

**AGENDA  
MEETING OF THE  
CITY/COUNTY ANIMAL SERVICES JPA  
TUESDAY, NOVEMBER 10, 2009, 1:00 P.M.  
YUCCA VALLEY COMMUNITY CENTER MESQUITE ROOM**

**ROLL CALL:** Members Cronin, Herbel, Huntington, Chair Derry

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES**

1-4 Approve the minutes of July 29, 2009 as presented

**DIRECTORS REPORTS/UPDATES**

**DISCUSSION ITEMS**

1. Discussion of Operating Budget
2. RFQ for Architecture/Engineering Services.
3. Transfer of Funds
4. MOU with County Counsel for JPA Legal Services
- 5-49 5. Insurance
- 50-119 6. Review of appraisal for Town Land as part of financial contribution.
7. Funding for remaining payments and willingness of County to consider advancing funds and entering into a separate finance agreement with the Town.
- 120-141 8. Conflict of Interest Code – Proposed Adoption Process
- 142-145 9. Bylaws Draft
10. Form 700 Filing

**PUBLIC COMMENTS**

**ADJOURNMENT**

**CITY/COUNTY ANIMAL SERVICES JPA  
MINUTES  
WEDNESDAY, JULY 29, 2009 3:00 P.M.**

Director Derry called the meeting to order at 3:15 p.m. with Directors Herbel, Huntington, Cronin and Derry present

**PLEDGE OF ALLEGIANCE**

Led by Director Derry

**PUBLIC COMMENT**

None

**DISCUSSION ITEMS**

**1. Election of Officers**

Director Herbel nominated Director Derry as Chair. Director Cronin seconded. Motion carried unanimously.

Director Herbel nominated Director Huntington as 1<sup>st</sup> Vice Chair. Chair Derry Seconded. Motion carried unanimously.

Director Huntington nominated Director Herbel as 2<sup>nd</sup> Vice Chair. Director Cronin seconded. Motion carried unanimously.

Chair Derry nominated Director Cronin as Secretary. Director Herbel seconded. Motion carried unanimously.

**2. Designation of Legal Advisor:**

Director Cronin commented the County Counsel is willing to act as Counsel, but would require a MOU, and questioned if the Town would provide Counsel. The need for administrative funding for the JPA was also discussed.

Town Manager Takata expressed concern regarding funds being siphoned away from the construction for administrative purposes. The money should go toward the Shelter and not administration. Director Cronin stated the main costs would be for insurance and guidance. He noted he will explore having the County Counsel develop a MOU and bring it back to the next meeting for consideration by the Board.

Director Huntington questioned board management. Town Manager Takata advised there will be staff involvement on both sides, and he does not feel those costs should be covered by the JPA. Director Cronin stated initially it is anticipated Counsel support would be minimal.

Director Huntington moved to recommend that County Counsel draft a MOU, establishing what they feel the cost will be and bring it back to the next meeting for consideration. Director Herbel seconded. Motion carried unanimously.

**3. Direction to file Notice of Agreement with Secretary of State.**

It was recommended that Counsel be directed to file the notice when they have been appointed.

**4. Designation of Treasurer**

Per the JPA agreement, the Treasurer for San Bernardino County is the Treasurer for the JPA. The Directors agreed.

**5. Designation of Auditor.**

The County Auditor/Controller is also named as the JPA Auditor. The Directors agreed.

**6. Discussion regarding transferring construction funds to the JPA.**

Director Cronin advised the County has already allocated three of their \$437,500 payments and has the funds available to transfer to the JPA when the Town is ready to transfer their funds. Administrative Services Director Yakimow advised the Town is in the position to allocate its first payment, but Council has not yet acted on the second and third payments. He noted the Town may want to obtain external financing for its portion. Director Cronin advised the County has three payments available and will carry them over until the Town is ready to put in their payments. Administrative Services Director Yakimow suggested another option discussed among staff would be to ask the County if it has any interest in financing the Town. Director Cronin advised he would need to check on that, noting in this financial climate it may be difficult, but he will ask. The main goal is to disperse as many dollars as possible so they are held in trust for the project. Whatever point and time the Town would like to forward its first payment the funds would be transferred into a trust. Administrative Services Director Yakimow advised the item will be taken to council and we will move forward.

Town Manager Takata questioned if an Architect from the County is preparing plans. Director Cronin advised they do not want to pick the Architect, the JPA should chose. Town Manager Takata suggested at the next meeting the JPA may want to talk about asking for an RFQ for architecture services.

Director Cronin commented another item for discussion at the next meeting should be whether or not the JPA should consider the value of the Town's land as part of it payment. Town Manager Takata advised the Town currently has the land and the current shelter will be used for parking, so the value of that would be added also. In addition, the road to the shelter, which was dirt, has been paved.

Director Huntington questioned who would be preparing the RFQ. Director Cronin advised that all of that would go through the JPA so administrative costs would have to be determined.

Director Herbel commented that staff at the shelter must have some idea of what is needed up there, or things they would like to see, noting it would be nice to get their input.

Administrative Services Director Yakimow questioned what the recommendation is regarding how to develop that administrative budget. Director Cronin advised that each item needs to be agendized individually, noting primary costs would be for Counsel if clerical support is needed.

Upon discussion regarding meetings, Director Huntington moved to meet monthly. Director Herbel seconded. Motion carried unanimously.

**7. Discussion regarding purposes of JPA and proposed work plan.**

Director Cronin commented regarding the importance to try to stay on task as much as possible with the work plan in the JPA agreement. Director Huntington noted that the property has been identified.

The initial objective is to make sure the membership has reviewed the governing documents. Town Manager Takata stated as the agendas are prepared there will be communication back and forth from staff at both the County and Town, which should not be charged to the JPA.

Town Manager Takata suggested that normal meetings be set, perhaps on the 1<sup>st</sup> or 3<sup>rd</sup> Wednesday of the month.

Upon discussion, the next meeting was scheduled for Wednesday, September 2, 2009 at 3:00 p.m. The JPA will attempt to meet the 1<sup>st</sup> Wednesday of every month, but that is subject to the Directors schedules.

Item for the next agenda include.

Determination of operating budget

Examination of an RFQ for architecture/engineering services

Transfer of funds,

County counsel to establish a MOU for costs

Director Cronin will check into insurance

The value of the Town's land.

Funding for the remaining payments, and willingness of the County to consider advancing funds and entering into a separate finance agreement with the Town.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:47 p.m.

Respectfully submitted,

Jamie Anderson, MMC  
Town Clerk

## Brokerage Casualty Quotation

Date: October 29, 2009  
 To: Jim Lynch  
 SWETT & CRAWFORD (SAN FRANCISCO)  
 From: TARA HIGGINS  
 Phone: 480-889-5725  
 Applicant: ANIMAL CARE JOINT POWERS AUTHORITY  
 Submission #: 01573675  
 Insurance Company: Colony Insurance Company

Quote valid until: November 28, 2009

Thank you for the opportunity to review the above account. We are pleased to offer the following quotation:

**PREMIUM TERMS:**

<u>\$3,000</u>	100% Deposit Premium	<u>\$3,000</u>	100% Minimum Premium at Audit
<u>\$200</u>	Inspection Fee		
<u>\$125</u>	Terrorism Covg Prem	<i>(Not included in the total premium shown above.)</i>	
<b>18% Commission</b>			

The attached disclosure notice must be signed & returned prior to Company binding coverage.

Minimum Retained Premium: Company to retain no less than 25% of the Minimum Term Premium if the Insured cancels.

**LIMITS OF LIABILITY:**

\$ 2,000,000 General Aggregate  
 \$ Included Products and Completed Operations Aggregate  
 \$ 1,000,000 Personal and Advertising Injury  
 \$ 1,000,000 Each Occurrence  
 \$ 100,000 Damage To Premises Rented To You  
 \$ 5,000 Medical Payments

**COVERAGE**

Commercial General Liability Covg.  
 FORM  
 Occurrence  
 Retro Date: N/A  
 DEDUCTIBLE: \$2,500 Per Claim  
*Includes Loss Adjustment Expenses & Defense Costs & applies to both BI and PD.*

*Note: Brokerage Casualty can also provide Excess & Umbrella limits. Please contact your Umbrella/Excess Underwriter.*

**Premium Breakdown:**

<u>Class Code</u>	<u>Exposure</u>	<u>Rating Basis</u>	<u>Rate</u>	<u>Premium</u>	
61225	500	Area	150.00	\$2,500	MP

Definition of Gross Sales: Total Revenues minus sales taxes. No other deductions allowed.

Endorsements/Additional Coverages:

All Additional Premiums are Flat (Fully Earned)

	<u>Number/Exp.</u>	<u>Premium</u>	<u>Sublimit</u>
U132C-0709 Hired & Non-Owned Auto Liab.		\$500	\$1,000,000

**FORMS:**

CG0001-1204 Comm'l General Liab Cov  
IL0017-1198 Common Policy Conditions  
IL0021-0498 Nuclear Energy Liab Excl Endt  
U094-0702 Service of Suit Endorsement  
U002-0904 Minimum Policy Premium  
U003-0702 Hazardous Materials Exclusion  
U004-0707 Miscellaneous Exclusion Endt  
U009-0707 Aircraft Prod. & Grounding Excl  
U048-0904 Empl.-Related Practices Excl  
U070-0308 Deductible Liability Insurance  
CG2167-1204 Fungi or Bacteria Exclusion  
CG0067-0305 Excl. Violation of Statutes Email, Fax, Phone

U184-0702 Inspection  
U593-1008 Contractors Covg. Limitations  
U593 Limits: \$1M / \$1M / \$1M

CG2426-0704 Amendment of Insured Contract Definition  
CG2186-1204 Excl-Exterior Insulation & Finish Systems

CG3234-0105 California Changes

Oil & Gas Program Forms (If applicable):

TRIA2002Notice-0108 Policyholder Disclosure

Cancellation Endt:

U173-0702 Cancellation

U527-0607 Excl - Any Residential Construction Work Except as Specified

Wording:

No Exceptions

CG2134-0187 Exclusion-Designated Work

Excludes:

Any/All Construction Activities

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The following must be received Prior To Binding:

**OTHER:**

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**NOTE:** At this time, all construction activities are excluded. When the Insured is ready to commence we can add the location and the cost of construction to the policy. The CG2134 will be deleted at that time.

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Consideration of reduction in sales requires a written explanation by the applicant prior to binding. Rate will be re-evaluated.

This quote is subject to an acceptable inspection and receipt of current application signed by the insured. Premium quoted includes no taxes or agent fees. This quote does not necessarily provide the terms and/or coverage requested in your submission application. If any conditions of this quote are not met, this quote and any binder or policy issued pursuant to it are invalid, and we reserve the right to withdraw, rescind, or to revise our price and terms for this insurance.

**Please attach a copy of this quote sheet with request to bind policy.**

\*\*\* PAGE 2 OF 2 \*\*\*

**POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism, as defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or effect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURER'S LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

PLEASE ALSO BE AWARE THAT YOUR POLICY DOES NOT PROVIDE COVERAGE FOR ACTS OF TERRORISM THAT ARE NOT CERTIFIED BY THE SECRETARY OF THE TREASURY.

Acceptance or Rejection of Terrorism Insurance Coverage

You must accept or reject this insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, before the effective date of this policy. Your coverage cannot be bound unless our representative has received this form signed by you on behalf of all insureds with all premiums due.

**Coverage acceptance.**

I hereby elect to purchase coverage for certified acts of terrorism, as defined in Section 102(1) of the Act for a prospective annual premium of \$125. I understand that I will not have coverage for losses resulting from any non-certified acts of terrorism.

OR

**Coverage rejection.**

I hereby decline to purchase coverage for certified acts of terrorism, as defined in Section 102(1) of the Act. I understand that I will not have coverage for any losses arising from certified or non-certified acts of terrorism.

\_\_\_\_\_  
Policyholder/Applicant's Signature  
Must be person authorized to sign for all insureds.

\_\_\_\_\_  
Print Name

ANIMAL CARE JOINT POWERS AUTHORITY  
\_\_\_\_\_  
Named Insured

\_\_\_\_\_  
Date

\_\_\_\_\_  
Colony Insurance Company  
Insurance Company

\_\_\_\_\_  
To Be Assigned

\_\_\_\_\_  
Policy Number  
01573675

\_\_\_\_\_  
Submission Number  
04208

\_\_\_\_\_  
Producer Number  
SWETT & CRAWFORD (SAN FRANCISCO)

\_\_\_\_\_  
Producer Name  
ONE CALIFORNIA STREET, 12TH FLOOR

\_\_\_\_\_  
Street Address  
SAN FRANCISCO, CA 94111

\_\_\_\_\_  
City, State, Zip

The producer shown above is the wholesale insurance broker your local insurance agent used to place your insurance coverage with us. Please discuss this Disclosure with your agent before signing.



Daniel Carreras  
 Willis Insurance Services of California, Inc (Irvine)  
 18101 Von Karman Ave  
 Suite 600  
 Irvine, California 92612

Quote No.: UDA1124767

October 20th, 2009

RE: Animal Care Joint Powers Authority

Public Officials Liability

Dear Daniel

In accordance with your request for a proposal, and based upon the information submitted, I am pleased to offer the following indication subject to receipt, review and acceptance of:

1. PRIOR TO BINDING, receipt, review, and acceptance of a fully completed, signed, and dated Hiscox main form application with all supplemental information (including but not limited to an employee handbook, most recently audited financials/proforma financials/Form 990, etc.)

Option # 1

Limit of Liability ( Each Claim and in the Aggregate for all Claims including Claims Expenses )	Retention ( Each Claim including Claim Expenses )	Annual Premium
\$ 1,000,000	\$ 10,000 Organization \$ 10,000 Employment Practices	\$ 7,831.00

Option # 2

Limit of Liability ( Each Claim and in the Aggregate for all Claims including Claims Expenses )	Retention ( Each Claim including Claim Expenses )	Annual Premium
\$ 2,000,000	\$ 10,000 Organization \$ 10,000 Employment Practices	\$ 14,097.00



The above indication is subject to our standard policy form and is inclusive of the following:

1. One (1) year policy period;
2. Full prior acts;
3. State National Insurance Company, which is Admitted and rated A by A.M. Best. Financial Size Category is Class VIII;
4. Attached endorsements apply: (1) E513.1, (2) E543.2, (3) E545.1, (4) E562.1, (5) E564.1, (6) E602.2, (7) E613.2, (8) E634.1, (9) E693.1, (10) E997.1, (11) E998.1, (12) E566.1

This indication will expire in 30 days, and the commission payable is 15.00 %.

Thank you for the opportunity to offer a proposal. Please give me a call if you have any questions.

Sincerely,

Rick Wong  
Underwriter Management Liability

PLEASE NOTE: EPL Retentions have been amended via Endorsement E566.



**HISCOX Inc.** is now providing a **Toll-Free Risk Management Assistance Hotline** for its policyholders.

In an on-going effort to better serve the needs of our policyholders, Hiscox, through its United States organization, **Hiscox Inc.**, is now making available a **Toll-Free Risk Management Assistance Hotline**. This hotline is staffed by highly qualified attorneys from the law firm of Warden Grier PC a **nationally recognized firm** which has distinguished itself for many years in the area of insurance related issues.

**Who is it For:**

- All policyholders of Hiscox Professional Liability insurance (except for Terrorism coverage) written out of our US offices.

**Information Provided On Issues Relating To:**

- Contract provisions dealing with liability and damage issues.
- Matters that could potentially result in a claim situation.
- Other general risk management related matters.

**How It Works:**

- Policyholders can either call the Toll-Free Hotline or can send questions via email.
- Callers required to provide insured name/policy number for verification purposes.
- Inquiries will be responded to by an appropriately experienced Warden Grier PC attorney. If the attorney is unavailable at the time of contact, then a telephone or email response will be sent within one business day.
- Hours of service are 8:00 AM to 6:00 PM Eastern Standard Time, Monday - Friday, excluding national holidays.

**Other Terms and Conditions:**

- The information and counseling provided shall be on a basis that does **not** establish any **attorney-client relationship** between Warden Grier PC and the caller.
- The information and counseling provided **must be confirmed** with the caller's own legal counsel.
- Conversations/emails will be confidential and the content will **not be communicated** to the insurer in any part.
- The caller will be advised by the Warden Grier PC attorney at the beginning of each call of the **nature and limitation** of the relationship, including the fact that Warden Grier represents the insurers.
- **This Hotline is NOT a loss reporting Hotline.** Please refer to your policy for instructions on how to report a claim.



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**ABOUT THIS  
POLICY**

This is a Claims Made Policy and only covers those Claims that are first made against the Insured during the Policy Period or, if exercised, during the Extended Reporting Period. Claim Expenses reduce the Limit of Liability provided. Please read the entire Policy carefully and consult with your insurance broker or advisor.

In consideration of the payment of premium and in reliance on the statements made and information provided to the Company, including but not limited to the statements made and information provided in the **Application** which is made a part of this Policy, and subject to the Limits of Liability and Retentions stated in the Declarations and all of the terms, conditions, limitations and exclusions of the Policy, the Company and the **Insured** agree as follows:

**I. INSURING  
AGREEMENT**

**Insuring Agreement 1 –  
Individual Non-  
Indemnified Liability**

The Company shall pay, on behalf of each of the **Insured Persons**, Loss for which the **Insured Person** is not indemnified by the **Organization** and which the **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against the **Insured Person**, individually or as a representative of the **Organization** or an **Outside Entity**, if the **Insured Person** is acting in an **Outside Capacity** for such **Outside Entity** with the knowledge and consent and at the request or direction of the **Organization**, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in the Reporting and Notice or Extended Reporting Period Sections of this Policy.

**Insuring Agreement 2 -  
Individual Indemnified  
Liability:**

The Company shall pay, on behalf of the **Organization**, Loss for which the **Organization** grants indemnification to an **Insured Person**, as permitted or required by law, and which the **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against the **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in the Reporting and Notice or Extended Reporting Period Sections of this Policy.



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Insuring Agreement 3 -  
Organization Liability:

The Company shall pay, on behalf of the **Organization**, **Loss** which the **Organization** becomes legally obligated to pay on account of any **Claim** first made against the **Organization** during the **Policy Period**, or if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Organization** by the **Insured Persons** before or during the **Policy Period**, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in the Reporting and Notice or Extended Reporting Period Sections of this Policy.

**II. DEFENSE AND  
SETTLEMENT**

- A. The Company shall have the right and the duty to defend any covered **Claim**, including but not limited to the appointment of legal counsel, subject to the Limits of Liability and Retentions stated in the Declarations and all applicable terms and conditions of this Policy, even if such **Claim** is groundless, false or fraudulent.
- B. Notwithstanding Section II.A. above, the **Insured** may appoint defense counsel to defend any covered **Claim**, but only with the prior written consent of the Company, who shall have the sole discretion to consent to such an appointment. The appointment by the **Insured** of defense counsel pursuant to this provision shall not waive or alter the rights of the Company with respect to review and determination as to the terms and conditions of retention and the reasonableness or necessity of any **Claim Expense** presented to them for payment.
- C. The Company shall have the right to investigate and to solicit settlement demands or proposals as to any covered **Claim** as the Company deems reasonable and the **Insured** shall, as a condition precedent to any right of coverage under this Policy, have the duty to cooperate with the Company in such investigation and in the solicitation of settlement demands or proposals including, but not limited to:
1. upon request, submitting to examination and interrogation under oath by the Company representatives
  2. attending hearings, depositions and trials as requested by the Company;
  3. assisting in securing and giving evidence and obtaining the attendance of witnesses;
  4. providing written statements to the Company representatives and meeting with such representatives for the purpose of investigation and/or defense and/or settlement and/or appeal;



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all without charge to the Company.

- D. The **Insured** shall not, except at its own cost, make any payment, incur any expense, admit any liability, settle any **Claim**, or assume any obligation without the prior written consent of the Company.
- E. The Company shall not settle any **Claim** without the consent of the **Insured**, which consent the **Insured** will not unreasonably withhold.
- F. If the **Insured** shall refuse to consent to any settlement recommended by the Company and shall elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the Company liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus **Claim Expenses** incurred up to the date of such refusal. Such amounts are subject to the Limits of Liability set forth in Sections VI.A and VI.B of this Policy and Item 4 of the Declarations.
- G. The Company shall not be obligated to settle any **Claim**, pay any **Claim Expenses**, or continue to defend any **Claim** after the Limit of Liability stated in Item 4 of the Declarations has been exhausted.

### III. DEFINITIONS

- A. **Affiliate** means any person or entity which is related to any **Insured** through common ownership, control or management, but **Affiliate** shall not include any **Subsidiary**.
- B. **Application** means the signed **Application** for the Policy including any attachments and other materials or information submitted in conjunction with the signed application. The **Application** shall be attached to and become part of this Policy. If this Policy is a renewal or replacement of a previous policy or policies issued by the Company, all signed applications and other materials that were attached to and become a part of these previous policies shall be considered as part of the **Application** for this Policy.
- C. **Claim** means:
  - 1. when used in reference to the coverage provided by Insuring Agreements 1 or 2:
    - a. a demand for monetary damages or non-monetary relief;
    - b. a civil proceeding commenced by the service of a complaint or a similar pleading;
    - c. a criminal proceeding commenced by the return of an indictment; or

Hiscox Inc 357 Main Street Armonk NY 10504 Tel: 914 273 7400 Fax: 914 273 4716 Website: www.hiscoxusa.com Email: hiscox.usa@hiscox.com



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- d. a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document, or by the entry of a formal order of investigation or similar document, against an **Insured Person** for a **Wrongful Act**, including any appeal therefrom; or
2. when used in reference to the coverage provided by Insuring Agreement 3:
  - a. a demand for monetary damages or non-monetary relief;
  - b. a civil proceeding commenced by the service of a complaint or similar pleading;
  - c. a criminal proceeding commenced by the return of an indictment; or
  - d. a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document, or by the entry of a formal order of investigation or similar document, but only while such proceeding is also pending against an **Insured Person**, against an **Organization** for a **Wrongful Act**, including any appeal therefrom.
- D. **Claim Expenses** means:
  1. all reasonable and necessary fees, costs, charges and expenses, including the fees of attorneys and experts, incurred by or on behalf of the Company in the investigation, defense, appeal and settlement of a **Claim**;
  2. all other reasonable and necessary fees, costs and expenses incurred by the **Insured** with the written approval of the Company; and
  3. premiums on appeal bonds, attachment bonds or similar bonds; however, the Company shall have no obligation to apply for or furnish any such bonds.

**Claim Expenses** shall not include fees and expenses incurred with respect to any criminal action or proceeding, or with regard to any salary charges of regular **employees** or officials of the Company nor salary or wages of the **Insured**.
- E. **Employee** means any natural person whose labor or service is engaged by and directed by the **Organization**, including any part-time, seasonal, leased or temporary **employees** or volunteers.
- F. **Executive** means any natural person who was, now is or shall become:
  1. A duly elected or appointed director, officer, manager, in-house general



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- counsel, or duly constituted committee member of any **Organization** chartered in the United States of America; or
2. A holder of a position equivalent to any position described in Section III.F.1 above in any **Organization** that is chartered in any jurisdiction other than the United States of America.
- G. **Insured** means the **Organization** set forth in Item 1. of the Declarations and any **Insured Person**.
- H. **Insured Capacity** means the position or capacity of an **Insured Person** that causes him or her to meet the definition of **Insured Person**. **Insured Capacity** does not include any position or capacity held by an **Insured Person** in any organization other than the **Organization**, even if the **Organization** directed or requested the **Insured Person** to serve in such position or capacity in such other organization.
- I. **Insured Person** means any natural person who was, now is or shall become a duly elected or appointed director, officer, trustee, duly constituted committee member or **Employee** of any **Organization**.
- J. **Loss** means the amount that any **Insured** becomes legally obligated to pay on account of any covered **Claim**, including but not limited to:
1. damages (including punitive or exemplary damages, if and to the extent that such punitive or exemplary damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has a substantial relationship to the relevant **Insureds**, to the Company, or to the **Claim** giving rise to the damages);
  2. judgments;
  3. settlements;
  4. pre- and postjudgment interest;
  5. **Claim Expenses**.
- Loss** does not include:
1. any amount not indemnified by the **Organization** for which an **Insured Person** is absolved from payment by reason of any covenant, agreement or court order;
  2. any costs incurred by the **Organization** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
  3. any amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action,



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proceeding or demand subsequently gives rise to a **Claim**.

4. taxes, fines or penalties, or the multiple portion of any multiplied damage award, except as provided above with respect to punitive or exemplary damages;
  5. any amount deemed uninsurable under the law pursuant to which this insurance shall be construed.
- K. **Organization** means the Not-for-Profit Organization named in Item 1 of the Declarations and any **Subsidiary** listed in the **Application** as of the Inception Date of this Policy stated in Item 3. of the Declarations that has been accepted by the Company.
- L. **Outside Capacity** means service by an **Insured Person** in the position of director, officer, trustee, regent, or governor (or any equivalent executive position) of an **Outside Entity**, but only during the time that such service is with the knowledge and consent or at the request of the **Organization**.
- M. **Outside Capacity Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an **Insured Person** in his or her **Outside Capacity**.
- N. **Outside Entity** means:
1. any not-for-profit organization, community chest, fund or foundation that is not included in the definition of the **Organization** and that is exempt from federal income tax as an organization described in Section 501 (c) (3) of the Internal Revenue code of 1986, as amended;
  2. any other entity organized for a religious or charitable purpose under any not-for-profit organization act or statute; and
  3. if specifically added as an **Outside Entity** by written endorsement attached to this Policy, any other non-profit entity or any for-profit entity, but does not include any **Subsidiary** or **Affiliate**.
- O. **Personal Injury** means any actual or alleged:
1. false arrest, wrongful detention or imprisonment;
  2. malicious prosecution;
  3. wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
  4. oral or written publication of material that slanders, libels or defames a person or organization or disparages the goods, products or services of a



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- person or organization; or
5. oral or written publication or material that violates a person's right of privacy.
- P. **Policy Period** means the period of time specified in Item 3. of the Declarations.
- Q. **Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, radon, asbestos, electromagnetic radiation, or waste of any like substances. In addition to pollutants to be disposed of, waste also includes materials to be recycled, reconditioned or reclaimed.
- R. **Related Claims** means all **Claims** for **Wrongful Acts** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.
- S. **Securities Laws** means the Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, any state "blue sky" securities law, or any other federal, state or local securities law or any amendments thereto or any rules or regulations promulgated thereunder or any other provision of statutory or common law used to impose liability in connection with the offer to sell or purchase, or the sale or purchase, of securities.
- T. **Subsidiary** means any not-for-profit entity during any time in which the **Organization** owns or controls, directly or through one or more **Subsidiaries**, the present right to elect or appoint more than fifty percent (50%) of such entity's directors, officers or trustees.
- U. **Third Party Discrimination** means any actual or alleged discrimination or sexual harassment of a client, customer or vendor of, or visitor to, the **Organization**, or violation of that person's civil rights relating to such discrimination or sexual harassment.
- V. **Wrongful Act** means:
1. any error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted, or allegedly committed or attempted by an **Insured Person** in his or her **Insured Capacity**, including **Wrongful Employment Practices, Personal Injury** or **Third Party Discrimination**, or, for purposes of coverage under Insuring Agreement 3, by the **Organization**;
  2. any other matter claimed against an **Insured Person** solely by reason of his or her serving in an **Insured Capacity**; or

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3. any **Outside Capacity Wrongful Act**.

W. **Wrongful Employment Practices** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment whether actual or constructive;
2. employment related misrepresentations;
3. violation of any federal, state or local law concerning employment or discrimination in employment, including but not limited to Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights act of 1964(as amended), the Pregnancy Discrimination Act of 1978, the Civil Rights Acts of 1866, the Family Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Fifth and Fourteenth Amendments of the United States Constitution, or any rule or regulation promulgated thereunder;
4. sexual or other harassment in the workplace;
5. wrongful demotion or wrongful deprivation of career opportunity, employment or promotion; or
6. wrongful hiring, retention, discipline or evaluation or failure to adopt adequate employment or workplace policies and procedures.

**IV. EXTENSIONS  
OF COVERAGE**

A. **Estates, Heirs, and Legal Representatives**

In the event of the death or incapacity of an **Insured Person**, or the ~~bankruptcy of an Insured~~, any ~~Claim~~ made against any of the heirs, executors, administrators, trustees in bankruptcy, assignees or legal representatives of any **Insured**, based upon actual or alleged **Wrongful Acts** of such **Insured**, shall be deemed to be a **Claim** against such **Insured** for the purposes of this Policy.

B. **Spousal Liability**

If a **Claim** is asserted against the lawful spouse of any **Insured Person** solely as a result of:

1. the status of the spouse as a spouse of any **Insured Person**; or
2. the ownership interest of the spouse in property which the claimant seeks as recovery for actual or alleged **Wrongful Acts** of any **Insured Person**,



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then such **Claim** shall be deemed a **Claim** against the **Insured Person** for the purpose of this Policy; provided, however, that, subject to all of the terms, conditions, limitations and exclusions of this Policy, coverage shall only apply to **Claims** for actual or alleged **Wrongful Acts** of the **Insured** and no coverage will be provided for any **Claim** for any actual or alleged **Wrongful Acts** of the Spouse.

**V. EXCLUSIONS**

**Applicable to all Insuring Agreements**

This Policy does not apply to any **Claim**:

- A. based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date set forth in Item 3 of the Declarations, was the subject of any notice given under any policy of which this Policy is a direct or indirect renewal or replacement;
- B. based upon, arising from, or in consequence of any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the Pending or Prior Litigation Date set forth in Item 6 of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- C. brought or maintained by or on behalf of any **Insured** in any capacity against any other **Insured**, provided that this Exclusion V.C shall not apply to:
  1. a **Claim** brought or maintained derivatively on behalf of the **Organization** by one or more security holders of the **Organization** or persons who are not **Insured Persons**, provided such **Claim** is brought and maintained without any active assistance or participation of, or solicitation by, any **Executive**;
  2. a **Claim** brought or maintained by an **Insured Person** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this Policy;
  3. a **Claim** brought by an **Executive** who has not served as an **Executive** of the **Organization** for at least four (4) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without any active assistance or participation of, or solicitation by, the **Organization** or any other **Executive** who is serving or has served as an **Executive** within such four (4) year period; or
  4. a **Claim** brought or maintained by **Employees** who are not past or present **Executives** of an **Organization** if such **Claim** is brought and maintained without any active assistance or participation of, or solicitation



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by, any such **Executives**;

D. based upon, arising from, or in consequence of:

1. any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
2. any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants** or any action taken in contemplation or anticipation of any such regulation, order, direction or request;

including but not limited to any **Claim** for financial loss to the **Organization**, to any member, security holder, or creditor of the **Organization**, to any **Outside Entity**, or to any member, security holder, or creditor of an **Outside Entity** based upon, arising from, or in consequence of any matter set forth in clause 1 or 2 of this Exclusion V.D.

E. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed. To the extent a **Claim** is made for **Wrongful Employment Practices** or **Third Party Discrimination**, mental anguish and emotional distress are deleted from this exclusion;

F. for an actual or alleged violation of the responsibilities, obligations or duties imposed on fiduciaries by the Employee Retirement Income Security Act of 1974, or any amendments thereto, or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;

~~G. brought or maintained by or on behalf of any **Outside Entity** or any director, officer, trustee, governor or equivalent executive of an **Outside Entity** in any capacity; provided that this Exclusion V.G shall not apply to:~~

1. a **Claim** brought or maintained derivatively on behalf of an **Outside Entity** by one or more security holders or members of the **Outside Entity** who are not **Insured Persons** and are not directors, officers, trustees, governors, or equivalent executives of the **Outside Entity** and who bring and maintain such **Claim** without the solicitation, assistance or participation of an **Insured Person** of any director, officer, trustee, governor or equivalent executive of the **Outside Entity**; or
2. a **Claim** brought or maintained by a director, officer, trustee, governor or equivalent executive of an **Outside Entity** for contribution or indemnification, if such **Claim** directly results from another **Claim** covered under this Policy;



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- H. for **Wrongful Acts** of an **Insured Person** in his or her capacity as a director, officer, manager, trustee, regent, governor or employee of any entity other than the **Organization**, even if the **Insured Person's** service in such capacity is with the knowledge and consent or at the request of the **Organization**, provided, however that this Exclusion V.H shall not apply to service in an **Outside Capacity**;
- I. based on any **Wrongful Act** which is, or is alleged to be, an assault and/or battery, a willful or reckless violation of any statute or regulation, or any conduct which is dishonest, willful, malicious, fraudulent or otherwise intended to cause damage or injury to persons or property. However, notwithstanding the foregoing, the **Insureds** shall be protected under the terms of this Policy as to any **Claims** made against them by reason of any alleged dishonesty on the part of the **Insureds** unless a judgment or other final adjudication thereof adverse to such **Insureds** shall establish that acts of active deliberate dishonesty committed by such **Insureds** were material to the cause of action so adjudicated;
- J. made against a **Subsidiary** or **Affiliate** or an **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed, attempted, or allegedly committed or attempted during any time when such entity was not a **Subsidiary** or **Affiliate**;
- K. made against any **Insured** based upon, arising from, or in consequence of:
1. the committing of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured** as evidenced by a final and non-appealable judgment or adjudication, or by any plea of guilty, nolo contendere or no contest, or by an *Alford* plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970); or
  2. such **Insured** having gained in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled;
- L. based upon, arising from, or in consequence of the actual or alleged violation of any **Securities Laws**; provided that this Exclusion V. part L. shall not apply to the extent that such **Claim** is based upon, arises from or is in consequence of the **Organization's** offer or sale of debt securities of the **Organization** in a transaction that is (or in a series of transactions that are) exempt from registration under the Securities Act of 1933, as amended, and under the rules and regulations promulgated thereunder;

**Applicable to Insuring Agreement 3 Only**

- M. The Company shall not be liable under Insuring Agreement 3 for **Loss**, other than **Claim Expenses**, on account of any **Claim** based upon, arising from, or in consequence of any actual or alleged liability of an **Organization** under any written or oral contract or agreement, provided that this Exclusion V. part M.



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shall not apply to the extent that the **Organization** would have been liable in the absence of such contract or agreement.

- N. The Company shall not be liable under Insuring Agreement 3 for **Loss** on account of any **Claim** based upon, arising from, or in consequence of any actual or alleged infringement of patent, copyright or trademark, or misappropriation of intellectual property, ideas or trade secrets.
- O. The failure to procure or maintain adequate insurance or bonds.

**VI. LIMITS OF  
LIABILITY AND  
RETENTION**

- A. The Company's obligation to pay **Loss** and **Claim Expenses** because of all **Claims** first made against the **Insured** during the **Policy Period** is subject to and shall never exceed the amount of the Company's Limit of Liability stated in Item 4 of the Declarations. Any payment of **Loss** and/or **Claim Expenses** by the Company will reduce the stated Limit of Liability. Once the Limit of Liability is exhausted by such payments, the Company will have no further obligations under this Policy to pay **Loss** and **Claim Expenses**.
- B. The Company's liability under this Policy shall apply only to that part of covered **Loss** on account of each **Claim** which is excess of the applicable Retention set forth in Item 5 of the Declarations. Such Retention shall be depleted only by **Loss** otherwise covered under this Policy, and shall be borne by the **Insureds** uninsured and at their own risk.
- C. If different parts of a single **Claim** are subject to different retentions, the applicable retentions will be applied separately to each part of such **Claim**, but the sum of such retentions shall not exceed the largest applicable Retention.
- D. All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** were first made, or on the date the earliest of such **Related Claims** is treated as having been made, regardless of whether such date is before or during the **Policy Period**.
- E. The Limit of Liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate Limit of Liability stated in Item 4 of the Declarations.

**VII. EXTENDED  
REPORTING  
PERIOD**

- A. If the Company or the **Organization** cancels or non-renews this Policy then the **Organization** shall have the right, upon payment of an additional premium

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to an extension of the coverage granted by this Policy for the period offered by the Company. Such extension of coverage shall be referred to as the Extended Reporting Period and shall commence upon the effective date of cancellation or non-renewal. The Extended Reporting Period will apply only to **Claims** first made against the **Insured** during the Extended Reporting Period for or based upon **Wrongful Acts** committed or allegedly committed prior to such effective date of cancellation or non-renewal and otherwise covered by the Policy. The right to purchase the Extended Reporting Period shall not apply if this Policy is cancelled by the Company for reasons of nonpayment of premium.

- B. As a condition precedent to the right to purchase the Extended Reporting Period the total premium of the Policy must have been paid. The right to purchase the Extended Reporting Period shall lapse unless a written notice of the election of the Extended Reporting Period, together with full payment of the additional premium for the Extended Reporting Period, is received by the Company within 30 days after the effective date of cancellation or the non-renewal of the Policy. In the event such written notice of election and the payment of the additional premium are not received by the Company within such 30-day period, there shall be no right to purchase the Extended Reporting Period at a later date.
- C. If the Extended Reporting Period is purchased, the entire premium shall be deemed earned at its commencement without any obligation by the Company to later return any portion thereof.
- D. The Limits of Liability available during the Extended Reporting Period shall be the remaining available Limits of Liability under this cancelled or non-renewed Policy. There shall be no separate or additional Limit of Liability available for the Extended Reporting Period and the purchase of the Extended Reporting Period shall in no way increase the Limit of Liability set forth in Item 4 of the Declarations.
- E. The **Organization** shall have continued coverage granted by this Policy for a period of 60 days following the effective date of such termination or non-renewal, but only for **Claims** first made during such 60 days and arising from **Wrongful Acts** taking place prior to the effective date of such termination or non-renewal. This Automatic Extended Reporting Period shall immediately expire upon the purchase of replacement coverage by the **Organization**.

## VIII. CONDITIONS

### A. Reporting and Notice

In the event a **Claim** is first made against an **Insured**, the **Organization**, as a condition precedent to any right to coverage under this Policy, shall give written notice to the Company of any such **Claim** as soon as practicable but



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in no event later than sixty (60) days after the end of the **Policy Period** or, if applicable, during the Extended Reporting Period.

The **Organization** shall thereafter forward to the Company any and all documents relating to the **Claim**, including every demand, notice, summons or other applicable information received by the **Insured** or by the **Insured's** representatives.

**B. Notice of potential Claims**

If, during the **Policy Period** an **Insured** first becomes aware of a **Wrongful Act** to which this Insurance applies and which might subsequently give rise to a **Claim**; the **Insured** may give written notice to the Company of a potential **Claim** during the **Policy Period**. Such notice must include:

1. the identity of the potential claimant;
2. the identity of the person(s) who allegedly committed the **Wrongful Act**;
3. the date of the alleged **Wrongful Act**;
4. specific details of the alleged **Wrongful Act**; and
5. any written notice from the potential claimant describing the **Wrongful Act**.

If this notice is received by the Company during the **Policy Period**, then any **Claim** that is subsequently made against the **Insured** arising from the **Wrongful Act** about which notice was given to the Company shall be deemed for the purpose of this Policy to have been first made during the **Policy Period**. This provision shall not apply to, nor shall the reporting of potential **Claims** be permitted during the Extended Reporting Period.

If the potential **Claim** is not reported to the Company during the **Policy Period**, there is no further right to report such potential **Claims** and any **Claim** arising from such potential **Claims** shall not be covered.

**C. Acquisition/Creation of Another Organization**

1. If before or during the **Policy Period** any **Organization**:
  - a. acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
  - b. acquires another organization by merger into or consolidation with the **Organization** such that the **Organization** is the surviving entity,

then coverage shall be provided for such other organization, and its **Insured Persons**, only with respect to any **Wrongful Acts** committed, attempted, or allegedly committed or attempted after the effective date of such acquisition or creation unless the Company agrees, after presentation of a complete **Application** and all other appropriate information, to provide coverage by endorsement for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by such



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**Insured Persons** before the effective date of such acquisition or creation.

2. If, at the time of an acquisition or creation the total assets of any such acquired or created organization exceed twenty-five percent (25%) of the total assets of the **Organization** (as reflected in the most recent audited consolidated financial statements of such organization and the **Organization**, respectively, as of the date of such acquisition or creation), then the **Organization** shall give written notice of such acquisition or creation to the Company as soon as practicable, but in no event later than thirty (30) days after the date of such acquisition or creation, together with such other information as the Company may require and shall pay any reasonable additional premium required by the Company.

If the **Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Company, coverage for such acquired or created organization and its **Insured Persons** shall terminate with respect to **Claims** first made more than thirty (30) days after such acquisition or creation. Coverage for any acquired or created organization described in this paragraph, and for its **Insured Persons**, shall be subject to such additional or different terms, conditions and limitations of coverage as the Company in its sole discretion may require.

D. **Acquisition by Another Organization**

If:

1. the **Organization** merges into or consolidates with another organization and the **Organization** is not the surviving entity; or
2. another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities of the **Organization**;

then coverage under this Policy shall continue until termination of the Policy but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insured Persons** before such merger, consolidation or acquisition. The entire premium shall be deemed fully earned. The **Organization** shall give written notice of such merger, consolidation or acquisition to the Company as soon as practicable, but in no event later than thirty (30) days after the date of such merger, consolidation or acquisition, together with such other information as the Company may require. Upon receipt of such notice and information and at the request of the **Organization**, the Company may provide to the **Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Company and the **Organization**) with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insureds** after such merger, consolidation or acquisition. Any coverage extension pursuant to such quotation shall be subject to such additional or different



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terms, conditions and limitations of coverage, and payment of such additional premium, as the Company in their sole discretion may require.

**E. Cessation of Subsidiary**

In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, then coverage under this Policy with respects to such former **Subsidiary** and its **Insureds** shall continue until termination of this Policy, but only with respects to **Claims for Wrongful Acts** committed, attempted, or allegedly committed or attempted while such organization was a **Subsidiary**.

**F. Subrogation**

In the event of any payment under this Policy, the Company shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and such **Insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Company effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insured**.

**G. Action Against the Company**

No action may be taken against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy. No person or entity shall have any right under this Policy to join the Company as part to any action against any **Insured** to determine such **Insured's** liability nor shall the Company be impleaded by such **Insured** or legal representatives of such **Insured**.

**H. Representation and Severability**

1. In granting coverage to the **Insureds** under this Policy, the Company has relied upon the declarations and statement in the **Application**. Such declarations and statements are the basis of the coverage granted in this Policy and shall be considered as incorporated in and constituting part of this Policy.
2. The **Application** shall be construed as a separate application for coverage by each **Insured Person**, and no fact pertaining to the knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining if coverage is available.
3. The statements and representations in the **Application** will be deemed to have been made by all **Organizations**. For the purpose of determining if coverage is available, facts pertaining to and knowledge possessed by:
  - a. the Chief Financial Officer, President, Executive Director, Chief Executive Officer or Chairperson of an **Organization** shall be imputed only to that **Organization** and its **Subsidiaries**; and
  - b. any individual signing the **Application** shall be imputed to all **Organizations, Subsidiaries and Affiliates**.



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**I. Notice of cancellation**

This Policy may be cancelled by the **Organization** by giving advance written notice to the Company stating when thereafter such cancellation shall be effective. This Policy may also be cancelled by the Company by mailing to the **Organization** by registered, certified or other first class mail, at the **Organization** address shown in Item 2 of the Declarations, written notice stating when not less

than sixty (60) days thereafter (or fifteen (15) days thereafter when cancellation is due to non-payment of premium), the cancellation shall be effective. The mailing of such notice shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice. If this Policy shall be cancelled by the **Organization**, the Company shall retain the customary short rate proportion of the premium. If this Policy shall be cancelled by the Company, any return premium shall be calculated pro rata. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of the cancellation, but such payment shall be made as soon as practicable.

**J. Bankruptcy and Insolvency**

Bankruptcy or insolvency of an **Insured** shall not relieve the Company of any of their obligations under this Policy.

**K. Alteration and Assignment**

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy which is signed by a duly appointed representative of the Company.

**L. Titles**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

**M. Compliance With Applicable Trade Sanction Laws**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the Company from providing insurance.

IN WITNESS WHEREOF, the Company has executed and attested these presents, but this Policy shall not be valid unless countersigned on the Declarations by a duly appointed representative of the Company.

Secretary

President

Endorsement 1

APPLICANT NAME: Animal Care Joint Powers Authority

E513.1 Public Officials Liability Endorsement

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It is hereby understood and agreed that the Policy is amended as follows:

1. SECTION I. INSURING AGREEMENT is hereby deleted in its entirety and the following is substituted therefor:

The Company will pay on behalf of the **Insured** all **Loss**, including **Claim Expenses**, in excess of the retention and subject to the applicable Limit of Liability and the provisions of Section VI.A. of the Policy, that the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured** during the Policy Period or any duly exercised Extended Reporting Period for a **Wrongful Act** committed, attempted, or alleged to have been committed or attempted by an **Insured**, or by anyone for whom the **Insured** is legally responsible, before or during the **Policy Period**, but only if such **Wrongful Act** is committed, attempted, or alleged to have been committed or attempted after the Retroactive Date, if any, and the **Claim** is reported to the Company in writing in the manner and within the time period provided in the Reporting and Notice or Extended Reporting Period sections of this Policy.

2. SECTION III. DEFINITIONS is hereby amended as follows:

- a. DEFINITIONS Sections III.A., III.F. and III.T. are deleted in their entirety.
- b. DEFINITIONS Sections III.C.1.c. and III.C.2.c. are deleted.
- c. DEFINITIONS Section III.G. is amended to read as follows:

G. **Insured** means:

- 1. The **Organization**;
- 2. All persons who were, are, or in future become lawfully elected or appointed officials or duly and lawfully hired **Employees** of the **Organization**, but only while acting in such capacity for or on behalf of the **Organization**;
- 3. Commissions, boards, or other similar bodies and the members and employees thereof, but only where such bodies are operated by, included within the budget of, and are established under and pursuant to the jurisdiction and lawful powers of the **Organization**;
- 4. Volunteers, but only while acting for or on behalf of and at the specific written request and direction of the **Organization**;
- 5. Duly elected or appointed officials or duly hired **Employees** of the Organization who serve in an **Outside Capacity** for an **Outside Entity**.

Endorsement 1

APPLICANT NAME: Animal Care Joint Powers Authority

E513.1 Public Officials Liability Endorsement

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d. DEFINITIONS Section III.H. is amended to read as follows:

H. **Insured Capacity** means the position or capacity of an **Insured Person** that causes him or her to meet the definition of **Insured Person**. **Insured Capacity** does not include any position or capacity held by an **Insured Person** in any organization other than the **Organization**, unless the **Organization** has directed or requested in writing that the **Insured Person** serve in such position or capacity in such other organization.

e. DEFINITIONS Section III.J. is amended to read as follows:

J. **Loss** means the amount that an **insured** becomes legally obligated to pay as a result of any covered **Claim**, including:

1. damages;
2. judgments;
3. settlements;
4. pre- and postjudgment interest;
5. **Claim Expenses**.

**Loss** does not include:

1. civil or criminal fines, penalties, sanctions, or taxes;
2. the multiplied portion of any multiplied damage award;
3. punitive or exemplary damages, or any amounts deemed uninsurable pursuant to the law under which this Policy shall be construed, except to the extent punitive or exemplary damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, and further provided that such jurisdiction has a substantial relationship to the relevant **Insureds**, to the Company, or to the **Claim** giving rise to such damages;
4. any amount not indemnified by the **Organization** for which an **Insured Person** is absolved from payment by reason of any covenant, agreement, or court order;
5. any costs incurred by the **Organization** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
6. any amounts incurred by an **Insured** in the defense or investigation of any action, proceeding, or demand that is not a **Claim**, even if such defense or investigation benefits the defense of a covered **Claim**, or such action, proceeding, or demand subsequently gives rise to a covered **Claim**;
7. any political contributions;

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- 8. any wages, salaries, expenses, benefits, gratuities, or other payments regularly made to employees, officials, commissioners, committee members, board members, interns, or volunteers;
- 9. in connection with any **Claim** for or based on **Wrongful Employment Practices**, any award of back wages.

f. DEFINITIONS Section III.K. is amended to read as follows:

K. **Organization** means the public entity named in Item 1 of the Declarations.

g. DEFINITIONS Section III.L. is amended to read as follows:

L. **Outside Capacity** means service by an **Insured Person** as a director, officer, trustee, regent, governor, commissioner, committee member, or similar position with an **Outside Entity**, but only where and during the time that such service is at the express written direction or request of the **Organization**.

h. DEFINITIONS Section III.N. is amended to read as follows:

N. **Outside Entity** means any public, tax exempt, or not-for-profit organization, body, or entity that is not included in the definition of the **Organization** and as to which an **Insured Person** is directed or requested to serve.

3. EXCLUSIONS Section V.C. is amended to read as follows:

- C. brought or maintained by or on behalf of any **Insured** in any capacity as against any other **Insured**, provided, however, that this exclusion shall not apply to:
  - 1. a **Claim** for indemnity of contribution brought or maintained by an **Insured** against another **Insured** in or directly arising out of a **Claim** covered under this Policy;
  - 2. the **Claim** relates to allegations of **Wrongful Employment Practices** by an **Insured** against another **Insured** in his or her **Insured Capacity**.

4. EXCLUSIONS Section V.D. is amended to read as follows:

- D. based upon, arising out of, or in consequence of:
  - 1. any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants** ; or

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APPLICANT NAME: Animal Care Joint Powers Authority

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2. any regulation, order, direction, or request to test for, clean up, remove, contain, treat, detoxify, or neutralize any **Pollutants** or any action taken in contemplation or anticipation of any such regulation, order, direction, or request.

5. EXCLUSIONS Sections V.G., V.J. and V. K. are deleted in their entirety.

6. EXCLUSIONS Section V.I. is amended to read as follows:

I. based on any **Wrongful Act** which is, or is alleged to be, an assault and/or battery, a willful or reckless violation of any statute or regulation, or any conduct that is dishonest, willful, malicious, fraudulent, criminal, or otherwise intended to cause damage or injury to persons or property. However, notwithstanding the foregoing, the **Insureds** shall be protected under the terms of this Policy as to any **Claims** made against them by reason of any alleged dishonesty on the part of the **Insureds** unless a judgment or other final adjudication thereof adverse to such **Insureds** shall establish that acts of active deliberate dishonesty were committed by such **Insureds** and were material to the cause of action so adjudicated. Nothing in this exclusion V. I. shall extend any coverage for **Loss** or **Claim Expenses** to any criminal investigation, action, or proceeding.

7. The following exclusions are added to Section V. of the Policy:

P. for any **Personal Injury**;

Q. any actual or alleged infringement of any patent, copyright, or trademark, or the misappropriation of any ideas or proprietary information, or any plagiarism;

R. based upon or involving condemnation, eminent domain, inverse condemnation, temporary or permanent taking, adverse possession, or dedication by adverse use, including, but not limited to, the valuation of any property for purposes of the foregoing;

S. based upon or involving, either directly or indirectly, any strikes, picketing, riots, civil commotions, or other similar events;

T. based upon or involving, either directly or indirectly, any debt financing, including, but not limited to, the planned or actual issuance of any bonds, notes, debentures, or guarantees of debt;

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E513.1 Public Officials Liability Endorsement

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U. based on or involving the determination of assessed values, the formulation or calculation of any tax rates, the collection of taxes, or the formulation, calculation, issuance, or failure to issue any tax refunds;

V. the gaining by any **Insured** of any profit, gain, or advantage to which such **Insured** was not legally entitled;

W. based upon or relating to the providing, or the failure to provide, any professional services as a lawyer, architect, engineer, doctor, nurse, or accountant;

X. based on or involving the establishment, operation, or maintenance of any hospitals or other health care, clinic, hospice, or nursing facilities, any law enforcement or fire fighting agencies or forces, or any jails or other detention facilities.

8. LIMITS OF LIABILITY AND RETENTION Section VI.A. is amended to read as follows:

A. The Company's obligation to pay **Loss and Claim Expenses** because of all **Claims** first made against the **Insured** during the **Policy Period** is subject to and shall never exceed the amount of the Company's Limit of Liability stated in Item 4. of the Declarations. Any payment of **Loss and/or Claim Expenses** by the Company will reduce the stated Limit of Liability, provided, however, that the Company shall pay **Claim Expenses** in excess of the applicable retention and up to an amount equal to the Limit of Liability set forth in Item 4. of the Declarations without reduction of the applicable Limit of Liability. Once the Company has paid the amount set forth in Item 4. of the Declarations in **Claim Expenses**, all further payments by the Company of **Claim Expenses** shall reduce the applicable Limit of Liability. Once the Limit of Liability has been exhausted by payment of any damages, judgments, settlements, or pre- and postjudgment interest, regardless of whether the payment by the Company of **Claim Expenses** without reduction of the Limit of Liability has exhausted the amount set forth in Item 4. of the Declarations, the Company shall have no further obligations under this Policy to **Loss and Claim Expenses**.

Endorsement 1

APPLICANT NAME: Animal Care Joint Powers Authority

E513.1 Public Officials Liability Endorsement

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9. CONDITIONS Sections VIII. C., D. and E. of the Policy are deleted in their entirety and the following new Sections VIII. C., D. and E. are substituted therefor:

C. In the event the **Organization** is consolidated with or is merged into another organization, such that the **Organization** is the surviving entity, coverage shall be afforded for the organization so consolidated with or merged into the **Organization**, but only with respect to **Wrongful Acts** committed, attempted, or allegedly attempted or committed after the effective date of such consolidation or merger, unless the Company agrees, after presentation to the Company of a full **Application** and all requested information, to provide coverage by endorsement for ~~Wrongful Acts~~ committed, attempted, or allegedly committed or attempted by the organization so consolidated or merged into the **Organization**, prior to the effective date of the consolidation or merger.

D. In the event the **Organization** is consolidated with or is merged into another organization, such that the **Organization** is not the surviving entity, coverage under this Policy will continue until expiration or earlier termination of the Policy, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted before the effective date of the consolidation or merger.

E. With respect to the consolidations or mergers set forth in Sections VIII. C. and D. above, it shall be a condition precedent to the continuance of coverage under said sections that the **Organization** give written notice of the consolidation or merger to the Company as soon as practicable, but no later than thirty (30) days after the effective date of the consolidation or merger. The Company shall, upon receipt of notice, have the right to request additional information and to terminate, limit, or modify the terms of the Policy, including but not limited to the requiring of payment of an additional premium. The failure of the **Organization** to provide notice of the consolidation or merger with the thirty(30) day period, or to pay any required additional premium within thirty (30) days of the sending of notice of such requirement by the Company, shall result in the termination of coverage as of the thirty-first (31<sup>st</sup>) day for any **Claims** made against the consolidated or merged entity for or arising from the **Wrongful Acts** of the other organization.

Endorsement 1

APPLICANT NAME: Animal Care Joint Powers Authority

E513.1 Public Officials Liability Endorsement

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10. CONDITIONS Sections VIII.H.3.a. and b. is amended to read as follows:

- a. the executive officials of the **Organization**, including the Mayor, Chief Financial Officer, President, Executive Director, Chief Executive Officer, Chairperson, or other similar positions, shall be imputed to the **Organization** and to all of its committees, boards, commissions and similar bodies; and
- b. any individual signing the **Application** shall be imputed to all Insureds, including the **Organization** and to each **Insured Person**.

11. CONDITIONS Section VIII.. is added as follows:

N. The coverage provided by this Policy is excess over any other valid and collectible insurance or right of indemnification available to the **Insured**, whether such other insurance or indemnification right is stated to be primary, contributory, excess, pro rata, contingent, or otherwise.

All other terms and conditions of the Policy remain unchanged.

**State National Insurance Company**

Administered by Hiscox Inc.



**Endorsement 2**

APPLICANT NAME: Animal Care Joint Powers Authority

**E543.2 Breach of Contract Exclusion Endorsement**

Page 1 of 1

It is understood and agreed that the section of this Policy entitled V. EXCLUSIONS, part M. is deleted in its entirety and replaced by the following:

Coverage is not afforded hereunder in respect of any **Claim** based upon, arising from, or in consequence of any actual or alleged liability of any **Organization** or **Outside Entity** under any written or oral contract or agreement, provided that this exclusion shall not apply to the extent that the **Organization** or **Outside Entity** would have been liable in the absence of such contract or agreement.

All other terms and conditions remain unchanged.

**State National Insurance Company**

Administered by Hiscox Inc.



**Endorsement 3**

APPLICANT NAME: Animal Care Joint Powers Authority

**E545.1 Backwage Coverage Extension Endorsement**

Page 1 of 1

It is hereby understood and agreed that notwithstanding any terms, conditions, limitations and exclusions to the contrary anywhere within this policy including the endorsements thereto, with respect to **Claims of Wrongful Employment Practices** for which indemnity coverage is otherwise afforded, no exclusion, or "carve out" in the policy's definition of **Loss**, shall be applied to back wages.

All other terms and conditions remain unchanged.

Endorsement 4

APPLICANT NAME: Animal Care Joint Powers Authority

E562.1 Nuclear Energy Liability Exclusion Ends. (All Coverage)

Page 1 of 2

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, the **Hazardous Properties of Nuclear Material**, including but not limited to:
- (1) **Nuclear Material** located at any **Nuclear Facility** owned by, or operated by or on behalf of, the **Organization**, or discharged or dispersed therefrom; or
  - (2) **Nuclear Material** contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the **Organization**; or
  - (3) the furnishing by an **Insured** or the **Organization** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **Nuclear Facility**; or
  - (4) **Claims** for damage or other injury to the **Organization** or its members which allege, arise from, are based upon, are attributed to or in any way involve, directly or indirectly, the **Hazardous Properties of Nuclear Material**.
- B. (1) which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its limit of liability; or,
- (2) with respect to which: (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **Insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

As used in this endorsement:

"**Hazardous Properties**" include radioactive, toxic or explosive properties.

"**Nuclear Facility**" means:

- (a) any nuclear reactor;
- (b) any equipment or device designed or used for:
  - (1) separating the isotopes of uranium or plutonium,
  - (2) processing or utilizing spent fuel, or
  - (3) handling, processing or packaging <sup>P-38</sup>wastes;

Endorsement 4

APPLICANT NAME: Animal Care Joint Powers Authority

E562.1 Nuclear Energy Liability Exclusion Ends. (All Coverage)

Page 2 of 2

- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; and
- (d) any structure, basin, excavation, ~~premises or place prepared or used for the storage or disposal of waste,~~ and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear Material" means source material, special nuclear material or byproduct material.

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Source Material," "Special Nuclear Material," and "Byproduct Material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

"Waste" means any waste material:

- (1) containing by product material and
- (2) ~~resulting from the operation by any person or organization of any Nuclear Facility~~ included within the definition of nuclear facility under paragraph (a) or (b) thereof.

Endorsement 5

APPLICANT NAME: Animal Care Joint Powers Authority

E564.1 EPLI (FLSA) Exclusion Endorsement

Page 1 of 1

It is understood and agreed that the policy is amended as follows:

1. Clause III. DEFINITIONS is amended to include the following definition at the end thereof:

WH-A. **Retaliation** means a retaliatory act of an **Insured** alleged to be in response to any of the following activities: (i) the disclosure or threat of disclosure by an **Employee** of the **Organization** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (ii) the actual or attempted exercise by an **Employee** of the **Organization** or an **Outside Entity** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (iii) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (iv) strikes of an **Employee** of the **Organization** or an **Outside Entity**.

2. Clause V. EXCLUSIONS is amended to include the following paragraph at the end thereof:

**Applicable to all Insuring Agreements**

This Policy does not apply to any **Claim**:

WH-A. for violation(s) of any of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall not apply to the extent that a **Claim** is for **Retaliation**;

WH-B. alleging, arising out of, based upon, attributable to or in any way relating to:

1. the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered (as opposed to tort-based back pay or front pay damages for torts other than conversion);
2. improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
3. failure to provide or enforce legally required meal or rest break periods;

provided, however, this exclusion shall not apply to the extent that a **Claim** is for **Retaliation**;

All other terms, conditions, and exclusions remain unchanged.

**State National Insurance Company**

Administered by Hiscox Inc.



**Endorsement 6**

APPLICANT NAME: Animal Care Joint Powers Authority

**E602.2 Prior Claim or Circumstance Exclusion**

Page 1 of 1

It is hereby understood and agreed that coverage is not afforded hereunder for any **Claim**, that is, either directly or indirectly, based upon or arising out of, or in any way related to any facts, circumstances, acts, errors, or omissions that are directly or indirectly alleged or involved in any matter, **Claim**, lawsuit or information reported to the Company of which the **Organization** had knowledge prior to the inception date of this insurance.

All other terms and conditions remain unchanged.

**Endorsement 7**

APPLICANT NAME: Animal Care Joint Powers Authority

**E613.2 Cap on Losses from Certified Acts of Terrorism Endorsement**

Page 1 of 1

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE FEDERAL TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

The following is hereby added to the Policy and shall apply to all coverage:

With respect to any one or more "act of terrorism", the Company will not pay any amounts for which we are not responsible under the terms of the federal Terrorism Risk Insurance Act due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

The term "act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the federal Terrorism Risk Insurance Act for an "act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a program year (January 1, through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to the pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**A. Disclosure of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in the Policy Declarations.

**B. Disclosure of Federal Participation in Payment of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a program year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

All other terms and conditions remain unchanged.

**Endorsement 8**

APPLICANT NAME: Animal Care Joint Powers Authority

**E634.1 California Amendatory Endorsement**

Page 1 of 2

This endorsement modifies insurance provided under the following:

**NOT-FOR-PROFIT DIRECTORS AND OFFICERS LIABILITY PROGRAM**

1. Paragraph I. Notice of cancellation of Section VIII. CONDITIONS is deleted in its entirety and replaced by the following:

**I. Notice of cancellation**

This Policy may be cancelled by the **Organization** by giving advance written notice to the Company stating when thereafter such cancellation shall be effective. This Policy may also be cancelled by the Company by mailing to the **Organization** and the producer of record, if any, by registered, certified or other first class mail, at the **Organization's** address shown in Item 2 of the Declarations, written notice stating when not less than sixty (60) days thereafter (or fifteen (15) days thereafter when cancellation is due to non-payment of premium), the cancellation shall be effective. The mailing of such notice, which will include the reason(s) for cancellation, shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice. If this Policy shall be cancelled, any return premium shall be calculated pro rata. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of the cancellation, but such payment shall be made as soon as practicable.

If this Policy has been in effect for more than sixty (60) days, or if the Policy is a renewal, effective immediately, the Company may only cancel this Policy for one or more of the following reasons:

a. Non-payment of premium, including payment due on a prior Policy issued by the Company and due during the current Policy term covering the same risks;

b. A judgment by a court or an administrative tribunal that the **Organization** has violated any law of this state or of the United States having as one of its necessary elements an act which materially increases any of the risks insured against;

~~c. Discovery of fraud or material misrepresentation by either of the following:~~

1. The **Organization** or the **Organization's** representative in obtaining the insurance; or

2. The **Organization** or the **Organization's** representative in pursuing a **Claim** under the Policy;

d. Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by the **Organization** or the **Organization's** representative, which materially increase any of the risks insured against;

**Endorsement 8**

APPLICANT NAME: Animal Care Joint Powers Authority

**E634.1 California Amendatory Endorsement**

Page 2 of 2

- e. Failure by the **Organization** or the **Organization's** representative to implement reasonable loss control requirements which were agreed to by the **Organization** as a condition of Policy issuance or which were conditions precedent to the use by the Company of a particular rate or rating plan, if the failure materially increases any of the risks insured against;
- f. A determination by the commissioner that the loss of, or changes in, the Company's reinsurance covering all or part of the risk would threaten the Company's financial integrity or solvency;
- g. A determination by the commissioner that the continuation of the Policy coverage would place the Company in violation of the laws of this state or the **Organization's** state of domicile or that the continuation of coverage would threaten the Company's solvency; or
- h. A change by the **Organization** or the **Organization's** representative in the activities or property of the commercial or industrial enterprise which results in a material added risk, a materially increased risk or a materially changed risk, unless the added, increased or changed risk is included in the Policy.

2. The following is added to Section VIII. **CONDITIONS:**

**Nonrenewal and Conditional Renewal**

If the Company elects not to renew this Policy, or if the Company intends to condition renewal upon a reduction in limits, the elimination of coverages, an increase in retentions, or an increase of more than twenty-five percent (25%) in the rate upon which the premium is based, it will mail or deliver to the **Organization** written notice at least sixty (60) days but not more than one-hundred-twenty (120) days before the end of the **Policy Period**.

The Company will mail or deliver the above notices to the **Organization** and the producer of record, if any, at the last mailing address known to the Company. The notice of nonrenewal will include the reason(s) for nonrenewal. If the above notices are mailed, proof of mailing will be sufficient proof of notice.

**State National Insurance Company**

Administered by Hiscox Inc.



Endorsement 9

APPLICANT NAME: Animal Care Joint Powers Authority

E693.1 Americans with Disabilities Act Accommodation Cost Exclusion

Page 1 of 1

It is hereby understood and agreed that Section V. EXCLUSIONS, is amended by the addition of the following:

P. only to the extent such Claim or that portion of such Claim directly relates to the cost of providing any of the reasonable accommodations that may be required by, or are made as a result of, the Americans with Disabilities Act of 1992 or any other similar federal, state or local laws, rules or regulations.

All other terms and conditions remain unchanged.

**State National Insurance Company**

Administered by Hiscox Inc.



**Endorsement 10**

APPLICANT NAME: Animal Care Joint Powers Authority

**E997.1 Specific Entity Exclusion (Claims By or Against)**

Page 1 of 1

In consideration of the premium charged, it is understood and agreed that Clause V. **EXCLUSIONS** is amended to include the following exclusion at the end thereof:

This Policy does not apply to any **Claim**:

SE-A. brought by or on behalf of or against the below listed entity(ies) (as well as any of its subsidiaries or affiliates), including any director, officer, trustee, trustee emeritus, executive director, department head or committee member thereof:

**ENTITIES**

1. The County of San Bernardino
2. The Town of Yucca Valley

All other terms and conditions remain unchanged.

**State National Insurance Company**

Administered by Hiscox Inc.



Endorsement 11

APPLICANT NAME: Animal Care Joint Powers Authority

E998.1 Bodily Injury/Property Damage Exclusion (Absolute)

Page 1 of 1

In consideration of the premium charged, it is understood and agreed that in Clause V. **EXCLUSIONS**, paragraph E. is deleted in its entirety and replaced with the following:

E. based upon, arising from, or in consequence of bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed. To the extent a **Claim** is made for **Wrongful Employment Practices**, mental anguish and emotional distress are deleted from this **Exclusion**.

All other terms and conditions remain unchanged.

**State National Insurance Company**

Administered by Hiscox Inc.



**Endorsement 12**

APPLICANT NAME: Animal Care Joint Powers Authority

**E566.1 Amend Retention Endorsement B**

Page 1 of 1

In consideration of the premium charged, it is hereby understood and agreed that Item 5. of the Declarations, Retention, is amended to read as follows:

- |    |  |          |                      |
|----|--|----------|----------------------|
| 5. | Retention                                | \$10,000 | Organization         |
|    | Each <b>Claim</b> including <b>Claim</b> | \$25,000 | Employment Practices |
|    | <b>Expenses</b>                          |          |                      |

All other terms and conditions remain unchanged.



## ECONOMIC AND TRADE SANCTIONS POLICYHOLDER NOTICE

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Hiscox is committed to complying with the U.S. Department of Treasury Office of Foreign Assets Control (OFAC) requirements. OFAC administers and enforces economic sanctions policy based on Presidential declarations of national emergency. OFAC has identified and listed numerous foreign agents, front organizations, terrorists, and narcotics traffickers as Specially Designated Nationals (SDN's) and Blocked Persons. OFAC has also identified Sanctioned Countries. A list of Specially Designated Nationals, Blocked Persons and Sanctioned Countries may be found on the United States Treasury's web site <http://www.treas.gov/offices/enforcement/ofac/>.

Economic sanctions prohibit all United States citizens (including corporations and other entities) and permanent resident aliens from engaging in transactions with Specially Designated Nationals, Blocked Persons and Sanctioned Countries. Hiscox may not accept premium from or issue a policy to insure property of or make a claim payment to a Specially Designated National or Blocked Person. Hiscox may not engage in business transactions with a Sanctioned Country.

A Specially Designated National or Blocked Person is any person who is determined as such by the Secretary of Treasury.

A Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States.

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy may be rendered void from its inception with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

- (1) Any insured under this Policy, or any person or entity claiming the benefits of such insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to US economic trade sanctions;
- (2) Any claim or suit that is brought in a Sanctioned Country or by a Sanctioned Country government, where any action in connection with such claim or suit is prohibited by US economic or trade sanctions;
- (3) Any claim or suit that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to US economic or trade sanctions;
- (4) Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country government, where any activities related to such property are prohibited by US economic or trade sanctions; or
- (5) Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to US economic or trade sanctions.

Please read your Policy carefully and discuss with your broker/agent or insurance professional. You may also visit the US Treasury's website at <http://www.treas.gov/offices/enforcement/ofac/>.



*Capital Realty Analysts*  
41-865 Boardwalk  
Suite 201  
Palm Desert, CA 92211

**Complete Appraisal  
Market Value – Fee Simple Estate  
Hi-Dez Animal Kennel  
Summary Report**

**1.33 Acres of Improved Land**  
Located at 56-460 Paseo Los Ninos, Yucca  
Valley, CA 92284



**Prepared For:**  
Mr. Shane R. Stueckle  
Deputy Town Manager  
Town of Yucca Valley  
658-928 Business Center Drive  
Yucca Valley, CA 92284

**Effective Date of Appraisal:**  
January 5, 2006

**Capital Realty Analysts, Inc.**  
File Number 06-881

February 3, 2006

Mr. Shane R. Stueckle  
Deputy Town Manager  
Town of Yucca Valley  
658-928 Business Center Drive  
Yucca Valley, CA 92284

**RE: A Market Value Estimate for The Hi-Dez Kennel, Located at 56-460  
Paseo Los Ninos, Yucca Valley, CA 92284; Otherwise known as APN  
0597-031-23, San Bernardino County, CA.**

Dear Mr. Stueckle:

In accordance with your instructions, I have prepared a complete appraisal for the ~~Town of Yucca Valley for the possible acquisition of the subject property.~~ I have presented the appraisal and my opinion of market value for the subject property as of January 5, 2006 in a summary report. In accordance with your request, the subject property is being valued "as is" on the date of value.

The subject property is comprised of a triangular shaped 1.33 acres of improved residential land and is an operating domestic animal kennel. In addition, the property serves as the Town of Yucca Valley's animal control pound. The facility also provides regional control services for the County of San Bernardino and houses a chapter of the Humane Society. The site improvements consist of a converted 1,414 square foot single-family residence, an office / kennel building, a series of outbuildings and concrete slab dog kennels. The site's perimeter is secured and cross-fenced with chain link material. The parking area is asphalt and the remaining portions of the site are level dirt and natural terrain.

My report identifies the subject property and the market area. It presents the market data and analysis leading to my estimate of value. This report is subject to the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. The appraisal report is intended to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and the Uniform Standards of Professional Appraisal Practice (USPAP), adopted by the Appraisal Standards Board of the Appraisal Foundation. Additionally, this report complies with the appraisal requirements of the Town of Yucca Valley.

James C. Dingman personally inspected the subject property. Because of the specialized nature of the improvements, the analysis is limited to the cost approach. Comparable land sales were located and applied as a component of the cost approach. This data is analyzed in order to arrive at my estimate of the market value of the subject property.

February 3, 2006

Page 2 - Capital Realty Analysts / Town of Yucca Valley

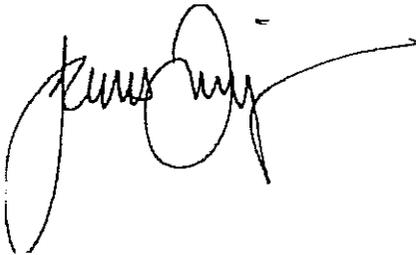
After weighing and comparing the data, it is my opinion that the market value of the fee simple estate in the subject property "as is" on January 5, 2005 is as follows:

**\$35,000 Rounded**  
**(Thirty Five Thousand Dollars)**

The undersigned has no personal interest either present or contemplated in the subject property and certifies that no fee, received or to be received for the employment of my services is in any way contingent on the opinion reported herein. I hope you find the details of this Summary Report relevant to your decisions. Thank you for the opportunity to be of service.

Respectfully submitted,

**Capital Realty Analysts, Inc.**

A handwritten signature in black ink, appearing to read 'James Dingman', with a long horizontal flourish extending to the right.

James Dingman

State Certification No.: AG025869

Expiration Date: March 2, 2007

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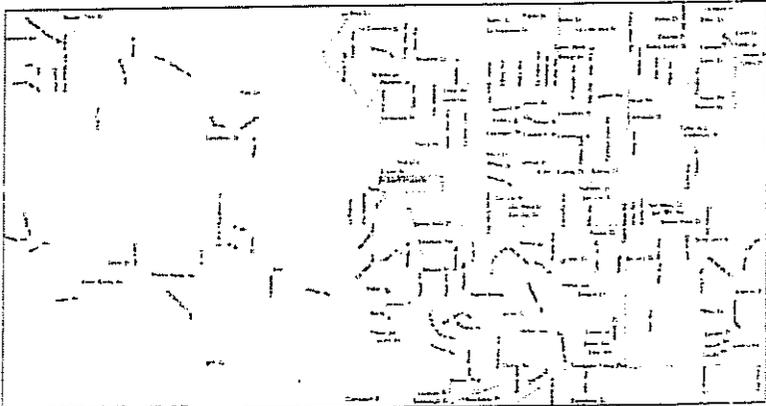
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**Summary of Important Facts and Conclusions**

**Client:** Town of Yucca Valley  
**Intended Users:** Client  
**Property Type:** Improved residential land  
**Location:** The subject property is a 1.33-acre triangular shaped site located on the north side of Paseo Los Ninos, east of Mormon Avenue. The street address is identified as 56-460 Paseo Los Ninos in the Town of Yucca Valley, CA.

**Site Identification:**

<b>APN</b>	<b>Size</b>
0597-031-23	1.33 acres



**Thomas Brothers Guide Reference:**

Page 4887 grid G3, San Bernardino County, CA

**Census Tract Number:**

104.11

**Appraisal Format:**

Complete Appraisal

**Type of Report:**

Summary Report

**Purpose of the Appraisal:**

The purpose of this appraisal is to estimate the market value of the fee simple estate of the subject property, on January 5, 2006, in accordance with the definition of market value stated in the body of this report.

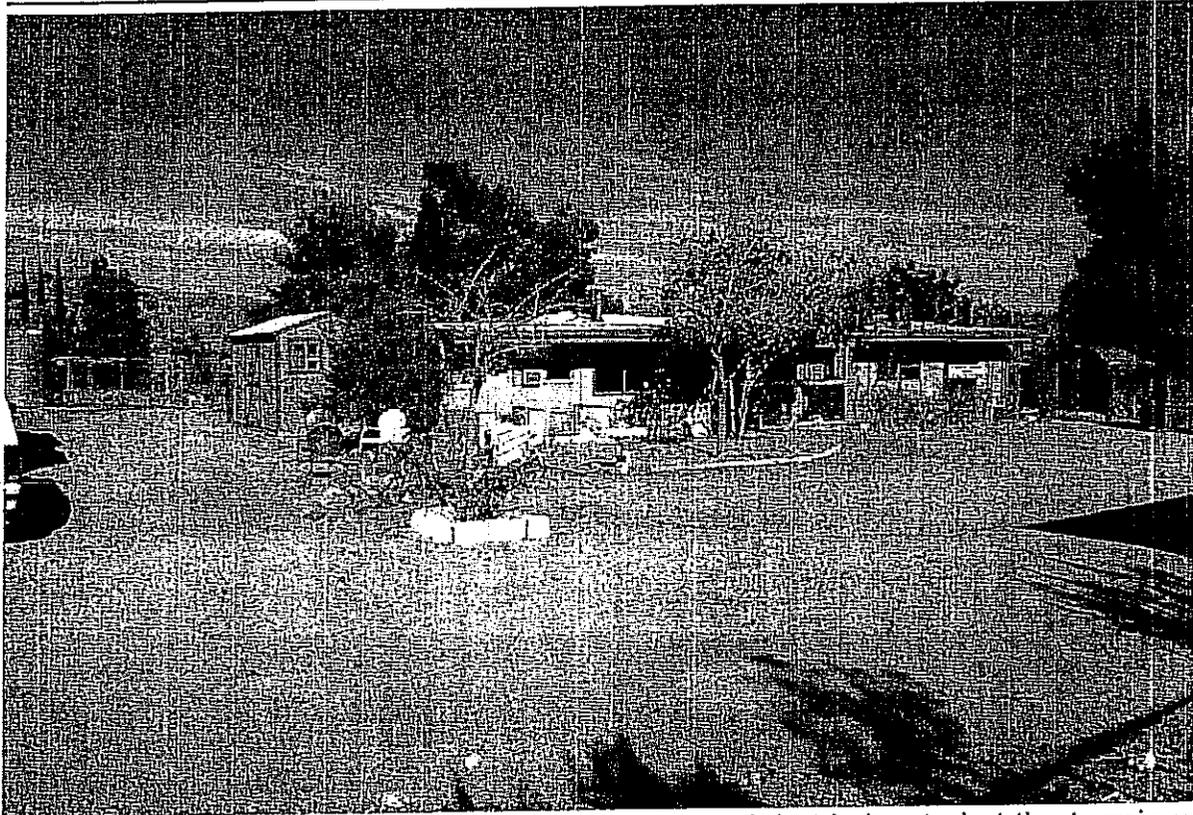
**Function of the Appraisal:**

Possible Acquisition

## Summary of Important Facts and Conclusions

<b>Date of Valuation:</b>	January 5, 2006
<b>Date of Inspection:</b>	January 5, 2006
<b>Date of Report:</b>	February 3, 2006
<b>Owner of Record:</b>	According to public records, the subject property is vested in the name of Kathryn C. Baker.
<b>Improvements:</b>	The subject property is improved with a single-family residence converted for use in connection with the high desert kennel. Additionally, the subject property is improved with a combined office and kennel area and several outbuildings. For a complete description of the subject improvements see the Improvements Description section of the report.
<b>Topography:</b>	Level at street grade
<b>Zoning:</b>	R-L-5, Town of Yucca Valley, CA
<b>General Plan Designation:</b>	Residential
<b>Utilities:</b>	All utilities except sewer are available to the subject property.
<b>Easements and Encumbrances:</b>	The appraiser did not receive nor examine a preliminary title report. This report assumes no atypical easements or encumbrances that may have a negative impact upon the potential sale price or marketability of the subject.
<b>Highest and Best Use:</b>	The highest and best use for the subject property is determined to be an interim use. The existing improvements in their existing configuration provide a community benefit and are operated as a nonprofit entity. These improvements and the housed business provide no contributory value to the highest and best use of the subject property.
<b>Subject Property Market Value Estimate on January 5, 2006:</b>	<b>\$35,000</b>
<b>Estimated Exposure</b>	<b>12 - 24 months</b>

## Introduction - History of the Subject Property



The subject site is comprised of a single legal parcel that is located at the terminus of Mormon Avenue on the north side of Paseo Los Ninos. The site's shape resembles a triangle with two access points on the north side of Paseo Los Ninos. The improvements are centered on an original single-family residence located in the approximate center of the site. An approximate 500 square foot office and reception building was subsequently constructed with a boarding kennel in the rear. There are several additional small outbuildings and numerous kennels and dog runs located around the site. While the property appears to run efficiently, there was no pre-designed plan to the infrastructure-and-improvements.

Located in the north central portion of the Town of Yucca Valley, the subject is adjacent to Skyline Ranch Road with an industrial district to the north and east. To the south and west are residential estate properties. The property was converted by the original owner, upon her death was placed in trust, and has since been operated in conjunction with the Humane Society. The business operation takes private boarders and operates two domestic animal control contracts, one for the Town of Yucca Valley and the other for San Bernardino County. The subject property is not operated to a highest and best use, which is considered residential. Immediately surrounding the subject property are residential uses reflecting a suitable highest and best use. Under the R-L-5 zoning ordinance, the current use is operated under a conditional use permit. There are no special purpose improvements that could not be removed, restoring the property to its highest and best use.

## **Purpose of the Appraisal**

To estimate the market value of the fee simple estate of the subject property based upon the definition of market value contained in the body of this appraisal report.

## **Function of the Appraisal**

Possible Acquisition

## **Property Rights Appraised**

Fee simple estate

## **Market Value**

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated.
- Both parties are well informed or well advised, and acting in what they consider their best interests;
- A reasonable time is allowed for exposure on the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangement comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.<sup>1</sup>

## **Fee Simple Estate**

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.<sup>2</sup>

## **Special Purpose Property**

A limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built; also called special-design property.<sup>3</sup>

---

<sup>1</sup> [Title XI, FIRREA, 34.42 (f)]

<sup>2</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed., (Chicago: Appraisal Institute, 2002)

<sup>3</sup> Ibid

### **Scope of the Appraisal**

This appraisal report is intended to be an "appraisal assignment" as defined in the Standards of Professional Appraisal Practice of the Appraisal Institute. It is my objective that the appraisal service be performed in such a manner that the results of the analysis, opinion or conclusion be that of a disinterested third party. It is my intent that all appropriate data deemed pertinent to the solution of the appraisal problem be collected, confirmed and reported in conformity with the Standards of Professional Appraisal Practice and the Code of Professional Ethics of the Appraisal Institute. The scope of the analysis is intended to be appropriate in relation to the significance of the appraisal problem.

The appraisal assignment is for the valuation of the fee simple estate of the subject property. Because of the condition of the subject property's primary improvements and the special purpose nature of the ancillary improvements, the cost approach is the most applicable valuation method for the property. The sales comparison and income approaches are not applied as value conclusions from these approaches do not provide any additional reliability to the analysis.

#### **Date of Valuation**

January 5, 2006

#### **Date of Property Inspection**

January 5, 2006

#### **Date of Report**

February 3, 2006

## **Identification of the Subject Property**

### **Legal Description**

The appraiser did not receive nor examine a preliminary title report. According to public records, the legal description of the subject property is as follows: 1.33 +/- acres. A further abbreviated legal description as provide by the county assessor's office is located in the addendum of the report.

### **Statement of Ownership of the Appraised Property**

According to public records, the subject property is vested in the name of Kathryn C. Baker Trust with an address of 56-460 Paseo Los Ninos, Yucca Valley, CA 92284-7704.

### **Census Tract Number**

104.11

### **Assessment and Taxation**

Real property taxation in the State of California is governed by Proposition 13, which was passed by the voters in June 1978. The basic elements of Proposition 13 are as follows:

- The tax rate was limited to 1% of the assessed value plus an additional 1/4% to cover the payment of debts previously approved by voters.
- The assessed value of a property purchased prior to March 1, 1975 was fixed at that property's market value as of March 1, 1975. For a property purchased after March 1, 1975, the law requires the assessment to be based on the market value at the time of sale.
- All assessed values can increase no more than 2% per year for inflation.

### **Assessment and Taxation**

Parcel Number	Assessed Land	Assessed Structures	Assessed Other	Assessed Total	2005/06 Taxes	Effective Tax Rate
0597-031-23	\$2,031	\$48,639	-	\$50,670	\$522.83	1.0318%

Based on the condition and utility of the subject site, the valuation used in the assessment of the subject property appears reasonable, though subject to Proposition 13 rules. The tax rate is consistent with surrounding properties within this portion of San Bernardino County.

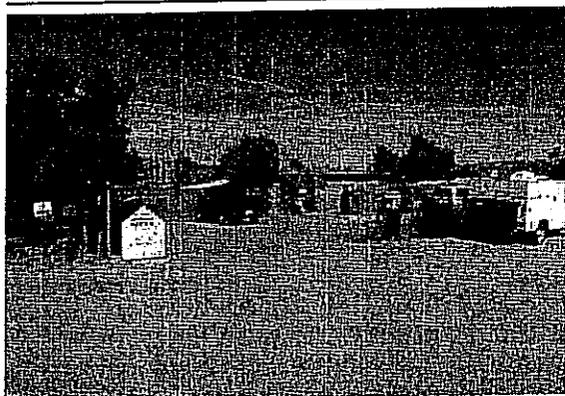
### **Easements and Encumbrances**

The appraiser did not receive nor examine a preliminary title report. This analysis assumes no atypical easements or encumbrances that may have a negative impact upon the potential sale price or marketability of the subject.

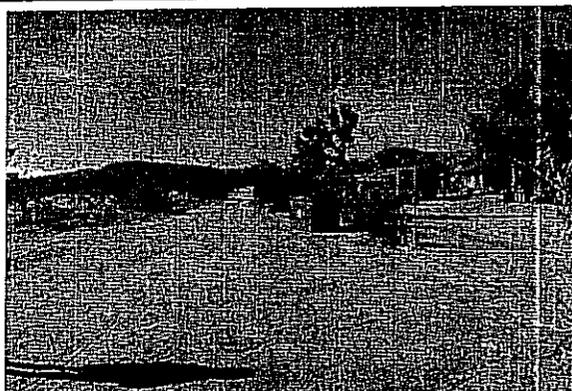
### **Zoning**

According to the Town of Yucca Valley zoning ordinance, the subject property is zoned R-L-5, Rural Living Residential. The subject property has a general plan designation of residential and is consistent with the subject's location.

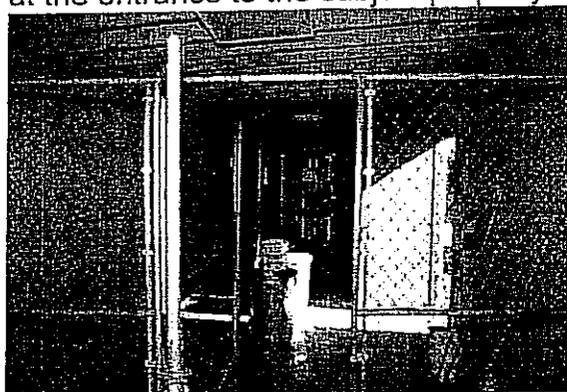
Photos of the Subject Property: Taken January 5, 2006



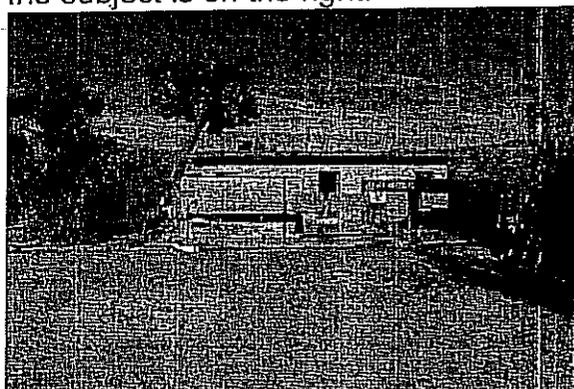
Viewing north across Paseo Los Ninos at the entrance to the subject property



Viewing west along Paseo Los Ninos, the subject is on the right.



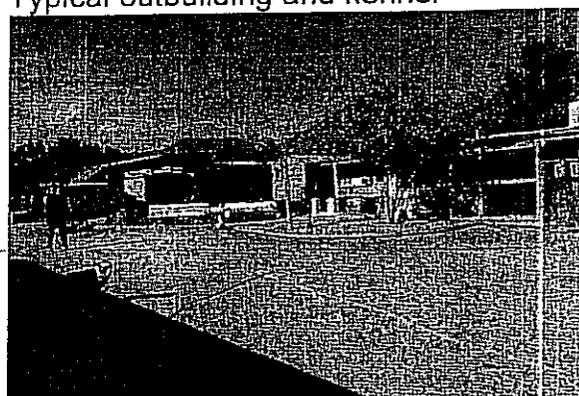
A typical outbuilding and kennel



Typical outbuilding and kennel

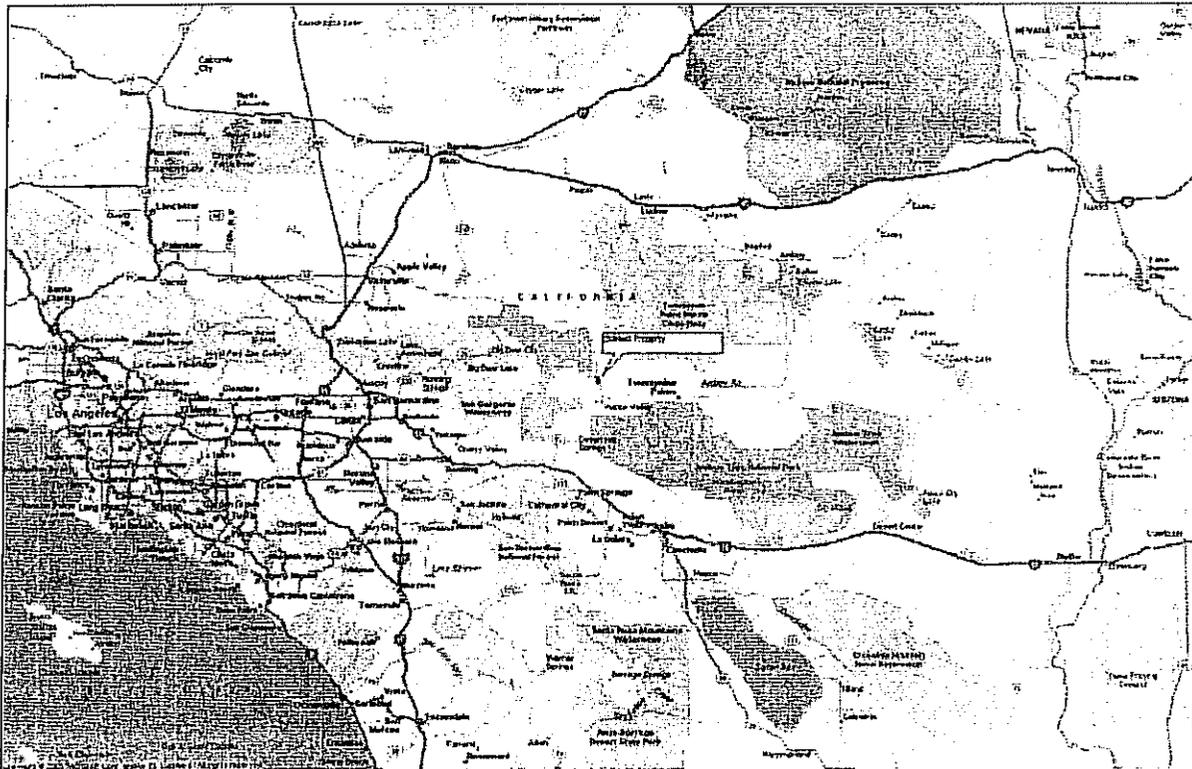


Quarantined kennel area



Viewing west across the interior courtyard of the subject

## Regional Analysis – San Bernardino County / High Desert Area



San Bernardino County encompasses 20,164 square miles making it the largest county in the United States. In area, the county is larger than nine states, though in terms of population it ranks fourth in the state of California behind Los Angeles, Orange and San Diego Counties. The San Bernardino Mountains are part of the Coast Range and run for approximately 60 miles east to west on the southern edge of the Mojave Desert in the southwestern section of the county, just north of the city of San Bernardino. About 90 percent of the county is desert; the rest consists of the San Bernardino Mountains and the San Bernardino Valley. The Mojave Desert encompasses about 25,000 square miles of southeastern California and portions of Arizona and Nevada.

The Cajon Pass, created by San Andreas Fault motion, is located between the San Gabriel and San Bernardino Mountains. The Cajon Pass, the San Geronio Pass, and the Tejon Pass provide the only ground access to the southern coastal basins. In 1861, a twelve-mile toll road through the Cajon Pass was opened, linking the coastal cities with the booming mining communities in the High Desert. In 1885, rail tracks followed. Today, Interstate 10 is an important east-west transportation corridor, extending from Los Angeles to Phoenix, Arizona.

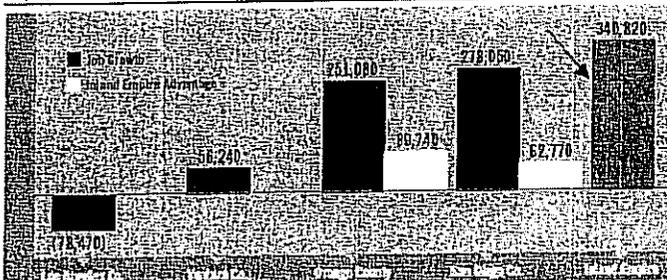
San Bernardino and Riverside Counties form the Inland Empire, a 75-mile area surrounding Los Angeles. The Inland Empire is growing at rates faster than any other area in the state; Riverside County had the fastest growth rate in 2004 (4.5%) and San Bernardino County the fourth (3.2%). Riverside County ranked as the second fastest growing county in the nation, behind Maricopa County in Arizona.

## Regional Analysis – San Bernardino County / High Desert Area

The State of California Department of Finance, reports San Bernardino County's population as of January 2005 was 1,946,202 representing a 2.5% increase over the prior year. The projected 2010 population is 2,133,337. Riverside County's population as of January 2005 was 1,877,000 a 3.8% increase over the prior year and the projected 2010 population is 2,165,148. The population of the combined counties, forming the Inland Empire, is approximately 3,823,000. Between the years 2000 and 2020 expectations are for the population of the Inland Empire to grow by 1.8 million. That represents more growth in the Inland Empire than the Census Bureau forecasts for 47 of the 50 states.

According to the Inland Empire Economic Partnership, between 1990 and 2002, the area added new jobs every year. Over that period, the job base went from 732,280 to 1,073,100, representing a 46.5% increase. The largest employment sectors are government, services (including retail, trade and hospitality), manufacturing, education, construction and health services. In the long-term, employment is expected to continue to grow in this region with 805,268 jobs added between 2000 and 2020. The quality of employment is changing with the migration of younger, well-educated workers moving to the area. Between 1998 and 2004, jobs in professional and corporate management firms grew 45.3%. This trend is projected to continue in the long-term.

Employment Change, Southern California Markets, Where 847,720 New Jobs Went, 1990-2002



Source: CA Employment Development Department

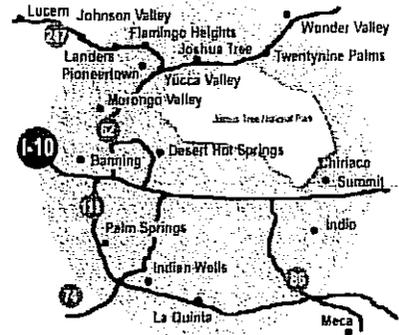
As housing prices rose in Orange and Los Angeles Counties, the Inland Empire attracted people in search of affordable housing, less traffic, cleaner air and open space. As demand has grown, prices have increased. According to DataQuick Real Estate News, in December 2005, San Bernardino's median sales price was \$358,500, up 28% from December 2004. Riverside's median sales price was \$412,500, up 13%. Between 2003 and 2004, the median sales price in San Bernardino County rose 31.75% from \$189,000 to \$249,000. Between 2004 and 2005, the median sales price rose again by 31.05% from \$248,000 to \$325,000. This median price is below the state median price and far below median prices in neighboring coastal counties.

In summary, the State of California Department of Finance projects that the Inland Empire will be the fastest growing urban area in California in the next decade and beyond. People will continue to spread eastward towards better housing opportunities. As the population grows and the job base in the region grows, the number of commuters will increase, creating demand for more housing in the High Desert regions.

## **Regional Analysis – San Bernardino County / High Desert Area**

The city of San Bernardino, located 59 miles east of Los Angeles in the southwest corner of the county, is the primary urban center and County seat. Incorporated in 1853, the city occupies 55.7 square miles with an estimated population in January 2005 of 199,803. Other cities in the county, all clustered around San Bernardino, with populations over 100,000 include Ontario with an International airport providing freight and passenger service to most U.S. hubs, Rancho Cucamonga and Fontana.

The Morongo Basin is located in the southwestern Mojave Desert. Joshua Tree National Park defines the southern border of the Morongo Basin. Communities in the region include the city of Twentynine Palms, the town of Yucca Valley, the village of Joshua Tree, and the unincorporated areas of the Morongo Valley, the Homestead Valley, and Pioneertown. According to the State of California Department of Finance, the estimated population of Twentynine Palms as of January 2005 was 27,337. Yucca Valley, about 26 miles west of Twentynine Palms, is the next most populous of the communities with an estimated 19,726 residents. Over the last five years both communities have grown in population at an annual rate just exceeding 4.5 percent.



Washington. Though later surveyors only found 26 palms, the area became known as Twentynine Palms.

Prospectors mined for gold in the hills surrounding the oasis from the 1880s through the first decade of the 1900s. Prior to the turn of the century the Dale mines produced more than \$3 million in gold. When World War I began, the mines shut down and most of the mining families moved away. Following the war, veteran's suffering from chronic symptoms of mustard gas poisoning populated the area. These settlers were led to Twentynine Palms by the advice of Dr. James Luckie who advocated that the dry, clean air of the region would allow for easier breathing. The government offered homesteads of 160 acres to settlers that built a uniform-sized dwelling and stayed for three years.

**Regional Analysis – San Bernardino County / High Desert Region**

In the 1930s when the country fell into the Great Depression mining experienced resurgence since employment opportunities were scarce. The most prosperous mine in the area, Desert Queen, was in operation from 1895 to 1961. In 1938, the government began offering 5-acre homesteads in recognition that this arid land was not suitable for farming. This attracted more people to the area.

In 1952, the government acquired 932 square miles or 596,000 acres about 5 miles north of the City of 29 Palms and established the Twentynine Palms U.S. Marine Corps Air Ground Combat Center (MCAGCC), the world's largest Marine Corp Base. The base is now included in city boundaries and population figures for Twentynine Palms include the active military and civilian personnel of MCAGCC. Approximately 9,700 active duty members, 8580 dependents and 1,398 civilians are assigned to the base. The base is the largest single employer in the area and the lifeblood of the entire community.

Historic State Route 62, forming a loop off Interstate 10, provides access to the Morongo Basin communities from both the west and the east. State Route 247, branching from Interstate 15 in Victorville 96 miles to the northwest, drops into the region from the north and terminates in Yucca Valley. Desert Hot Springs is 43 miles to the southwest of Joshua Tree and Palm Springs is 54 miles to the southwest.

There has been little development over the years between 1991 and 2003, though a remarkable growth spurt began in 2004. Data as of year-to-date 2005 indicates that the year will outpace 2004 in total building permits issued. The following table shows median sales prices for resale single-family residences and condos and new homes in the communities of the Morongo Basin.

<b>Recorded Home Sales</b>				
	<b><u>Dec.</u></b> <b><u>2005</u></b>	<b><u>Dec.</u></b> <b><u>2004</u></b>	<b><u>Change</u></b>	<b><u># Sold</u></b>
Joshua Tree	\$172,250	\$108,000	59.49%	22
Landers	\$168,000	\$98,000	71.43%	8
Morongo Valley	\$230,000	\$175,000	31.43%	9
Twentynine Palms	\$170,000	\$93,500	81.82%	54
San Bernardino Co.	\$358,500	\$280,000	28.04%	3,944
<b>Yucca Valley</b>	<b>\$190,500</b>	<b>\$159,000</b>	<b>19.51%</b>	<b>78</b>

Source: DataQuick

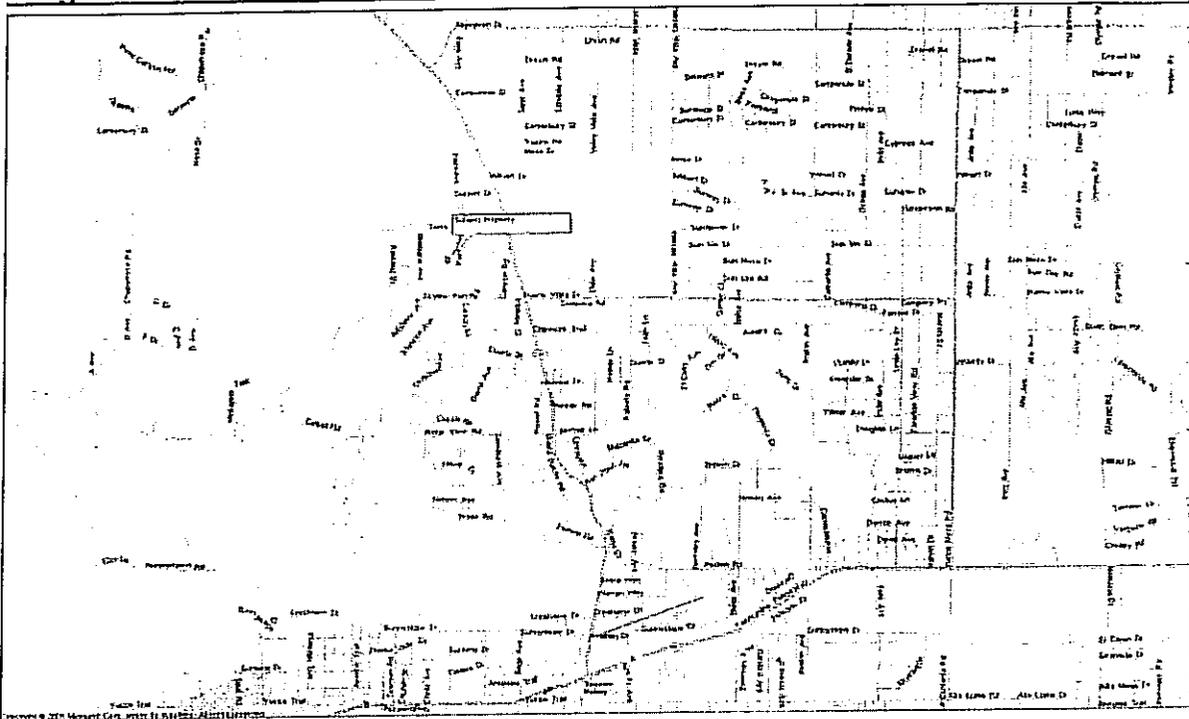
### **Regional Analysis – San Bernardino County / High Desert Region**

In contrast, median housing prices in the lower desert communities in December 2005 ranged from the low recorded in Desert Hot Springs of \$290,000 to the high recorded in Indian Wells of \$730,000. The city of Coachella came in at \$316,000, Cathedral City at \$370,000 and Indio at \$389,000.

### **Conclusion**

The High Desert Region is in its early growth phase with sufficient land to accommodate continuing growth. The economic health and the growth of the area are intertwined with the Marine base. The Base Realignment and Closure Commission 2005 recommends expansion of MCAGCC and it will likely remain a critically important training center as long as the country is involved in war in the deserts of the Middle East. Another integral component of the area's growth is the migration of retired people selling their homes in the cities and costal areas of Southern California for profit and moving to the more affordable communities of the High Desert. Commuters and real estate speculators are also attracted to the region by lower housing prices.

## Neighborhood - Market Analysis



### Overview

The purpose of a market analysis is to give an overview of the competitive environment within which the subject property is located. The goal is to quantify the marketing and exposure periods for the subject property if offered in the market at a market value price. The first steps in this process are to delineate and describe the subject market area, identify the various components of the subject, and review the history of the submarket.

The subject is located in the community of Yucca Valley, which is positioned northeast of Desert Hot Springs, immediately east of the community of Joshua Tree and 20 miles west of the city of Twentynine Palms and the Twentynine Palms Marine Corp. Air Ground Combat Center. Access to the subject's immediate neighborhood is provided via State Highway 62 (Twentynine Palms Hwy.), which is the High Desert's main thoroughfare. Skyline Ranch Road is accessed from Old Woman Springs Road (State Highway 247), a non-signalized intersection on SH 247. Running east and west, Buena Vista Drive is the eastern portion of Skyline Ranch Road and terminates into Yucca Mesa Road. Skyline Ranch Road, meanders along the northern ridgeline overlooking the Town of Yucca Valley. The roadway is unpaved and sparsely populated the farther west you travel. Varieties of land uses are allowed by zoning in the immediate area of the subject; however, presently most of the land is vacant. The subject's street is typical density for this portion of San Bernardino County, as the surrounding densities are predominantly five-acre lots or above. In the immediate subject neighborhood, there are no new or existing housing developments. The majority of development has occurred on existing in-fill lots similar to the subject property, though typically larger.

## Neighborhood - Market Analysis

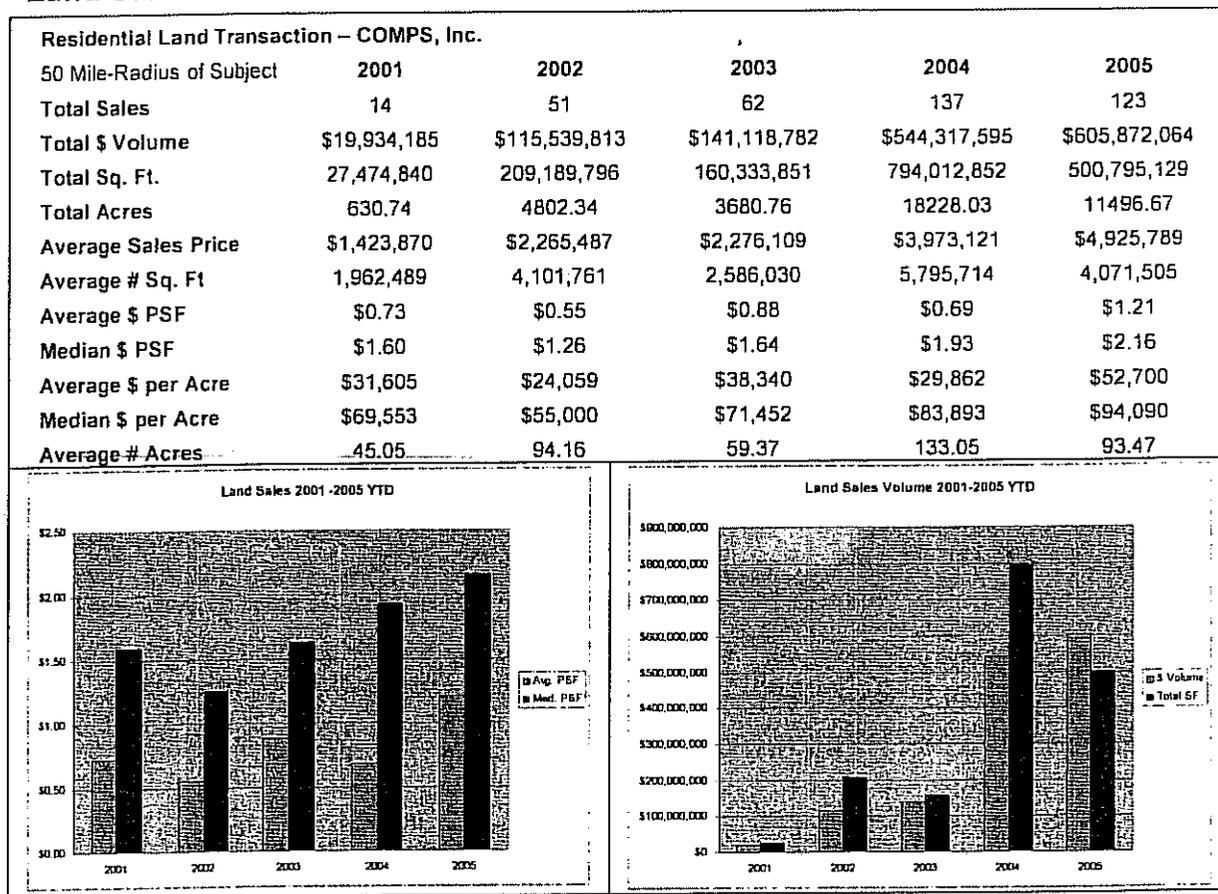
### Overview

The area is predominately comprised of single-family units with unpaved roads interconnecting the area with Skyline Ranch Road. Immediately to the north and east of the subject is zoned Industrial and is sporadically developed.

### Land Sales

I researched land sales in the High Desert market area over the last five years and found little activity in the market within 10 miles of the subject. Therefore, I broadened the market area search to include a 50-mile radius, 25-mile radius and a 15-mile radius of the subject over the past 5 years. The purpose of this broad series of searches is to illustrate the transactional activity in the markets surrounding the subject. As illustrated by the search results, the dramatic increases in sales volume and raw land values are the primary force behind the renewed interest in the High Desert region. These increases are a result of strong market momentum produced by developers and land speculators in the Coachella Valley region. Within our defined radius, some of the lower desert market segments are included. We will follow this macro market view with a tighter radius on the subject.

### Land Sales



## Neighborhood - Market Analysis

### Land Sales

Residential Land Transaction – COMPS, Inc.					
25 Mile-Radius Subject	2001	2002	2003	2004	2005
Total Sales	4	7	9	17	14
Total \$ Volume	\$1,875,000	\$10,893,000	\$16,898,000	\$51,530,500	\$39,764,000
Total Sq. Ft.	7,417,582	13,953,816	84,758,408	65,872,703	110,153,937
Total Acres	170.28	320.34	1945.79	1512.23	2528.79
Average Sales Price	\$468,750	\$1,556,143	\$1,877,556	\$3,031,206	\$2,840,286
Average # Sq. Ft	1,854,396	1,993,402	9,417,601	3,874,865	7,868,138
Average \$ PSF	\$0.25	\$0.78	\$0.20	\$0.78	\$0.36
Median \$ PSF	\$1.93	\$1.15	\$0.33	\$1.56	\$0.68
Average \$ per Acre	\$11,011	\$34,005	\$8,684	\$34,076	\$15,725
Median \$ per Acre	\$84,217	\$50,000	\$14,235	\$67,941	\$29,515
Average # Acres	42.57	45.76	216.20	88.95	180.63

Land Sales 2001-2005 YTD

Land Sales Volume 2001-2005 YTD

As the data illustrates, the momentum of the lower desert acquisitions and price points have strongly influenced the values of land in the high desert region. When the radius is tightened to 15-miles of the subject, sales of properties begin to start registering in 2003 and build with strong momentum in 2005. The interesting trend that is illustrated in the 25-mile radius search is that the trend seems to have peaked in 2004 with both sales volume and prices on a per square foot basis beginning to soften. In contrast to the 25-mile radius trend, the 50-mile radius shows the high points in both volume and per square foot price point eclipsing the 2004 highs in both categories.

Typically, the broader the search, the more reliable the trend analysis. The 50-mile radius shows continued strength in the larger market area. The 25-mile radius is showing some softening and the 15-mile radius reversing the volume trend change, though indicating a lower price point on the per square foot chart. However, it must be noted that as the radius is tightened, the market transactions increased in the average number of acres per transaction to almost half again as much as indicated in the 50-mile radius and slightly less than indicated in the 25-mile radius results.

## Neighborhood - Market Analysis

### Land Sales

Residential Land Transaction - COMPS Inc.					
15 Mile-Radius Subject	2001	2002	2003	2004	2005
Total Sales	0	0	1	3	8
Total \$ Volume	\$0	\$0	\$1,300,000	\$9,278,000	\$17,450,000
Total Sq. Ft.	-	-	6,890,495	7,387,281	50,332,990
Total Acres	0.00	0.00	158.18	169.59	1155.49
Average Sales Price	0.00	0.00	\$1,300,000	\$3,092,667	\$2,181,250
Average # Sq. Ft	0.00	0.00	6,890,495	2,462,427	6,291,624
Average \$ PSF	0.00	0.00	\$0.19	\$1.26	\$0.35
Median \$ PSF	\$0.00	\$0.00	\$0.19	\$1.72	\$0.71
Average \$ per Acre	0.00	0.00	\$8,218	\$54,709	\$15,102
Median \$ per Acre	\$0	\$0	\$8,218	\$74,730	\$30,878
Average # Acres	0.00	0.00	158.18	56.53	144.44

Land Sales 2001-2005 YTD

Year	Avg PSF	Med PSF
2001	0.00	0.00
2002	0.00	0.00
2003	0.19	0.19
2004	1.26	1.72
2005	0.35	0.71

Land Sales Volume 2001-2005 YTD

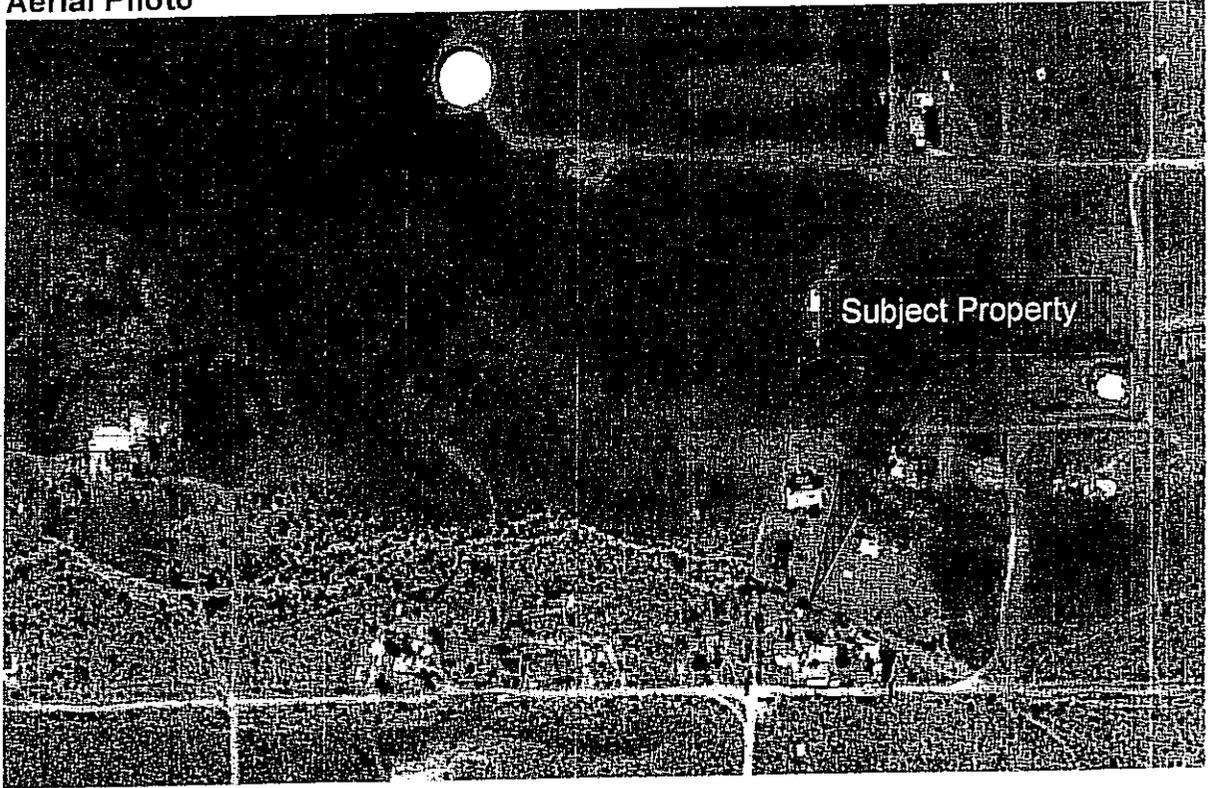
Year	Total Volume	Total SF
2001	\$0	0
2002	\$0	0
2003	\$1,300,000	6,890,495
2004	\$9,278,000	7,387,281
2005	\$17,450,000	50,332,990

### Conclusion

Using the three analysis tables centered on the subject, the trend becomes clear with the High Desert region experiencing the same type of market momentum as that occurring in the lower desert areas. Starting in 2003, the volume begins to accelerate, while 2004 only recorded three transactions, the volume increased eight fold over 2003's total. In 2005, the volume again doubled, though the price on a per square foot basis dropped. While it is difficult to predict a continued pattern on such few sales, the year over year pattern does indicate that the market could expect similar growth. The conclusion is supported with the broader view of the market data and that there are few available larger tracts of in the lower regions of the desert.

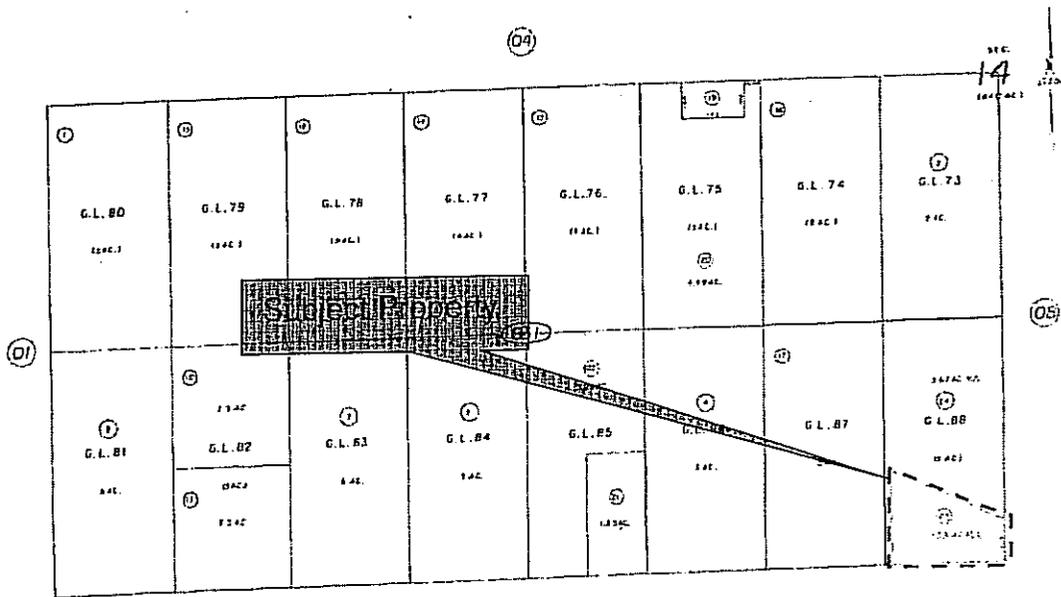
The High Desert region offers similar locational attributes and reasonable proximity to the primary infrastructure offered by the lower desert region. The location attributes will entice the large tract developers to look carefully at the region and the potential that it offers. In addition, if the retail product demand continues to grow even in the single digit levels year over year, the High Desert region is likely a part of this future growth.

**Site Analysis**  
**Aerial Photo**



N. 1/2, SW 1/4 Sec. 14, T.1N. R.5E., S.B.B. 8 M.

Town of Yucca Valley  
 Tax Rate Area  
 23003 597-03



Note - Assessor's Blk. & Lot  
 Numbers Shown in Circles

Assessor's Map  
 Book 597, Page 03  
 San Bernardino County

REVISED  
 11/20/04  
 11/20/04  
 11/20/04

## Site Analysis

**Location:** The subject site is located at the northeast corner of Paseo Los Ninos and Mormon Avenue, Yucca Valley, CA

**Owner of Record:** Kathryn C. Baker Trust

<b>Identification:</b>	<b>APN</b>	<b>Size</b>
	<b>0597-031-23</b>	<b>1.33 Gross +/- Acres</b>

**Flood Zone:** According to the Flood Insurance Rate Map, Community Panel Number 06071C8120FF effective 03/18/1996, the subject property is located in a Flood area determined as Zone X. Zone X is defined as, "Areas of 500-year flood; areas of 100-year flood with average depths of less than one (1) foot or with drainage areas less than 1 square mile; and areas protected by levees from the 100-year flood."

**Accessibility:** The subject site has access points from the north side of Paseo Los Ninos.

**Soils:** The appraiser was not provided with a soil report for the subject property. A physical inspection of the subject site was made for this analysis. This report assumes that no toxic or hazardous materials are present on any section of the subject property. The appraiser is not qualified to make a determination as to the existence or non-existence of hazardous material on the subject property, and recommends a soil engineer be consulted.

**Utilities:** All utilities are available at the subject property site. The following public utility companies have jurisdiction over the site.

<b>Water:</b>	Hi-Desert Water Agency
<b>Sewer:</b>	Septic
<b>Electricity:</b>	Southern California Edison
<b>Gas:</b>	The Gas Company
<b>Telephone:</b>	Verizon
<b>Cable TV:</b>	Time Warner
<b>School District:</b>	Morongo Valley Unified

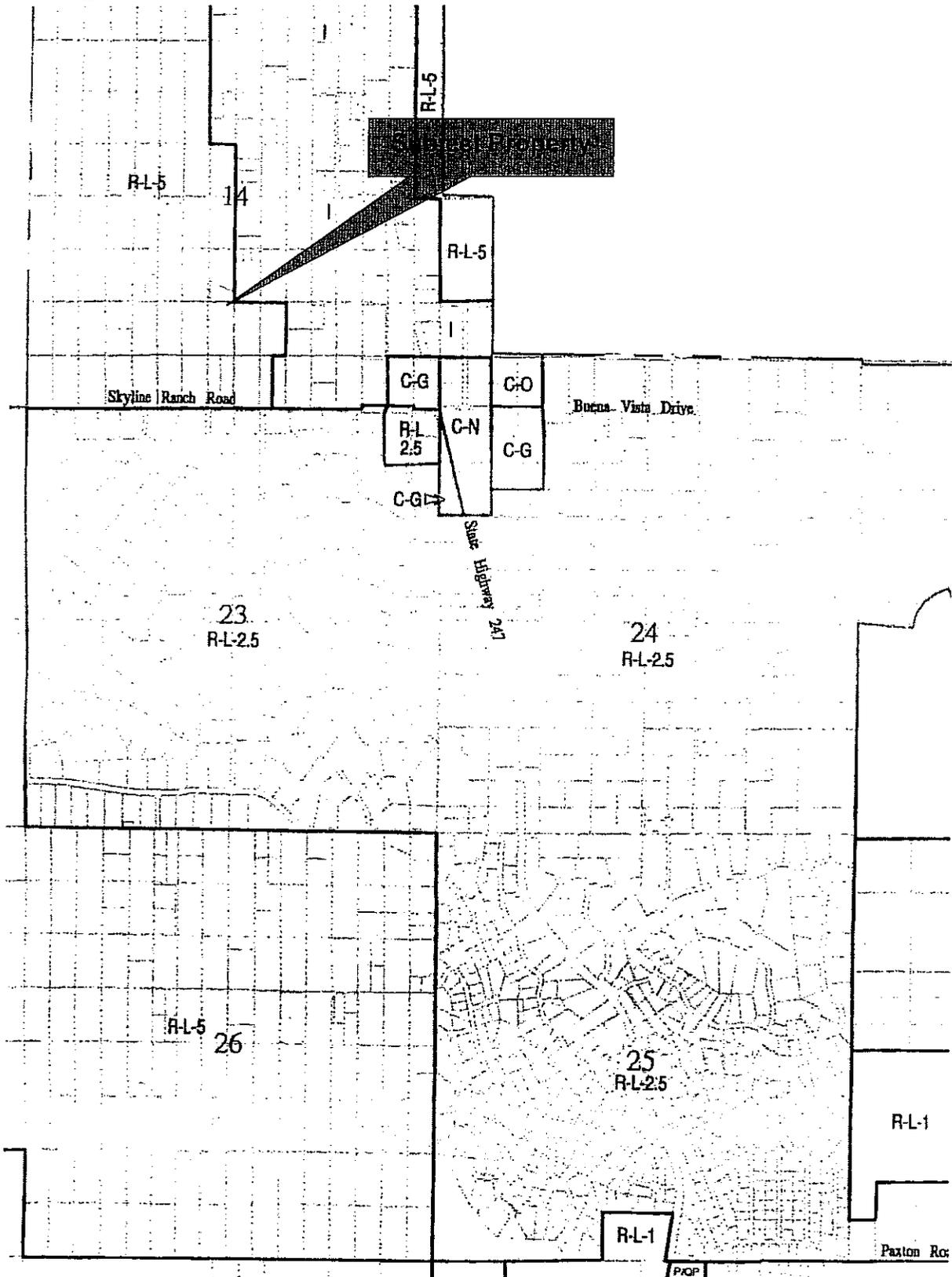
**Off-Site Improvements:** Unpaved roadways and overhead utilities

## **Site Analysis**

<b>Frontage:</b>	The subject site is irregular in shape. See parcel map for the exact frontage figures.
<b>Maintenance:</b>	Public
<b>Hazards:</b>	As a real estate appraiser I am not qualified to evaluate the site for toxic waste or hazardous substances. Therefore, I recommend that a licensed engineer conduct a soil test if required. This report assumes there are no hidden or unapparent conditions to the soil or subsoil that would render the parcel more or less valuable.
<b>Improvements:</b>	The subject property is improved with a single-family structure, an office area, kennels and ancillary outbuildings. The improvements are considered interim and do not contribute the highest and best use of the property. See the Improvements Description section of this report.
<b>Zoning:</b>	The subject site is zoned R-L-5, Rural Living Residential, Town of Yucca Valley, California.
<b>General Plan Designation:</b>	Residential
<b>Archeological/ Historical Study:</b>	An archeological study was not provided to the appraiser for review. The appraiser is not qualified to determine if the subject property has any archeological or historical significance. This report assumes that the subject property does not maintain any historical or archeological significance.
<b>Units of Comparison:</b>	The subject property is improved residential property. The marketplace typically utilizes a price per square foot when evaluating similar properties. Based on the market preference, the price per square foot is applied for this analysis.
<b>Functional Adequacy of the Site:</b>	The shape and size of the site is adequate to support the uses suggested in the Highest and Best Use section of this appraisal report.
<b>Relationship to Adjoining Properties:</b>	North: Residential South: Vacant residential East: Vacant Industrial West: Residential

# Site Analysis

## Zoning Map





## Improvements Description

### High-Dez Kennel

This subject property's improvements are situated on an approximately 1.33-acre, triangular shaped lot. The main house is a single story structure approximately 1,414 square feet in size designed around a four bedroom, two and a half bath layout. As of the date of inspection, I was unable to perform an interior inspection of the structure. The building is occupied by the Humane Society, which works in conjunction with the High-Dez Kennel facility.

The major building components of the subject are as follows.

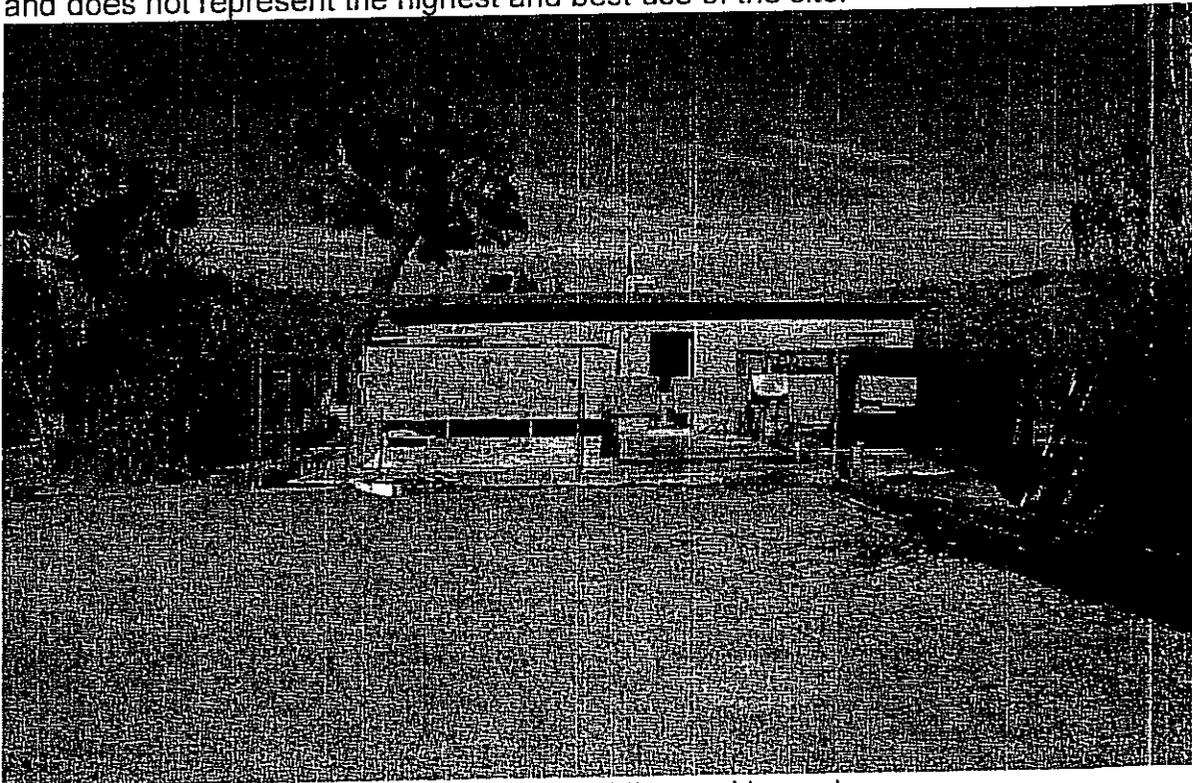
<b>Location:</b>	NEC Mormon Road and Paseo Los Ninos
<b>Building Classification:</b>	The subject is considered a fair wood frame and stucco exterior house. The office and kennel is a concrete block, wood frame and stucco sided structure.
<b>Size:</b>	1,414 square feet of gross living area
<b>Design:</b>	Single-family residential home
<b>Actual Age:</b>	35 years +/-
<b>Foundation:</b>	Concrete slab
<b>Joists:</b>	Wood-frame
<b>Exterior Walls:</b>	Exterior walls consist of wood studs and stucco exterior
<b>Interior Walls:</b>	Taped gypsum board interiors, papered and painted walls
<b>Roof:</b>	Sloped roof with built-up roofing
<b>Ceiling :</b>	Drywall
<b>Insulation:</b>	Unknown
<b>Floors:</b>	Vinyl and tile flooring
<b>Windows and Coverings:</b>	Sliding aluminum frames

### Improvements Description

<b>Interior Lighting:</b>	Combination track lighting and incandescent fixtures
<b>Doors:</b>	Hollow core wood
<b>Plumbing:</b>	2 full bathrooms and 2 half baths between two buildings
<b>Electrical:</b>	110/220, single meter
<b>HVAC:</b>	Evaporative air-conditioning / forced air heating
<b>Fire Protection:</b>	Smoke detectors
<b>Landscaping:</b>	Minimal
<b>Exterior Lighting:</b>	Ancillary building lighting and kennels
<b>Condition:</b>	Fair

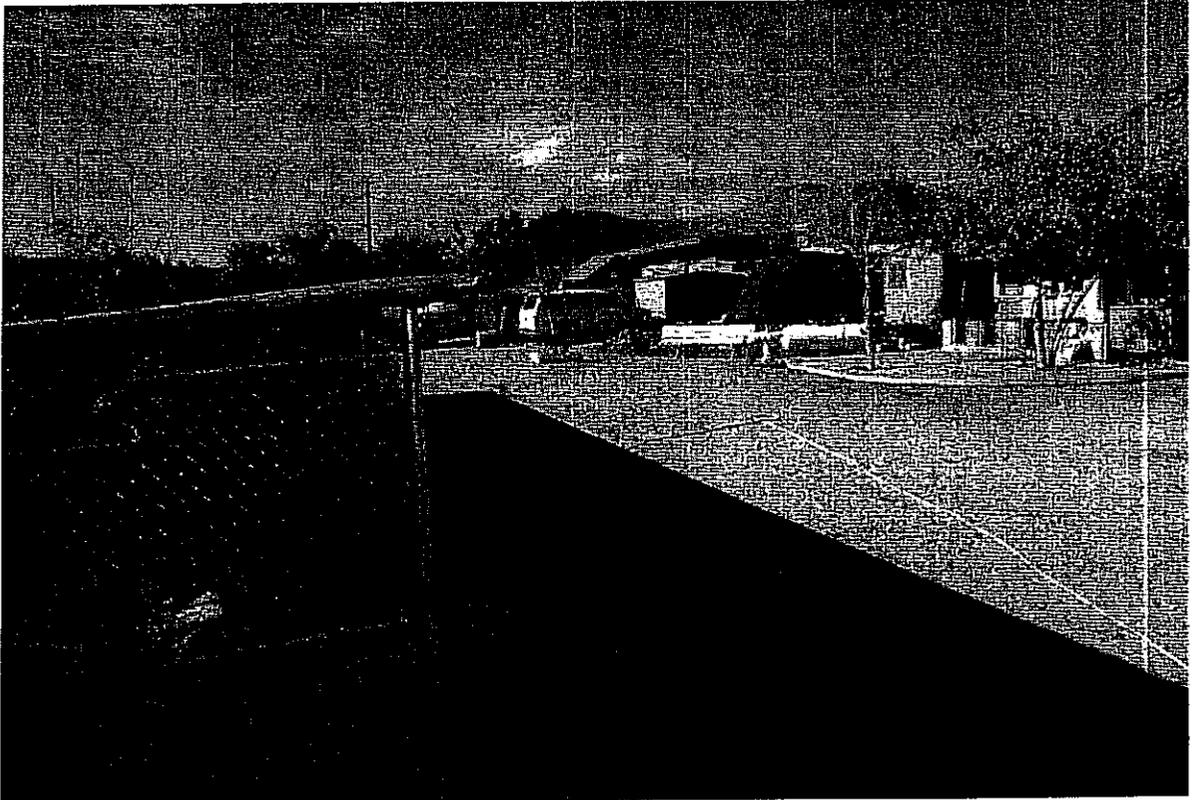
### **Comments**

The improvements are a single-family residential conversion and used as a domestic animal kennel. The property includes a 500 square foot office area with an attached dog kennel. The remaining portions of the site are improved with concrete dog kennels, ancillary storage buildings and assorted infrastructure components. The entire property is perimeter fenced and cross-fenced. Kennels have flat metal or wood roofs. Overall, the property is considered in fair condition and does not represent the highest and best use of the site.

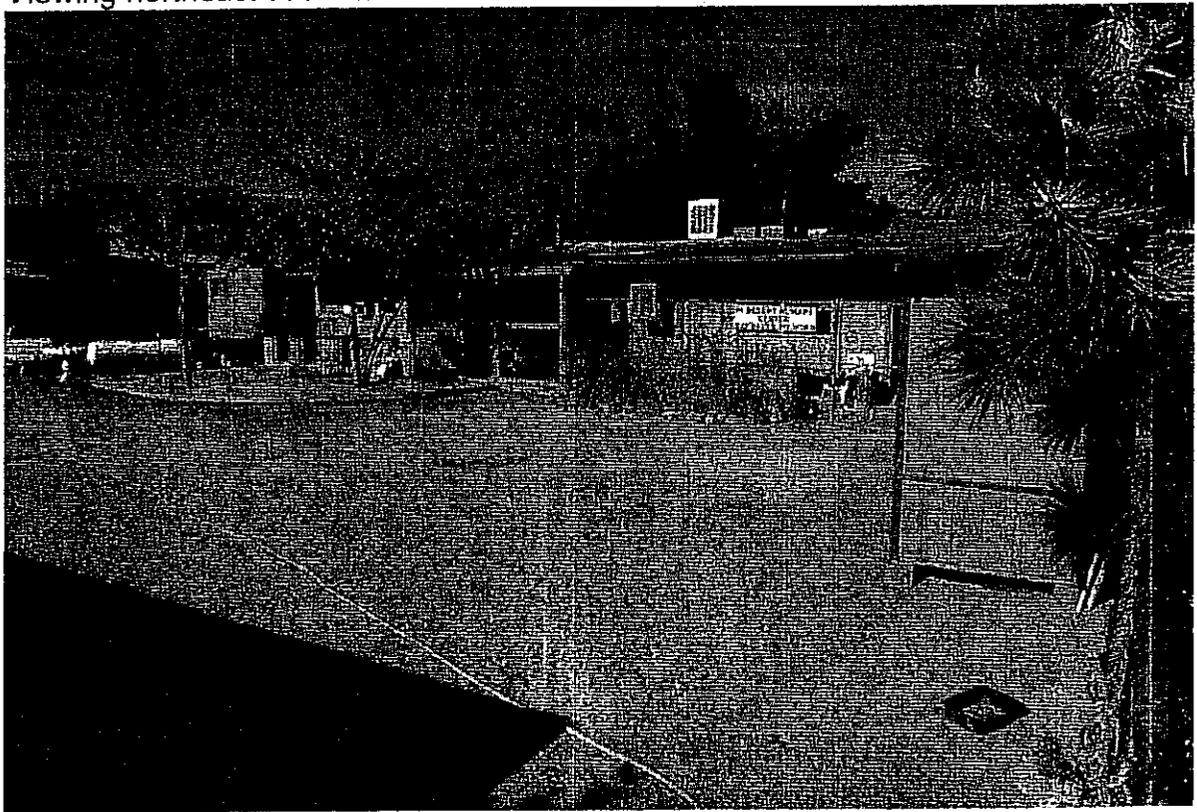


Ancillary block building and kennel

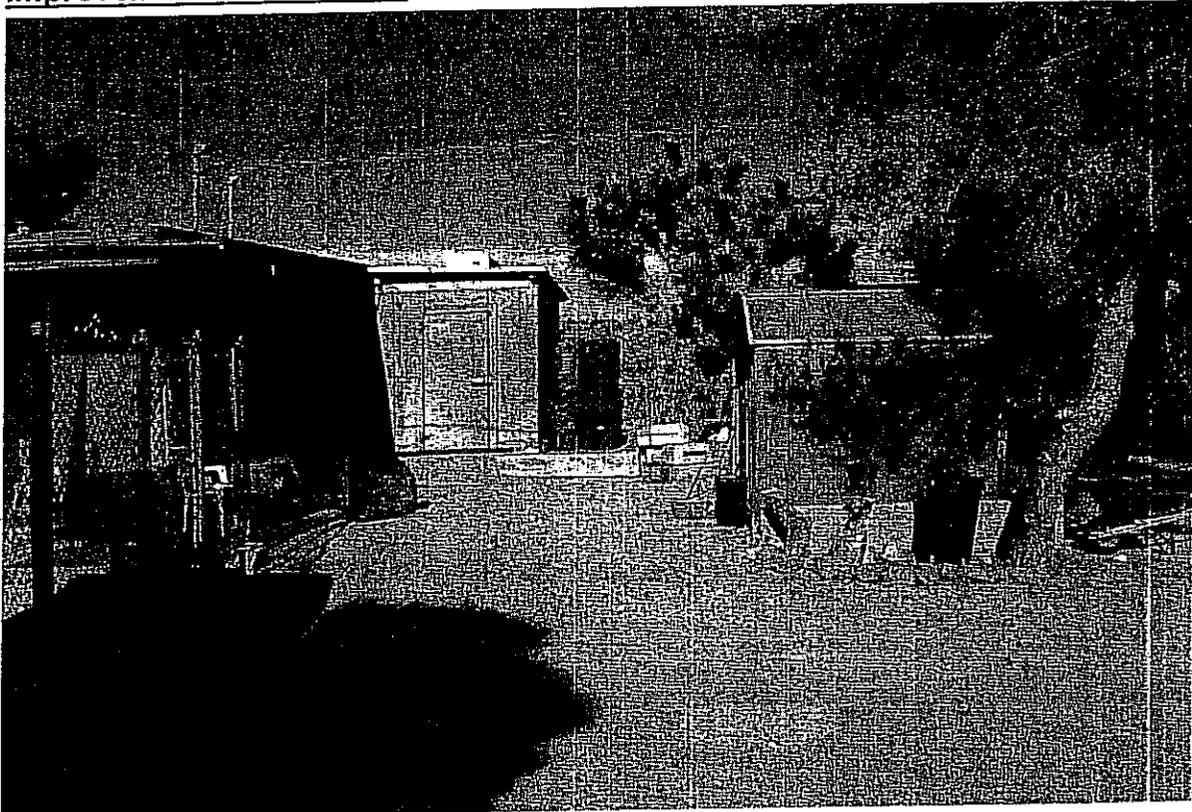
## Improvements Description



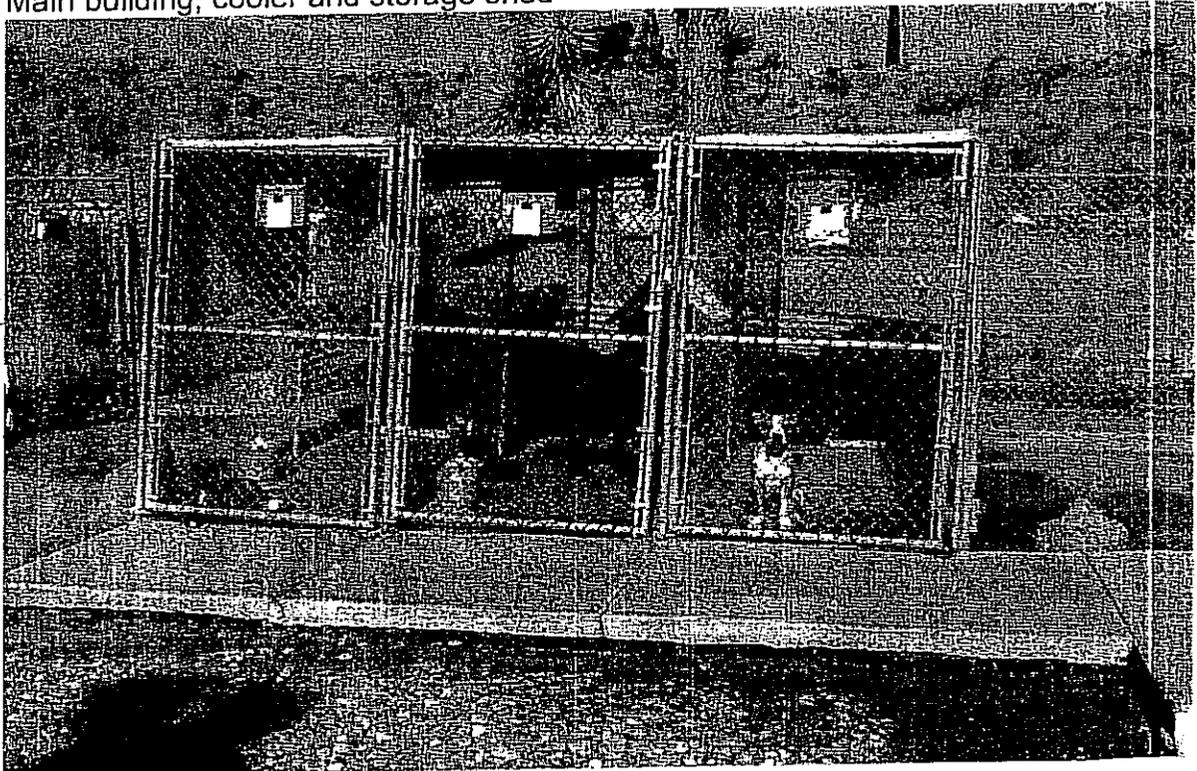
Viewing northeast at the main residential structure



Improvements Description



Main building, cooler and storage shed



Typical kennel improvement

Improvements Description



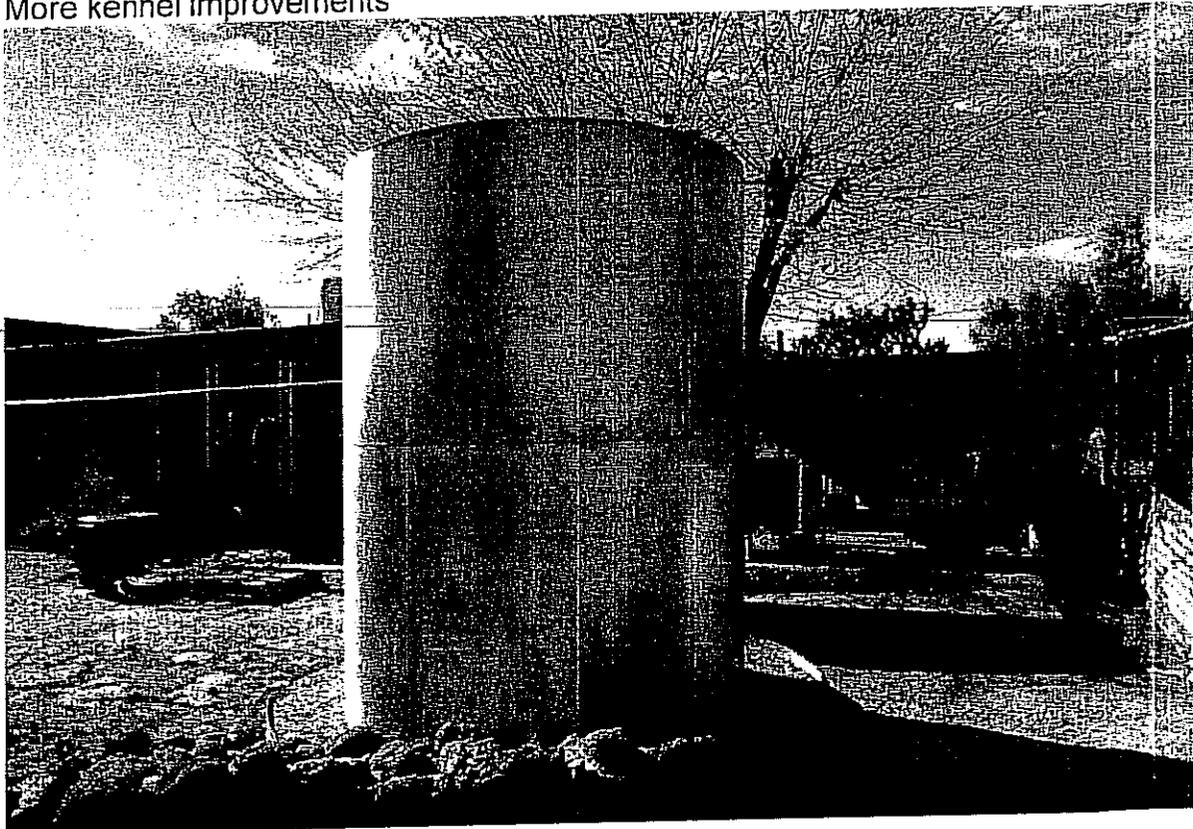
Typical kennel improvements and storage



Improvements Description

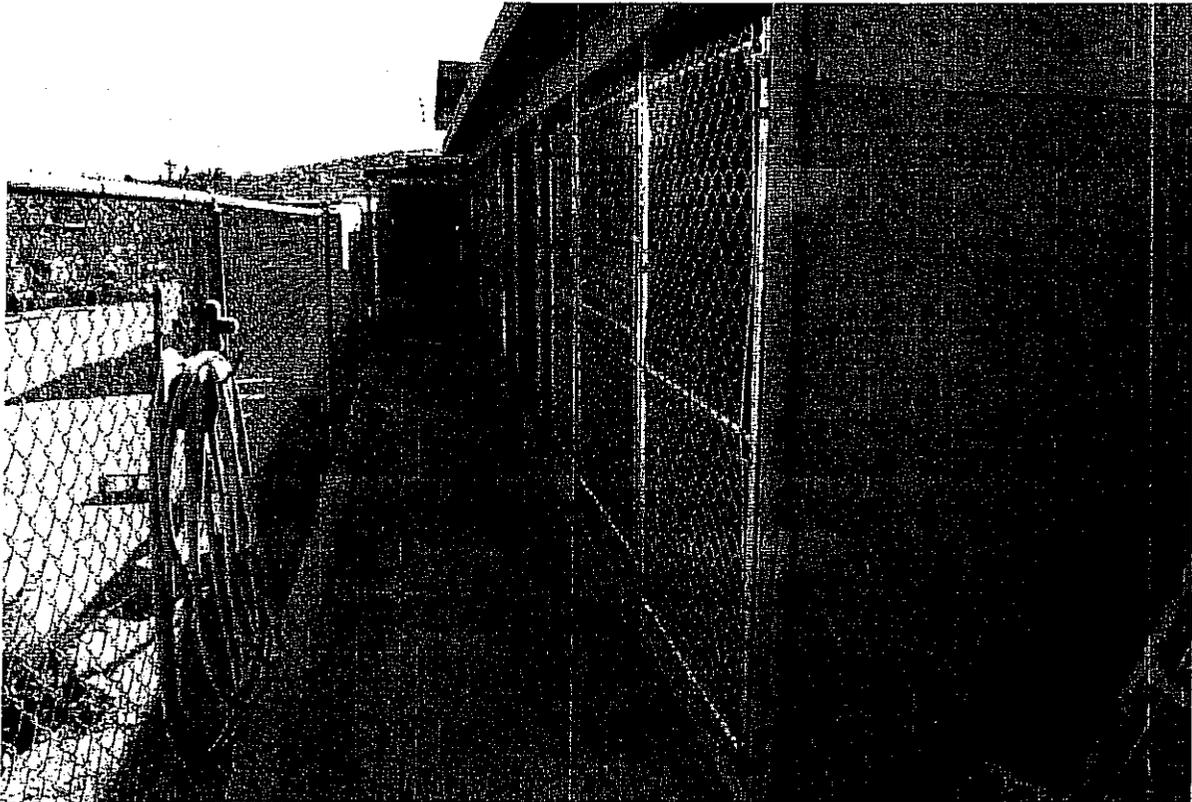


More kennel improvements



Water storage tank

Improvements Description

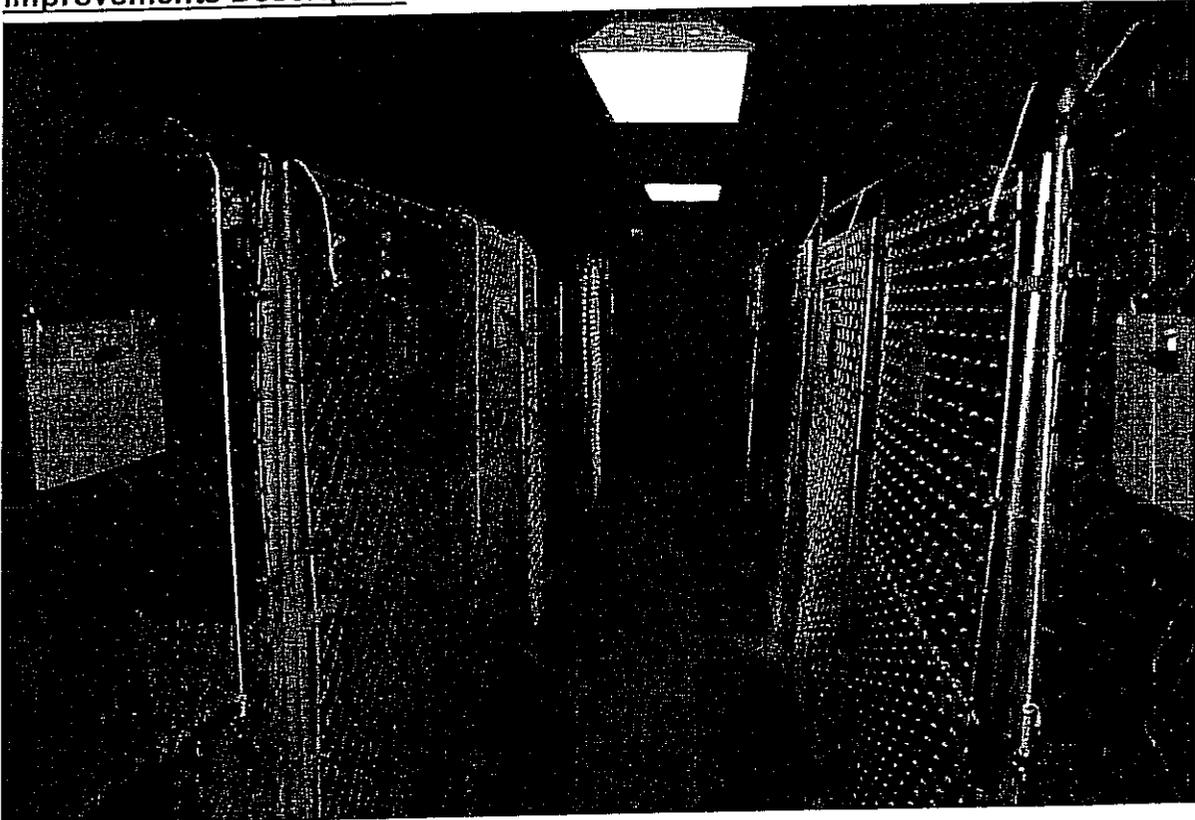


Main kennel

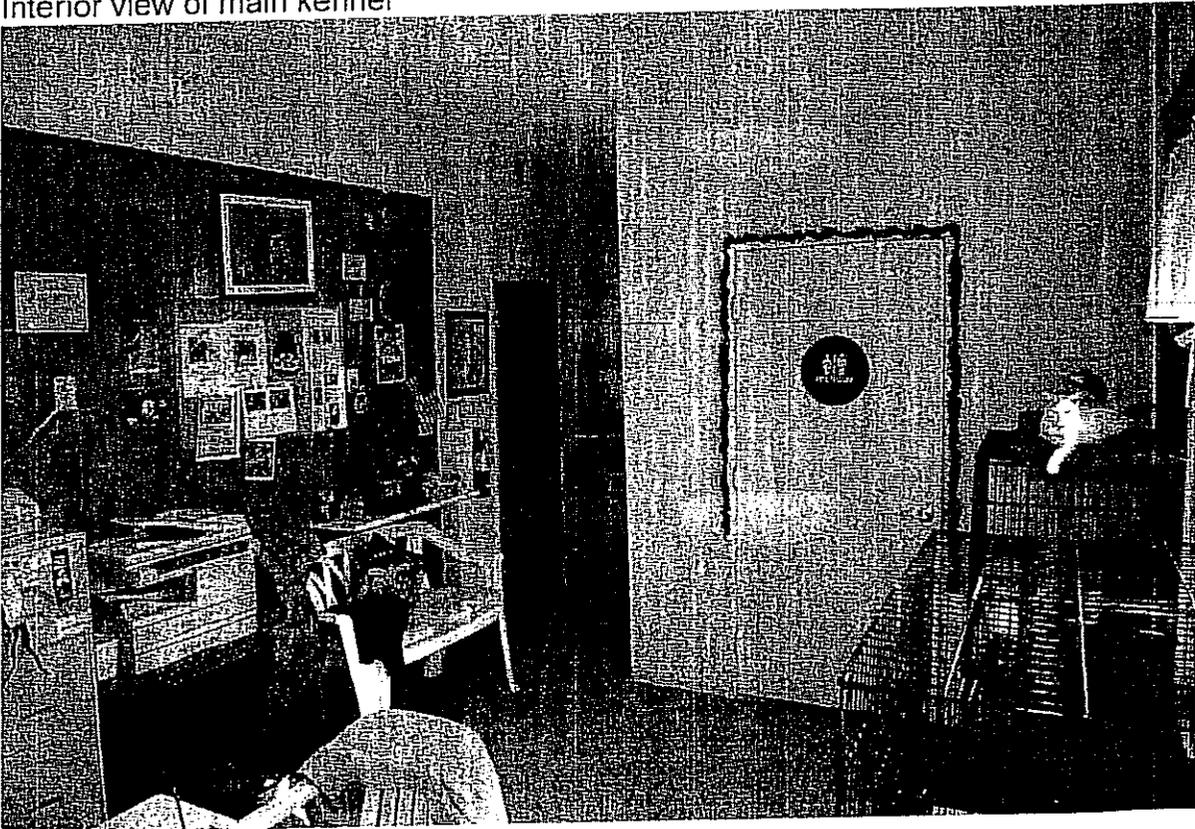


Dog runs

Improvements Description



Interior view of main kennel



Office area

## **Highest and Best Use Analysis**

A highest and best use of real property is defined as:

1. The reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of appraisal.
2. The reasonably probable and legally permissible use of land or sites as vacant, found to be physically possible, appropriately supported, financially feasible and that results in the highest present land value.
3. The most profitable use

Implied in these definitions is that the determination of highest and best use takes into account the contribution of a specific use to the community and community development goals as well as the benefits of that use to individual property owners. Hence, in certain situations, the highest and best use of land may be for parks, greenbelts, preservation, conservation, wildlife habitats, and the like.<sup>4</sup>

In estimating highest and best use, there are essentially four stages of analysis:

- **Legally Permissible:** What uses are permitted by zoning and deed restrictions for the subject site?
- **Physically Possible:** What are the physically possible uses for the subject site?
- **Financially Feasible:** What physically possible and legally permissible uses will produce a net return to the owner of the site?
- **Maximally Productive:** Among the financially feasible uses, which use will produce the highest net return or the highest present worth?

The following tests must be met in estimating the highest and best use: the use must be legal; the use must be probable, not speculative or conjectural; there must be a profitable demand for such use; and it must return to the land the highest net return for the longest period of time.

### **As if Vacant**

Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.<sup>5</sup>

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<sup>4</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed., (Chicago: Appraisal Institute, 2002)

<sup>5</sup> Ibid

## **Highest and Best Use Analysis**

### **As if Vacant**

#### **Legally Permissible**

The legal restrictions that apply to the subject are the public restrictions of the Town of Yucca Valley, R-L-5, Rural Living Residential, zoning restrictions. The numeric indication after the R-L indicates the minimum lot size of the zoning designation. In the case of the subject at 1.33 acres, the property is considered a legal non-conforming use.

The legal constraints of the subject are reasonable, appropriate, and do not impair the highest and best use development potential of the site.

#### **Physically Possible**

The subject is a corner parcel located at the northeast corner of Paseo Los Ninos and Mormon Avenue, Yucca Valley, California. The subject site is an irregular shaped parcel with dual access on Paseo Los Ninos. Accessibility, availability of utilities, unpaved roadways and the 1.33-acre lot size are typical for this area of Yucca Valley.

While the majority of the residential lots immediately surrounding the subject are five acres in size, just south of Skyline Ranch Road, the zoning changes to 2.5 acres and the lots are more homogeneous to the subject's. Therefore, it is my opinion that the physically possible characteristics of the subject property do not impair the highest and best use.

#### **Financially Feasible**

The estimation of financial feasibility for residential development is a simple comparison of costs and benefits. If the cost to construct a proposed development exceeds the present value of the net proceeds from sale, the prospective use is not considered feasible. Alternatively, if the present value of the anticipated income exceeds the cost to produce the proposed development, the use is considered financially feasible.

A specific development model was not supplied as part of this analysis. However, current absorption is increasing, though historical residential demand in this submarket has been sporadic. The ongoing developments currently observed in the market continue to be mostly in-fill developments. Based on the limited speculative development in the neighborhood, I conclude that financial feasibility for residential development is marginal on the subject property as of the date of value.

#### **Maximally Productive**

The physically possible and legally permissible uses for the subject property are present in the subject region. As current financial feasibility for development appears marginal for residential development, as of the date of value, the most maximally productive use of the site, "as if vacant", is to hold the property for investment purposes and future residential development.

## **Highest and Best Use Analysis**

### **As Improved**

The use that should be made of a property as it exists. An existing property should be renovated or retained so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.<sup>6</sup>

### **Legally Permissible Uses**

The existing use of the subject property is legal, though non-conforming. The current zoning is considered reasonable and appropriate. No changes in zoning are projected for the subject property.

### **Physically Possible**

The subject is a converted single-family residential structure and the existing use as a domestic kennel was built around the single-family residence position on the lot. In reality, while having an onsite resident to look after the animals is an important component of the operation, the amount of space allocated to the housing issue seems disproportionate. Additionally, the placement of the ancillary buildings and kennels on the property appears lacking any specific plan. Some of this haphazard appearance is also a result of the triangular shape of the subject site.

The subject property represents the most efficient use of the subject site given the legally permissible aspect of operating a kennel on the site. The site has no excess land or would repair, redesign or the removal of the existing improvements increase the value of the property as it is currently being used. However, that said, if the property were converted back to a single-family residential use the value of the property would increase, as there is demand for that alternative use. Therefore, it is my opinion that there is no physical limitation to the subject site that would affect the highest and best use.

### **Financially Feasible and Maximally Productive**

The subject's improvements are centered around a single-family residence that is the primary value component of the property. The existing domestic animal kennel use has been established and does not enhance the value of the property and ultimately the highest and best use. Conversion of the property back to a single-family residence would require the removal of significant improvements and rehabilitation of the existing structures. While it is beyond the scope of this analysis to estimate this cost, it would likely be in excess of the remaining value of the site. Market conditions do not support the removal of the current improvements. It is my opinion that no other form of development would increase the current net return to the property at this time. Therefore, it is the appraiser's opinion that the highest and best use for the subject property, "as improved", is to remain as improved until the improvements can be cost effectively remodeled or removed.

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<sup>6</sup>Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed., (Chicago: Appraisal Institute, 2002)

## **The Appraisal Process**

The first step in the appraisal process is to identify the appraisal problem. Every real property is different and many types of value can be estimated for any real property. For this appraisal assignment, the appraiser is estimating the market value of the fee simple estate for the subject property "as is" as of January 5, 2006.

The definition of market value has been described in the Purpose of the Appraisal section of this report. The subject property and type of value desired have been identified. Through the appraisal process, it is my intent to present a properly supported value estimate for the subject property. The market data, analysis and conclusions presented in the appraisal report should cause a reasonable person to reach similar conclusions. There are three traditional approaches to estimating market value for a property. These are the cost approach, the sales comparison approach and the income approach.

The subject property is being appraised "as is" and the assignment requires the estimation of the fee simple estate. The subject is an improved property consisting of converted single-family residential improvements that are used as a domestic kennel and animal control facility. The conversion and adaptation of the improvements are not considered to support or represent the highest and best use of the site. Therefore, the property is classified as an interim use property and as such, the valuation process is comprised of a single approach. The most applicable approach is the cost approach as it embodies the underlying land value and the depreciated value of the existing improvements. Since there are no similar domestic kennel facilities that have sold or are comparable, the sales comparison approach is not applicable. Similarly, the income derived from the existing operation is insufficient to utilize an income analysis and therefore the income approach is not applied.

A summary of the cost approach and its applicability to this analysis is presented.

### **Cost Approach**

"A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive, deducting depreciation from the total cost, and adding the estimated land value. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised."<sup>7</sup>

The cost approach has the best potential for accuracy when market conditions are such that the typical buyer will realize similar yields by acquiring an existing property, or building new. As indicated by the highest and best use, the subject property's improvements are considered interim and special purpose.

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<sup>7</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed., (Chicago: Appraisal Institute, 2002)

## **The Appraisal Process**

### **Cost Approach**

The combination of improvements and use on a residential lot places the subject in a unique situation, as there are no directly comparable property sales data to draw from. As a result, the cost approach is considered to have a reasonable level of reliability for valuing the improvements, as each of the property's value components can be analyzed.

An appraisal is composed of a number of integrated and inseparable procedures that have a collective objective, a convincing and reliable estimate of value. A reconciliation of the value indicators completes the analysis leading to a final value estimate.

### **Cost Approach**

The Cost Approach is an analytical process that involves five separate steps to arrive at an indication of value for the subject property. They are:

1. Estimation of land value by direct sales comparison as if vacant and put to its highest and best use
2. Estimation of reproduction or replacement cost new of the improvements
3. Estimation of accrued depreciation from physical deterioration, functional obsolescence and external obsolescence
4. The estimation of crude depreciation from all causes is then deducted from the replacement cost new.
5. Summation of land value and the depreciated cost of the improvements

The cost approach is applied to estimate the "as is" value for the subject property. The analysis is organized as follows:

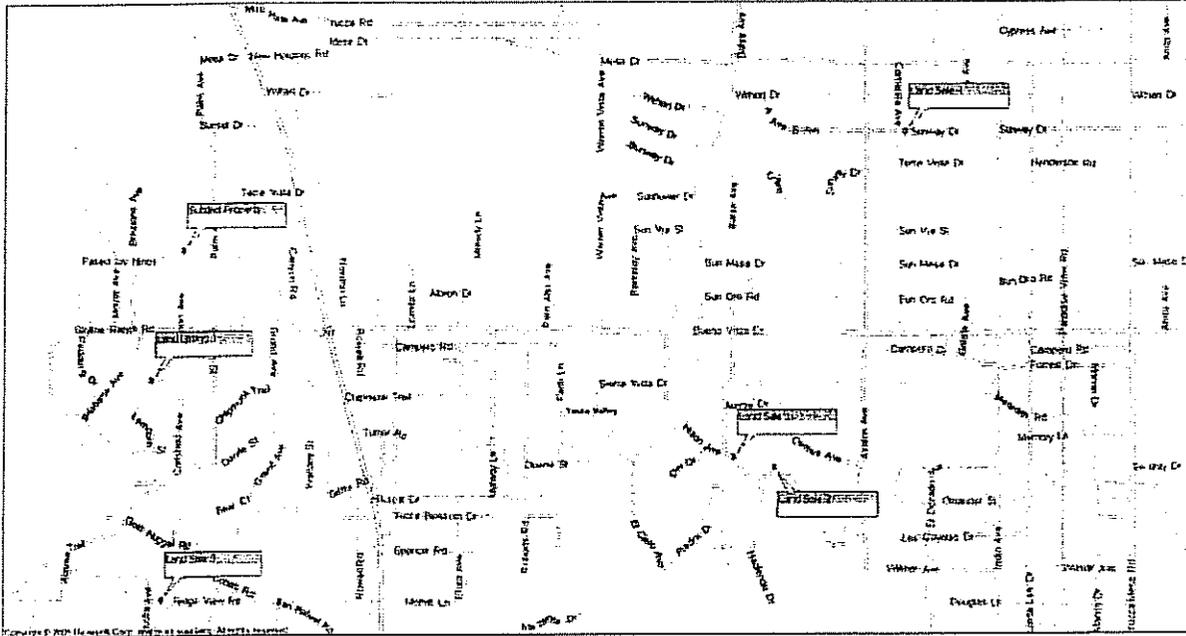
Comparable Land Sales Map  
Comparable Land Sales Grid  
Comparable Land Sales Data Sheets  
Comparable Land Sales Analysis and Conclusion  
Marshall Valuation Service Calculator Cost Estimate "As Is"  
Reconciliation and Value Conclusion by the Cost Approach

### **Comparable Land Sales Analysis**

I reviewed recent residential land sales activity within the Yucca Valley marketplace. As indicated in the Market Analysis section, there is ample market activity in vacant residential land in reasonable proximity to the subject property. As a result, I have selected the most recent land sales transactions available.

~~The subject's "as improved" highest and best use is considered interim. This is based on the financial results of the operation and the fact that converting the improvements back to a purely residential use would likely cost in excess of the overall value of the property once completed. The land sales selected each have a similar highest and best use as the subject, if it were vacant. Each of the comparable sales is a vacant residential lot in the same market area as the subject. Each of the sites could support the same level of improvements as the subject and attract buyers and sellers from the market stratum.~~

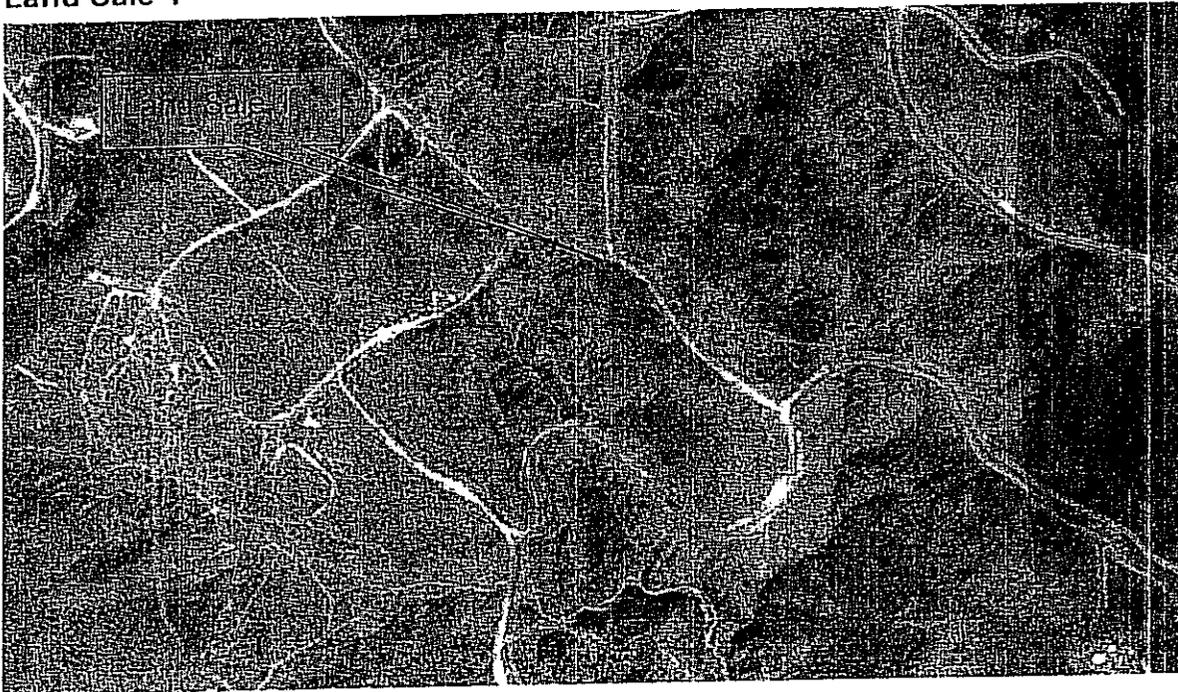
## Cost Approach



Sale Number	Location	Sale Date	Size Acres	Size SF	Zoning	Sale Price	Price Per Sq. Ft.
1	South side of Hilton Ave., east of Hacienda Dr. Yucca Valley, CA	12/2/2005	2.44	106,286	R-L-2.5	\$53,500	\$0.50
2	North side of Serin Dr., east of Balsa Ave. Yucca Valley, CA	12/2/2005	2.77	120,661	R-L-2.5	\$53,500	\$0.45
3	South side of Ridgeview, west of Sunny Ave. Yucca Valley, CA	11/8/2005	1.25	54,450	R-L-2.5	\$52,000	\$0.96
4	East side of Camarilla, north of Sunflower Dr. Yucca Valley, CA	10/5/2005	5.00	217,800	R-L-5	\$50,000	\$0.23
Listing 1	West side of Mormon, south of Carlsbad Ave. Yucca Valley, CA	Active	2.29	99,752	RL-2.5	\$165,000	\$1.65
Subject	NEC Paseo Los Ninos Yucca Valley, CA	12/5/2005	1.33	57,935	R-L-5	N/A	N/A

## Cost Approach

### Land Sale 1



**Location:** South side of Hilton Avenue, east of Hacienda Drive, Yucca Valley, California

**Identification:** APN 0598-381-05, San Bernardino County, CA

**Date of Sale:** December 02, 2005

**Documentation:** Grant Deed, recorded as instrument no. 903664 on December 2, 2005, official records, San Bernardino County, CA

**Grantor:** Client P. & Holly R. Martinez

**Grantee:** Larry R. & Darla K. Colucci

**Sale Price:** \$53,500

**Financing:** All cash to seller

**Exchange:** No

**Cash Equivalency:** \$53,500

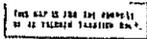
**Zoning:** R-L-2.5, Town of Yucca Valley, CA

**Flood Zone:** Zone X, defined as, "Areas of 500-year flood; areas of 100-year flood with average depths of less than one (1) foot or with drainage areas less than 1 square mile; and areas protected by levees from the 100-year flood."

## Cost Approach

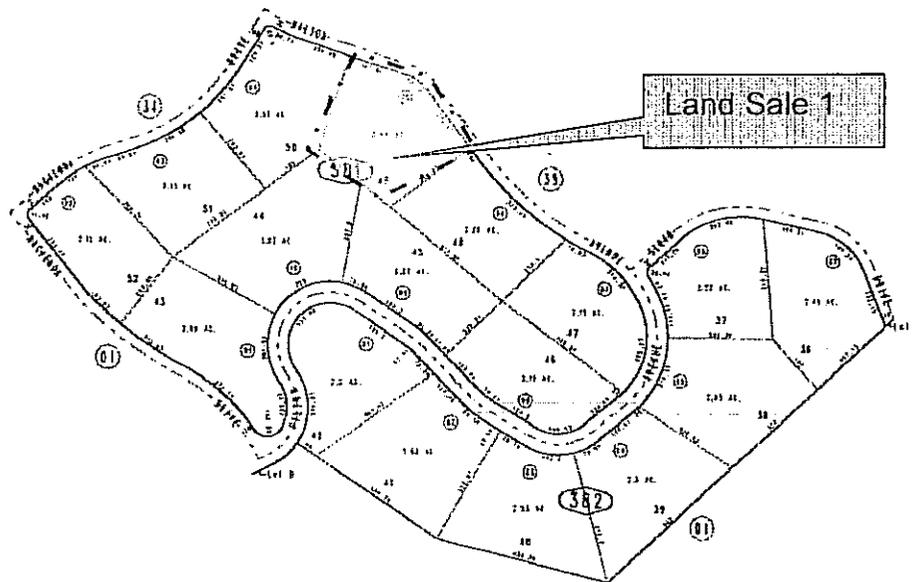
### Land Sale 1

**Site Size:** 2.44 acres / 106,286 SF  
**Utilities:** All available, except gas and sewer  
**Corner:** No  
**Improvements:** Barns, Corals and fencing; estimated value @ \$150,000  
**Topography:** Rolling raw desert terrain  
**Indicated Price Per Square Foot:** \$0.50  
**Verification:** Selling broker  
**Parcel Map :** 0598-381-05



Pln. Tract No. 6286, M.B. 85/88-92

Town of Yucca Valley 0598-38  
Tax Rate Area  
23003



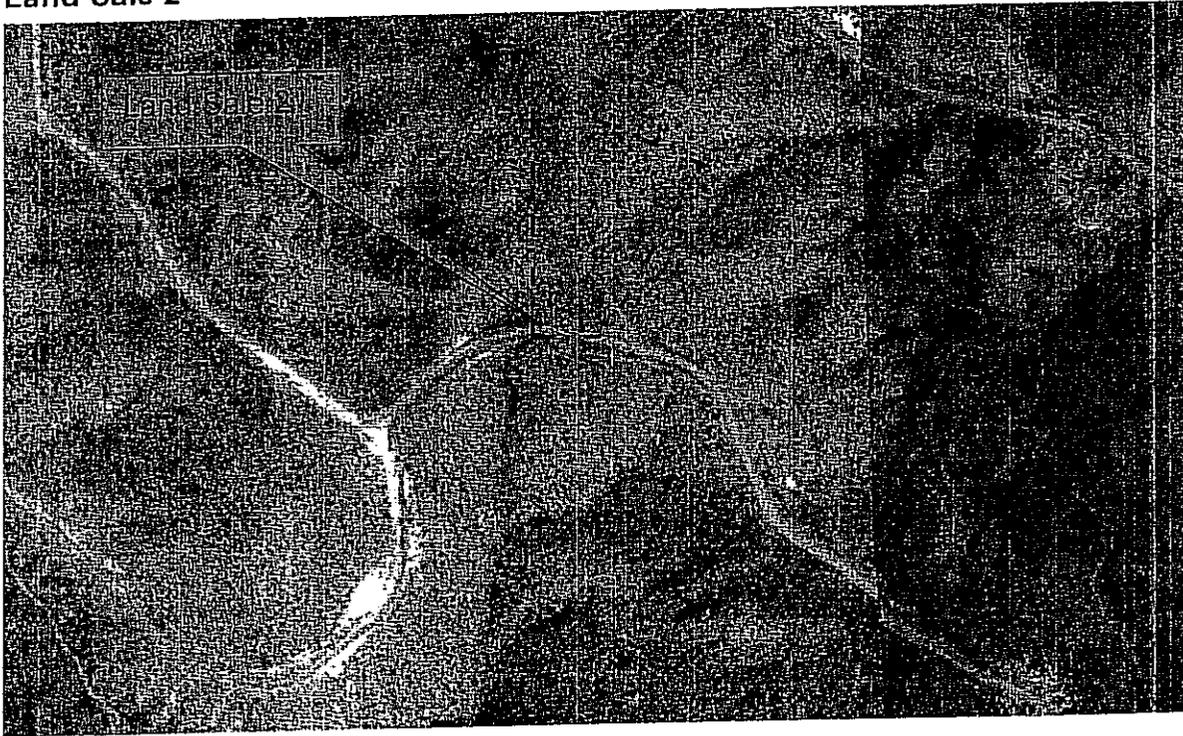
January 2005

Assessor's Map  
Book 0588 Page 38  
San Bernardino County

Comparable Sale 1 is the December 2005 acquisition of 2.44 acres of R-L-2.5 zoned residential land. The natural terrain site is unimproved raw land with dirt road access. The sale price of \$53,500 represents an unadjusted acquisition price of \$0.50 per square foot. The site is considered to have a similar location as the subject, though is larger in size. Overall, the site is considered to be an average comparison and indication of value.

## Cost Approach

### Land Sale 2



**Location:** North side of Serin Drive, east of Balsa Avenue, Yucca Valley, California

**Identification:** APN 598-393-03, San Bernardino County, CA

**Date of Sale:** December 02, 2005

**Documentation:** Grant Deed, recorded as instrument no. 903662 on December 2, 2005, official records, San Bernardino County, CA

**Grantor:** Clint P. & Holly R. Martinez

**Grantee:** Jon & Cynthia L. Wright

**Sale Price:** \$53,500

**Financing:** All cash to seller

**Exchange:** No

**Cash Equivalency:** \$53,500

**Zoning:** R-L-2.5, Town of Yucca Valley, CA

**Flood Zone:** Zone X, defined as, "Areas of 500-year flood; areas of 100-year flood with average depths of less than one (1) foot or with drainage areas less than 1 square mile; and areas protected by levees from the 100-year flood."

## Cost Approach

### Land Sale 2

**Site Size:** 2.77 acres / 120,661 SF

**Utilities:** All available, except gas and sewer

**Corner:** No

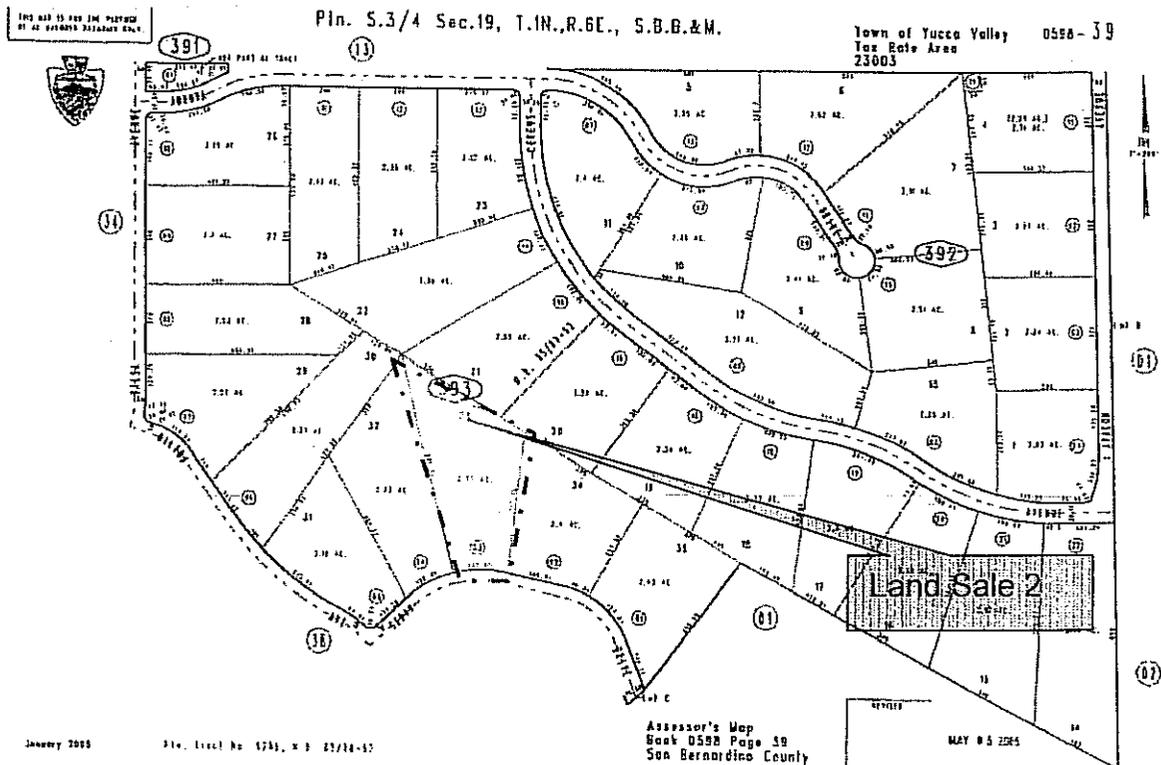
**Improvements:** None

**Topography:** Rolling raw desert terrain

**Indicated Price Per Square Foot:** \$0.45

**Verification:** Selling broker

**Parcel Map :** 0598-393-03



Comparable Sale 2 is the December 2005 acquisition of 2.77 acres of R-L-2.5 zoned residential land. The natural terrain site is unimproved raw land with dirt road access. The sale price of \$53,500 represents an unadjusted acquisition price of \$0.45 per square foot. The site is considered to have a similar location as the subject, though is larger in size. Overall, the site is considered to be an average comparison and indication of value.

## Cost Approach

### Land Sale 3



**Location:** South side of Ridgeview, west of Sunny Avenue, Yucca Valley, California

**Identification:** APN 0596-071-24, San Bernardino County, CA

**Date of Sale:** November 8, 2005

**Documentation:** Grant Deed, recorded as instrument no. 840755 on November 8, 2005, official records, San Bernardino County, CA

**Grantor:** Frances L. Langworthy Trust 1988

**Grantee:** Tony Hicks

**Sale Price:** \$52,000

**Financing:** All cash to seller

**Exchange:** No

**Cash Equivalency:** \$52,000

**Zoning:** R-L-2.5, Town of Yucca Valley, CA

**Flood Zone:** Zone X, defined as, "Areas of 500-year flood; areas of 100-year flood with average depths of less than one (1) foot or with drainage areas less than 1 square mile; and areas protected by levees from the 100-year flood."

**Cost Approach**

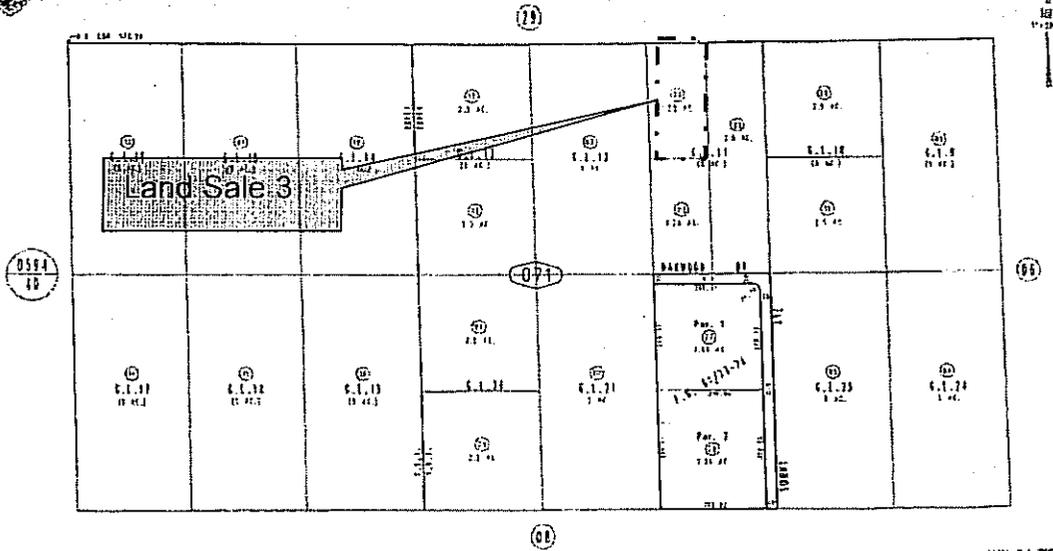
**Land Sale 3**

**Site Size:** 1.25 acres / 54,450 SF  
**Utilities:** All available, except gas and sewer  
**Corner:** Yes  
**Improvements:** None  
**Topography:** Rolling raw desert terrain  
**Indicated Price Per Square Foot:** \$0.96  
**Verification:** Selling broker  
**Parcel Map :** 0596-071-24

1st 1/4 Sec. 26, T. 1N., R. 5E., S.B.B. & M.

N.1/2, N.W.1/4 Sec.26, T.1N.,R.5E., S.B.B.&M.

Town of Yuca Valley Tax Rate Area 0596-07  
23000,23001



January 2005

Parcel Map No. 0596, P. 6, 05/27/04

Assessor's Map  
Book 0596 Page 07  
San Bernardino County

MAY 08 2005

Comparable Sale 3 is the November 2005 acquisition of 1.25 acres of RL-2.5 zoned residential land. The natural terrain site is unimproved raw land with dirt road access. The sale price of \$52,000 represents an unadjusted acquisition price of 0.96 per square foot. The site is considered to have a similar location as the subject. Overall, the site is considered to be an average comparison and indication of value.

## Cost Approach

### Land Sale 4



**Location:** East side of Camarilla, North of Sunflower Drive, Yucca Valley, California

**Identification:** APN 0598-372-48, San Bernardino County, CA

**Date of Sale:** October 05, 2005

**Documentation:** Grant Deed, recorded as instrument no. 745809 on October 5, 2005, official records, San Bernardino County, CA

**Grantor:** Sandra L. Schaefer

**Grantee:** Candace J. Moulton

**Sale Price:** \$50,000

**Financing:** All cash to seller

**Exchange:** No

**Cash Equivalency:** \$50,000

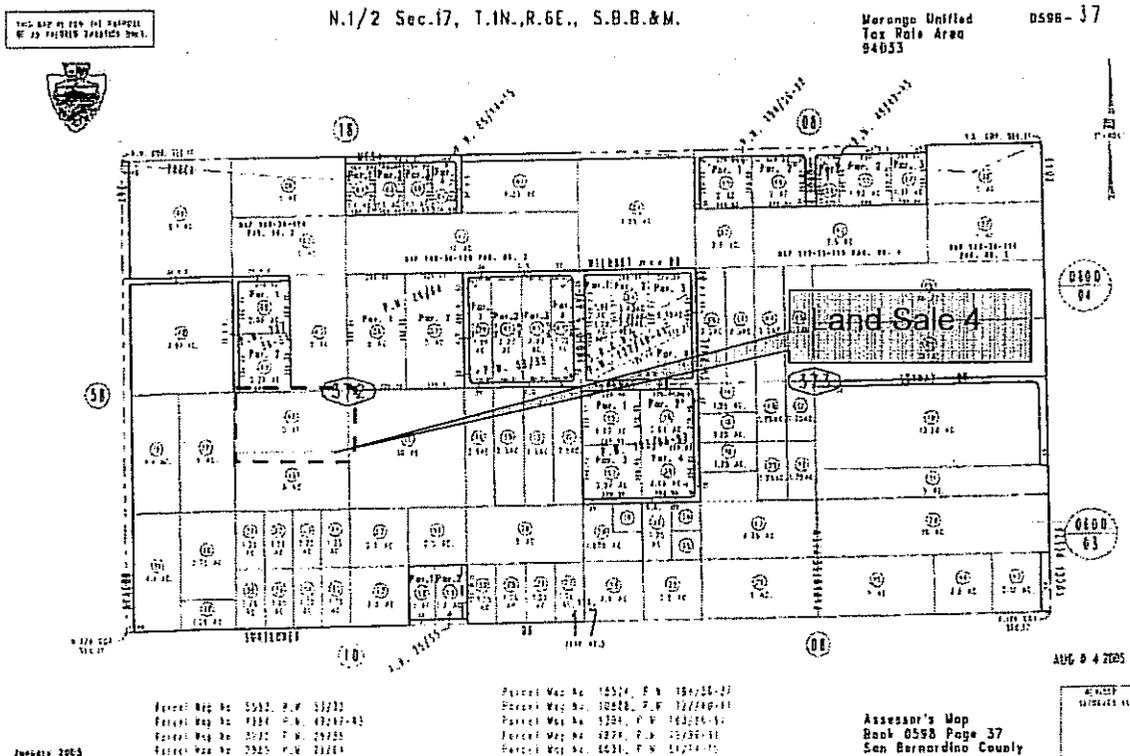
**Zoning:** R-L-5, Town of Yucca Valley, CA

**Flood Zone:** Zone X, defined as, "Areas of 500-year flood; areas of 100-year flood with average depths of less than one (1) foot or with drainage areas less than 1 square mile; and areas protected by levees from the 100-year flood."

## Cost Approach

### Land Sale No. 4

**Site Size:** 5.00 acres / 217,800 SF  
**Utilities:** All available, except gas and sewer  
**Corner:** Yes  
**Improvements:** None  
**Topography:** Mostly level raw desert terrain  
**Indicated Price Per Square Foot:** \$0.23  
**Verification:** Selling broker  
**Parcel Map :** 0598-372-48



Comparable Sale 4 is the October 2005 acquisition of 5.00 acres of R-L-5 zoned residential land. The natural terrain site is unimproved raw land with dirt road access. The sale price of \$50,000 represents an unadjusted acquisition price of \$0.23 per square foot. The site is considered to have a similar location as the subject, though is larger in size. Overall, the site is considered to be an average comparison and indication of value.

## Cost Approach

### Land Sale / Listing 1



**Location:** West side of Mormon Avenue, south of Carlsbad Avenue, Yucca Valley, California

**Identification:** APN 0596-033-09, San Bernardino County, CA

**Date of Sale:** September 27, 2004 / Active listing; 33 days on market (DOM)

**Documentation:** Grant Deed, recorded as instrument no. 700703 on September 27, 2004, official records, San Bernardino County, CA

**Grantor:** Luna & Livier-Gonzalo

**Grantee:** Erasmo & Aurora G. Leon

**Sale Price:** \$55,000 / Listing Price \$165,000

**Financing:** All cash to seller

**Exchange:** No

**Cash Equivalency:** \$55,000

**Zoning:** R-L-2.5, Town of Yucca Valley, CA

**Flood Zone:** Zone X, defined as, "Areas of 500-year flood; areas of 100-year flood with average depths of less than one (1) foot or with drainage areas less than 1 square mile; and areas protected by levees from the 100-year flood."

## Cost Approach

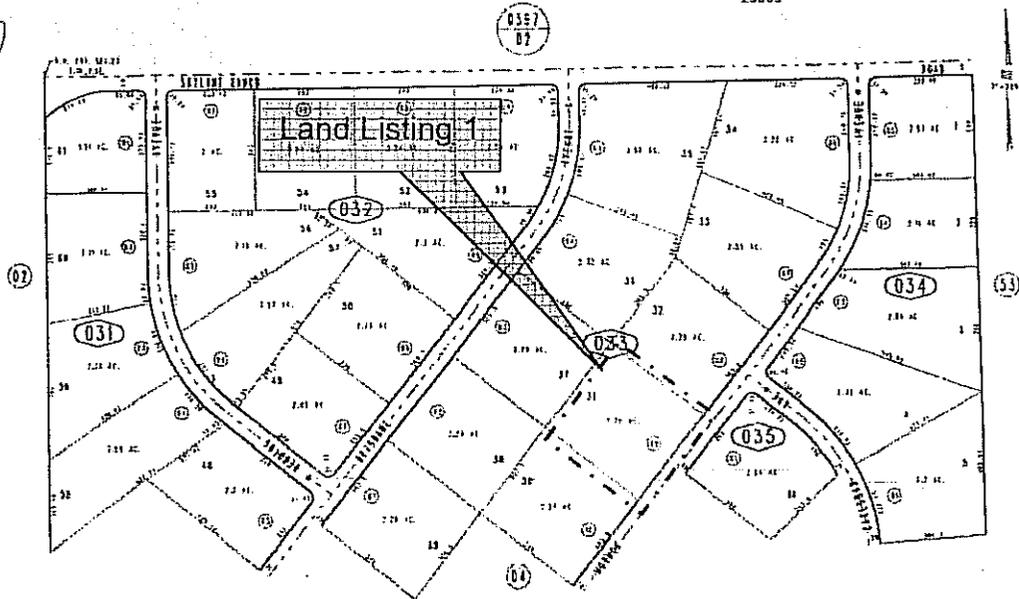
### Land Sale / Listing 1

**Site Size:** 2.29 acres / 99,752 SF  
**Utilities:** All available, except gas and sewer  
**Corner:** No  
**Improvements:** None  
**Topography:** Rolling raw desert terrain  
**Indicated Price Per Square Foot:** \$0.55; currently listed @ \$1.65 PSF  
**Verification:** Selling broker  
**Parcel Map :** 0596-033-09

THIS MAP IS FOR THE PURPOSES  
OF ASSESSMENT ONLY.

Pln. Tract No. 5849, M.B. 73/15

Town of Yucca Valley 0596-03  
Lux Rule Area  
23003



January 2005

Assessor's Map  
Book 0596 Page 03  
San Bernardino County

MAY 06 ZEES  
FENCIBLE

Comparable Listing 1 is also a September 2004 acquisition of 2.29 acres of R-L-2.5 zoned residential land. The natural terrain site is unimproved raw land with dirt road access. The sale price of \$55,000 represents an unadjusted acquisition price of \$0.55 per square foot. As of the date of this analysis, the property is an active listing at \$165,000 or \$1.65 PSF. The site is considered to have a similar location as the subject, though is larger in size. Overall, the site is considered to be an average comparison and indication of value.

## Cost Approach

### **Adjustments**

Adjustments to each of the sales are required for significant differences that affect value. The appraiser adheres to a sequence of adjustments in all sales comparison analyses. Using the sequence, the appraiser obtains intermediate price figures and applies succeeding adjustments to each previously adjusted price. The adjustments applied to the price of a comparable property reflect the comparable's superiority/inferiority involving the real property rights conveyed, financing, conditions of the sale, market conditions and locational and physical characteristics. A common method of extracting adjustments among the comparable sales is a technique called "matched pairs' analysis". The goal of matched pairs' analysis is to obtain market-based adjustments.

The basic premise of matched pairs is to isolate a particular adjustment feature among two or more sales, where the difference in adjusted prices would yield the market's perception of value for the feature. Generally, the appraiser follows a sequence of adjustments, attempting to isolate market-based adjustments from intermediate adjusted sales prices. In many cases, adjustment features cannot be isolated.

When adjustment features cannot be isolated, matched pairs' analysis is supplemented with other techniques to adjust the comparable data. These other techniques typically include cost-based adjustments, adjustments based upon a market survey, adjustments based upon published data and subjective adjustments. The following is a discussion of relevant adjustment factors.

### **Property Rights Conveyed**

The subject property is a fee simple estate. All of the comparable properties reflect the transfer of, or intent to transfer, fee simple estates. No adjustment for this feature is required among this group of comparable sales.

### **Financing Terms**

All of the comparable sales utilized in the land sales analysis sold for cash or cash equivalent terms. Therefore, no adjustments are made to the sales for financing. While I have included a listing in the data group, I have applied the 2004 acquisition of the property to help show the impact of the time adjustment. In the case of the listing, I feel the property is above market by a substantial amount and therefore, the listing price is not included as comparable data. Normally, I would adjust the active listing price to a level reflecting the current listing to closed price ratio and deduct commissions.

## **Cost Approach**

### **Adjustments**

#### **Conditions of Sale**

All of the data items were reported or are anticipated to be arm's-length transactions, with no indication of atypical conditions. No adjustments are applied in this category.

#### **Market Conditions**

Adjustments for market conditions reflect a change in prices paid for real property due to changes in markets over time. In this case, the existing sales data is insufficient to quantify a market conditions adjustment via matched pairs. However, as indicated in the market analysis land and retail unit prices have increased in the past year. Using the indicated range, I have selected a subjective annualized increase rate of 15%. This upward adjustment factor of 1.25% per month is applied to the closed sales for market conditions. The adjustment factor is applied to the period between the closing date of the individual sale and the date of value for the subject.

#### **Location**

The location of a property will dictate its desirability among similar properties in the market. The subject property has an average location in Yucca Valley market area. Each of the comparable sales are considered to have a similar location and therefore no adjustment are made.

#### **Size**

The size of a property affects the uses it will support, and the buyers it will attract. Size adjustments are generally based upon the concept of "marginal utility". Marginal utility is defined as follows:

"The increment of total utility added by the last unit of a good at any given point of consumption. In general, the greater the number of items, the lower the marginal utility, i.e., a greater supply of an item or product lowers the value of each item."<sup>8</sup>

The concept of marginal utility generally holds true for residential land parcels in the subject market. While larger sites can ultimately support more improvements, the cost of development and maintenance adds increased risk. Additionally, the available buyer pool generally gets smaller as the total site size increases. Through my experience of analyzing acquisitions in the marketplace, wide ranges of discounts have been typical. My research indicates a conservative adjustment would best illustrate the market perception of an applicable adjustment factor. Therefore, I have selected the low end of the indicated range. The comparable properties are adjusted for their size difference to the subject.

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<sup>8</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed., (Chicago: Appraisal Institute, 2002)

## Cost Approach

The following table illustrates the adjustments applied to the comparable sales.

Element	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Listing 1
Sale Price		\$53,500	\$53,500	\$52,000	\$50,000	\$55,000
Size (Acres)	1.33	2.44	2.77	1.25	5.00	2.29
Unit of Comparison	Price/PSF	Price/PSF	Price/PSF	Price/PSF	Price/PSF	Price/PSF
Sale Price Per Sq. Ft.		\$0.50	\$0.45	\$0.96	\$0.23	\$0.55
Property Rights Adjustment	Fee Simple					
		\$0	\$0	\$0	\$0	\$0
Terms Cash Equivalency		Cash Eq.				
		\$0	\$0	\$0	\$0	\$0
Conditions of Sale Adjustment		Arm's-Len.	Arm's-Len.	Arm's-Len.	Arm's-Len.	Arm's-Len.
		\$0	\$0	\$0	\$0	\$0
Date of Sale Adjustment	12/5/2005	12/2/2005	12/2/2005	11/8/2005	10/5/2005	9/27/2004
		\$0	\$0	\$0.01	\$0.01	\$0.10
Subtotal		\$0.50	\$0.45	\$0.97	\$0.24	\$0.65
Location Location Adjustment	Average	Similar	Similar	Similar	Similar	Similar
		\$0	\$0	\$0	\$0	\$0
Size SF Adjustment	57,935	106,286	120,661	54,450	217,800	99,752
		\$0.02	\$0.03	\$0	\$0.08	\$0.02
Adj. Sale Price Per SF		\$0.53	\$0.49	\$0.97	\$0.32	\$0.67
Average PSF		\$0.59				
Median PSF		\$0.53				
Indicated Price PSF		\$0.60				
Indicated Lot Value		\$34,761				

## Conclusion

Four of the five comparables fall within a narrow value range in both an adjusted and unadjusted state. Of the six adjustment categories, the adjustment for size is the largest single adjustment applied to the data group. The marketplace anticipates the concept of marginal utility, making the size adjustment a commonly accepted theory. The second adjustment with broad influence is the market conditions adjustment. As illustrated in the market analysis, the market's momentum and activity indicate strong appreciation in land prices over the data sample's period. The narrow range of values places the value conclusion in the middle of the adjusted range. Based on the available data, it is my opinion that the market value of the unencumbered fee simple estate of the subject property "as if vacant" on December 5, 2005, is as follows:

**57,935 Square Feet @ \$.60 per Square Foot = \$34,761**

**\$35,000 Rounded  
(Thirty Five Thousand Dollars)**

## **Cost Approach**

The next step in the cost approach is to estimate the depreciated reproduction, or replacement cost of the improvements. Reproduction and replacement costs are defined in the following paragraphs.

### **Reproduction Cost**

"The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all the deficiencies, superadequacies, and obsolescence of the subject building."<sup>9</sup>

### **Replacement Cost**

"The estimated cost to construct, at current prices as of the effective appraisal date, a building with utility equivalent to the building being appraised, using modern materials and current standards, design, and layout."<sup>10</sup>

The cost approach is most reliable when the improvements are comparatively new, and represent the highest and best use of the site. For new improvements, the various forms of depreciation are estimated with relative ease. The reproduction cost estimate is based upon the actual costs necessary to produce an exact replica of the improvements. Therefore, the reproduction cost estimate will embody all of the functional obsolescence present for the property (if any). The replacement cost method is used to estimate the cost to construct a functionally equivalent (but not identical) set of improvements and is applied in this analysis.

The "as is" value is estimated by adding the cost of the existing improvements to the "as if vacant" land value. The costs include all hard and soft costs, including entrepreneurial incentive. Typically, there are three methods to estimate existing construction costs. These methods include a direct comparison to other known costs from similar projects, a Marshall Valuation style bulk cost estimate, and the application of current bids and costs specific to the existing improvements.

The subject property is comprised of several improvement components that include the main house, office area, outbuildings, and the kennels. I will combine all the improvements into a single worksheet and establish an effective age for the complex. Since the building in its present use is considered a special purpose set of improvements, the expected life of the improvements is reflective of a commercial property and is estimated at a total of 40 years.

The cost data is sourced from the Marshall & Swift Cost Calculator Handbook as well as cost information supplied by general market knowledge.

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<sup>9</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed., (Chicago: Appraisal Institute, 2002)

<sup>10</sup> *Ibid*

## Cost Approach

### **Marshall Valuation Section**

#### **General Calculator Notes**

The subject is a converted single-family residential property operated as a domestic animal kennel and contracts with the town of Yucca Valley and the County of San Bernardino for animal control services. The operation does not produce net operating income and is dependent on charitable donations to remain operationally solvent. If it were not for the grandfathered nature of the improvements, the community necessity for the service and the goodwill of the community, the facility would close.

There are a number of factors that influence the operational results of the High-Dez Kennel, the first and foremost is that the locational attributes are not conducive to the domestic pet boarding business model. The second is facility design and quality. The third and only positive market influence is the market demand from governmental agencies for handling their animal control containment contracts. Without these two contracts, the facility would have closed several years earlier. Clearly, the only real reason the facility operates today, is the devotion and charity of the community. What this indicates is that the property is heavily influenced from several forms of depreciation.

#### **Base Building Costs**

The base building costs for the subject are taken from the Marshall Valuation Service Commercial Cost Estimator Software version 7, November 2005. Included in the base building costs are adequate interior lighting and plumbing. Package A/C is also included in the base building costs.

#### **Lump Sum Adjustments**

The kennels, outbuildings, water storage, and fencing typically constitute the majority of lump sum adjustments for this property. Other lump sum adjustments of \$15 PSF are allocated for interior improvements. This amount is for basic cabinetry and design features that accompany the main house and office area. Another lump sum adjustment applied to this analysis is the cost of first selling the house. This cost includes marketing material and commissions. The amount applied is estimated at 6% of the building and land cost. Typically, an amount is applied for entrepreneurial incentive for the development of the project. Since the subject is a nonprofit entity that primarily serves the good of the greater community an entrepreneurial incentive is not applied.

#### **Depreciation**

Depreciation is the loss in value due to any cause. Depreciation is generally divided into three categories. These are physical deterioration, functional obsolescence and external obsolescence. Physical deterioration and functional obsolescence are further divided into curable and incurable components. External obsolescence is considered incurable. The forms of depreciation are defined on the following pages.

## **Cost Approach**

### **Depreciation**

#### **Physical Deterioration - Curable**

"An element of accrued depreciation; a curable defect caused by deferred maintenance."<sup>11</sup>

#### **Physical Deterioration - Incurable**

"An element of accrued depreciation; a defect caused by physical deterioration that cannot be practically or economically corrected."<sup>12</sup>

#### **Functional Obsolescence - Curable**

"An element of accrued depreciation; a curable defect caused by a flaw in the structure, materials or design."<sup>13</sup>

#### **Functional Obsolescence - Incurable**

"An element of accrued depreciation; a defect caused by a deficiency or super adequacy in the structure, materials or design, which cannot be practically or economically corrected."<sup>14</sup>

#### **External Obsolescence**

"An element of accrued depreciation; a defect, usually incurable, caused by negative influences outside a site and generally incurable on the part of the owner, landlord, or tenant."<sup>15</sup>

In this report, each area of depreciation is analyzed separately as follows.

#### **Physical Deterioration - Curable**

As defined above, curable physical deterioration consists of deferred maintenance items. The subject's primary residence is considered a 38 year-old building that has seen limited remodeling through the years and is considered in fair condition. The ancillary improvements including the kennels, outbuildings, fencing and general infrastructure are all considered in fair condition.

While many of the issues that relate to the physical condition of these items are curable, there is no economic incentive or means to fix them. As a result, the property is repaired as necessary and is not maintained with a preventative maintenance program. Based on the building's age and fair condition, it is better to address depreciation in a single category, such as the incurable category. An attempt to delineate the differences would complicate what is already a difficult process of separating depreciation issues. Consequently, there will be no curable physical deterioration charged in this analysis.

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<sup>11</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed., (Chicago: Appraisal Institute, 2002)

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

## **Cost Approach**

### **Physical Deterioration - Incurable**

Incurable physical deterioration is the most common type of depreciation, generally caused by the physical aging of the improvements. In my analysis, the subject property does represents its highest and best use "as if vacant" and does not "as improved" these use conclusions are based on the market's demand for residential land and low demand for kennel services in the immediate area.

Incurable physical deterioration can be defined as a real loss in the existing use value of property and is an important component of property use and appreciation. The pace of technological change and higher land values each suggest that the contribution of the building component of property value is likely to decline as a proportion of property value at a more rapid-rate.

The subject's improvements are in fair condition, with an estimated effective age of 38 years and have an estimated remaining economic life of 2 years. The charge for incurable physical deterioration is based on the Marshall & Swift depreciation tables and applied at 95%.

### **Functional Obsolescence - Curable**

The subject property does not suffer from any forms of functional obsolescence that are curable "as is".

### **Functional Obsolescence - Incurable**

Incurable functional obsolescence includes items that do not contribute to value, yet have an associated cost. Many superadequacies fall into this category. In this case, the subject represents the standard of acceptability for facilities of this size and type in this submarket. Consequently, no adjustment for incurable functional obsolescence is applied.

The remaining components of cost include entrepreneurial incentive and the cost of marketing the property. Since the property is operated as a nonprofit entity, entrepreneurial incentive is not typically a component or a motivating factor for development. Therefore entrepreneurial incentive is not applied the analysis though sales and marketing are and estimated at 6%.

### **Conclusion**

The following page contains the Marshall Valuation Service Calculator Cost Approach worksheet for the subject property.

## Cost Approach

### Hi-Dez Kennel

(Marshall Valuation Service, Residential Estimator Version 7)

#### Square Foot Adjustments

Component	Area	Cost	Replacement
		Reference	Cost New
Base Building	1,414	\$95.00	\$134,330
Office Area	500	\$65.00	\$32,500
Pound Building	160	\$28.00	<u>\$4,480</u>

**Subtotal Square Foot Adjustments** **\$171,310**

#### Lump Sum Adjustments

Interior Finish	1,914	\$15.00	\$28,710
Fees / Permits / Indirects	1	\$35,000	<u>\$35,000</u>

**Subtotal Lump Sum Adjustments** **\$63,710**

**Subtotal Base Building Structure** **\$235,020**

#### Yard Improvements

Component	Area	Cost	Replacement
		Reference	Cost New
Site Improvements	10,000	\$1.00	\$10,000
Landscaping	1	\$1,500	\$1,500
Paving / Driveway / Grading	1,500	\$10.00	\$15,000
Kennels (Main)	896	\$18.00	\$16,128
Kennels (Pound)	2,438	\$12.00	\$29,256
Storage Shed	70	\$15.00	\$1,050
Water Tank	1	\$4,500	\$4,500
Interior Fencing	2,500	\$12.00	\$30,000
Perimeter Fencing	1,025	\$12.00	<u>\$12,300</u>

**Total Yard Improvements** **\$119,734**

**Subtotal** **\$354,754**

Current Cost Multiplier 1.00

Local Cost Multiplier 1.16

**Total Estimated Replacement Cost New** **\$411,515**

Total Economic Life (Years) 40

Remaining Economic Life 2

Effective Age 38

Less Accrued Depreciation 95.00% (\$390,939)

Plus Entrepreneurial Incentive 0% \$0

**Depreciated Replacement Cost** **\$20,576**

**Land Value** **\$35,000**

**Cost of 1st Occupancy** **\$3,335**

**Indicated Subject Value** **\$58,910**

**Indicated Subject Value (Rounded)** **\$60,000**

## Cost Approach

### Conclusion

The results of the cost approach are considered reasonable and reliable as the different components of the analysis are well supported. The analysis of the underlying land "as if vacant" required few adjustments. The costs of the improvements are also well defined, as the cost data is readily available. The remaining points of variability are based in the estimation of depreciation for all the improvements. Consequently, this is a significant calculation and assumption in the value estimate and represents 95% of the value of the improvements new. However, the test of reasonableness is the lack of net operating income and the property's disrepair. Both of these issues point to an alternative highest and best use for the subject. In this case, that would be to return the site back to a purely residential use and require the removal of the existing kennel based improvements as well as remodeling of the house. This calculation is defined as a cost to cure and is estimated at \$25,000 and deducted from the value conclusion presented in the cost analysis worksheet.

Based on the Marshall Valuation cost estimate, the "as is" value by the cost approach is as follows:

$$\text{\$35,000 (Land "As if Vacant")} + \text{\$23,911 (Hard \& Soft Costs)} = \text{\$58,911}$$

$$\text{Less cost to cure (\$25,000)} = \text{\$33,911}$$

**\\$35,000 Rounded**  
**(Thirty Five Thousand Dollars)**

## CERTIFICATION

I certify that, to the best of my knowledge and belief, ...  
The statements of fact contained in this report are true and correct.

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

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

My analysis, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation, except that the Departure Provision of the USPAP shall not apply to federally related transactions.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

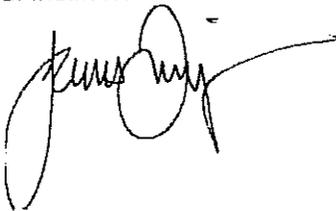
As of the date of this report, I have completed the requirements of the continuing education program of the Appraisal Institute and the State of California OREA.

I have made a personal inspection of the property that is the subject of this report.

No other person provided significant professional assistance to the person(s) signing this report.

This appraisal assignment was not based on a requested minimum valuation, a specific valuation or the approval of a loan.

I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.



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**James Dingman**  
**State Certification No.: AG025869**  
**Expiration Date: March 2, 2007**

## Addendum

## James Dingman

### General Experience

1996 – Present      CEO – Capital Realty Analysts  
 1993 – 1996        Appraiser – MacKenzie and Associates  
 1990 – 1993        Director of Food & Beverage Operations – Breckenridge Ski Corp.,  
                          Breckenridge Co., Mt. Hutt Ski & Alpine Co., Methven, New Zealand  
 1988 – 1990        Director of Operations – The Broe Co., San Diego, CA; Denver, CO  
 1986 – 1990        Owner – The Inn at Deep Canyon, Palm Desert, CA  
 1984 – 1986        General Manager – Radisson Hotel, San Jose, CA  
 1979 – 1983        General Manager – Crown Colony Country Club, Lufkin, TX

### Education

1975 –1977 Culinary Arts; Business; University of New Hampshire, Berlin

### Continuing Education

USPAP Update	Technical Inspection of Real Estate
Special Purpose Properties	Standards Part C
Advanced Sales & Cost Approaches	Expert Witness
Automated Valuation Models	Standards of Professional Practice
Basic Income Capitalization	Appraisal Procedures
Standards of Professional Practice	Real Estate Appraisal Principles
Real Estate Principles	Real Estate Economics
Real Estate Finance	California Real Estate Law

### Licensing

State of California – Certified General Real Estate Appraiser License  
 Office of Real Estate Appraisers – Appraiser Identification No. AG025869  
 California Real Estate Salesperson License

### Professional Organizations

Appraisal Institute – Associate Member

### Representative List of Clients

Public Sector	Private Sector	Institutional Sector
United States of America	Canyon Development	Palm Springs Savings
RTC/FDIC	Westar Development	Truckee River Bank
Small Business Administration	Morongo Band of Mission Indians	Foothill Independent Bank
Bureau of Indian Affairs	UNOCAL 76	First Bank Systems
City of La Quinta	Prudential Real Estate	Metropolitan Mortgage
City of Rancho Mirage	Best Best & Krieger	Canyon National Bank
City of Palm Desert	Guralnick & Gilliland	US Bank Corp
City of Palm Springs	Michael Zitomer	Valley Independent Bank
City of Temecula	Hotel Resort Properties	First Community Bank
County of Riverside	Selzer, Ealy, Hemphill & Blasdel	Los Padres Bank
Desert Sands School District	Grubb & Ellis	Union Bank of California
P.S. Unified School District	Agua Caliente Band of Cahuilla Indians	

## Assumptions and Limiting Conditions

This appraisal report has been made with the following general assumptions and limiting conditions:

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. The appraiser reserves the right to make adjustments to the analyses, opinions and conclusions in this report, as may be required by consideration of additional or revised data that may become available.
5. All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
7. It is assumed that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
8. It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless nonconformity has been identified, described and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
11. Unless otherwise stated in this report, the existence of hazardous materials, which may or may not be present on the subject property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation and other potentially hazardous materials may affect the value of the property. The value estimated is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required to discover them. The intended user is urged to retain an expert in this field, if desired.

## Assumptions and Limiting Conditions

12. Any allocation of the total value estimated in this report between the land and the improvements applies only under the stated program of utilization. The separate allocations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.
13. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with properly written qualification and only in its entirety.
14. The appraiser herein by reason of this appraisal is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
15. ~~Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.~~
16. Improved Properties - The Americans with Disabilities Act ("ADA") became effective January 26, 1992. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible non-compliance with the requirements of ADA in estimating the value of the property.
17. Improvements, Proposed Improvements, - The value estimates in this report are subject to the improvements being completed in the manner represented to the appraiser(s), and described in the Improvement Description section of this report.
18. ~~The legal descriptions, site sizes, dimensions and/or other surveys provided to the appraiser, including County Tax Plats, are assumed to be accurate. Should a survey prove these characteristics inaccurate, it may be necessary for the appraisal to be adjusted.~~
19. The forecasts, projections, or operation estimates contained herein are based upon current market conditions, anticipated short-term supply and demand factors, and a continued state economy. These forecasts are therefore, subject to change in the future.
20. The appraiser undertaking this assignment warrants that he is competent in properly identifying the appraisal problem and has the necessary knowledge and experience to complete the assignment.

Shane Stueckle

---

**From:** Jim Dingman [jim@realtyadvisor.com]  
**Sent:** Friday, October 23, 2009 6:54 PM  
**To:** Shane Stueckle  
**Subject:** Norma Hayes Appraisal

Shane —

In addition to the follow up, the sales used for 05-876 (Norma Hayes) were mostly the land sales that were used in 06-881 (hi-dez  
channel) and focused on sale 4 as the best indication of value. There were some other 5 acre sales and listings reviewed and used  
in the analysis, though they are in the paper file in storage. In addition, I used the sale of the subject which transferred in July of  
2005 (12-14-2005 date of value) for \$57,000. Our value estimate was \$60,000. I would think this should be adequate proof of  
value. Let me know your thoughts and how much additional support they are going to need.

---

Shane Stueckle

---

**From:** James Dingman [jcding@ix.netcom.com]  
**Sent:** Saturday, October 24, 2009 7:31 AM  
**To:** Shane Stueckle  
**Subject:** Additional Comps - Norma Hayes Land  
**Attachments:** Norma Hayes Comps.pdf

Re –

Attached are three additional comparable sales of 5 acre sites that were used for the appraisal located at the southwest corner of Mormon Avenue and Paseo Los Ninos. This should complete the request by the San Bernardino County. Let me know if you need any additional information or if you would like me to discuss these reports with the Brian Cronin.

Thanks

James  
Dingman

Realty Analysts  
Phone: (866)979-3222  
Fax: (866)979-3888  
Email: jim@realtyadvisor.com

### Agent Detail Report

Property Type Lots & Land Areas 355-Yucca Valley N.E, 352-Yucca Valley S.W, 356-Yucca Valley N., 353-Yucca Valley S.E, 371-Twenty-nine Palms, 354-Yucca Valley N.W Status Sold (1/1/2005 to 1/1/2006) Lot Size 3.00 ac to 6.00 ac Listings as of 10/24/09 at 7:21am

Sold 09/08/05 Listing # 41214839 Yucca Valley, CA 92284 Listing Price: \$55,000  
County: San Bernardino Cross St: Skyline Ranch Dr Map: 4887, G5



No Photo Available

Prop Type	Lots & Land	Prop Subtype(s)	Lots & Land
Area	354-Yucca Valley N.W	Subdivision	Not in a Development
APN	059702108	Price/Acre	\$11,000.00
Occupant	Owner	Lot Sq Ft (approx)	217800
DOM/CDOM	2/2	Lot Acres (approx)	5.000
Showing Instr.	Call Listing Office, Drive By Only		Phone to Show 760-668-5153

Listing Agent James N Xells (ID:43255) Primary:760-668-5153 Secondary:760-365-7878, FAX: 760-365-7337  
Listing Office Pro Valley Realty (ID:4556) Phone: 760-320-9300, FAX: 760-320-9080  
Agreement Type Excl. Right to Sell Listing Date 06/15/05

Commission 5% Variable Rate No

Pending Date 06/17/05 Estimated Selling Date

Selling Price 55,000 Selling Date 09/08/05  
Original Price 55,000 SP % LP 100.00  
Selling Agent James N Xells (ID: 43255) Phone: 760-668-5153 Selling Office Pro Valley Realty (ID: 4556) Phone: 760-320-9300  
Selling Co-Agent Selling Co-Office  
Financing Other Selling Comments

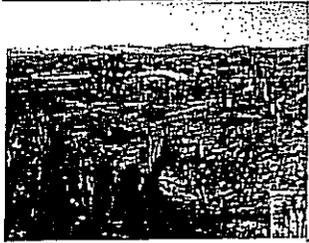
General Information		Zone	R
Description	Vac Land		
Terms	Cash		
Financial Information			
Land	Fee		

Presented By: Jim Dingman Lic: A1906299 / Capital Realty Analysts Phone: 760-564-6222  
Featured properties may not be listed by the office/agent presenting this brochure.  
All information herein has not been verified and is not guaranteed.  
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## Agent Detail Report

Property Type Lots & Land Areas 355-Yucca Valley N.E, 352-Yucca Valley S.W, 356-Yucca Valley N., 353-Yucca Valley S.E, 371-Twenty-nine Palms, 354-Yucca Valley N.W Status Sold (1/1/2005 to 1/1/2006) Lot Size 3.00 ac to 6.00 ac Listings as of 10/24/09 at 7:21am

Sold 10/20/05	Listing # 41204457	Nelson Ave Yucca Valley, CA 92284	Listing Price: \$68,500
	County: San Bernardino	Cross St: Linda Lee	Map: 4888, D6



Prop Type	Lots & Land	Prop Subtype(s)	Lots & Land
Area	355-Yucca Valley N.E	Subdivision	Not in a Development
APN	060114101	Price/Acre	\$15,384.62
Occupant	Vacant	Lot Sq Ft (approx)	169884 ((Assessor))
DOM/CDOM	196/196	Lot Acres (approx)	3.900
Showing Instr. Go Direct		Phone to Show	

**Directions** East on Hwy 62, left on Indio, through the wash. the road turns right and then becomes Nelson Avenue. Property is on the right. There will be a sign up.

**Public Marketing Remark** 3.9 acres in town horse property, convenient location. Great views, utilities available.

**Agent-Only Rmrs** Nice property. Power across the street. HDWD says water is in Nelson Ave.

**Listing Agent** Deborah M Andersen (ID:72237) Primary:760-220-1256 Secondary:760-309-8599 Other:760-444-2684, FAX: 760-444-2684

**Listing Office** Century 21 Mirage (ID:4956) Phone: 760-969-6400, FAX: 760-969-6400

**Agreement Type** Excl. Right to Sell

**Listing Date** 02/23/05

**Commission** 5 **Variable Rate No**

**Pending Date** 09/09/05 **Estimated Selling Date**

**Selling Price** 60,000

**Selling Date** 10/20/05

**Original Price** 60,000

**SP % LP** 87.59

**Selling Agent** Larry Parent (ID: 29915) Phone: 760-641-1916

**Selling Office** Keller Williams Realty (ID: 8531) Phone: 760-202-6600

**Selling Co-Agent**

**Selling Co-Office**

**Financing** Cash

**Selling Comments**

**General Information**

**Description** Vacant land  
**Lot Dimensions** approx 330 x 530

**Zone** RL5  
**Terms** Cash

**Property Features**

**Property Features** Fee Land, Horse Property, City Lights View, Mountain View

**Property Description**

**Dist. to Water** In street  
**Dist. to Freeway** approx 20 miles  
**Fee** Yes  
**Total % Usable** %90.0

**Dist. to Stores** approx 3 miles  
**Dist. to Electricity** Across street  
**Horse Property** Yes  
**Topography** slope

**Infrastructure**

**Water District Name** HDWD

**Financial Information**  
**Land** Fee

*Presented By: Jim Dingman Lic: A1906299 / Capital Realty Analysts Phone: 760-564-6222*

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## Agent Detail Report

Property Type Lots & Land Areas 355-Yucca Valley N.E, 352-Yucca Valley S.W, 356-Yucca Valley N., 353-Yucca Valley S.E, 371-Twenty-nine Palms, 354-Yucca Valley N.W Status Sold (1/1/2005 to 1/1/2006) Lot Size 3.00 ac to 6.00 ac Listings as of 10/24/09 at 7:21am

<b>Sold 10/25/05</b>	<b>Listing # 41210131</b> County: San Bernardino	<b>EL DORADO AVE. Yucca Valley, CA 92284</b> Cross St: LOS COYOTES DR	<b>Listing Price: \$89,500</b> Map: 488B, C6
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<b>Prop Type</b>	Lots & Land	<b>Prop Subtype(s)</b>	Lots & Land
<b>Area</b>	355-Yucca Valley N.E	<b>Subdivision</b>	Not In a Development
<b>APN</b>	059803106	<b>Price/Acre</b>	\$17,900.00
<b>Occupant</b>	Vacant	<b>Lot Sq Ft (approx)</b>	217800 ((Assessor))
<b>DOM/CDOM</b>	97/97	<b>Lot Acres (approx)</b>	5.000
<b>Showing Instr. Go Direct</b>		<b>Phone to Show</b>	

**Directions Call Agent**

<b>Listing Agent</b>	Sharon Rose (ID:47022), FAX: 760-288-2242		
<b>Listing Office</b>	CENTURY 21 Mirage (ID:4895) Phone: 760-329-2320, FAX: 760-329-4495		
<b>Agreement Type</b>	Excl. Right to Sell	<b>Listing Date</b>	04/23/05

**Commission** 5% **Variable Rate No**

**Pending Date** 07/29/05 **Estimated Selling Date**

<b>Selling Price</b> 89,500	<b>Selling Date</b> 10/25/05
<b>Original Price</b> 135,000	<b>SP % LP</b> 100.00
<b>Selling Agent</b> Sharon Rose (ID: 47022)	<b>Selling Office</b> CENTURY 21 Mirage (ID: 4895) Phone: 760-329-2320
<b>Selling Co-Agent</b>	<b>Selling Co-Office</b>
<b>Financing</b> Cash	<b>Selling Comments</b>

**General Information**

<b>Description</b>	Vacant Land	<b>Zone</b>	R1
<b>Terms</b>	Cash, Cash To New Loan		
<b>Property Features</b>	City Lights View, Hills View, Panoramic View, Mountain View		

**Financial Information**

**Land** Fee

*Presented By: Jim Dingman Lic: A1906299 / Capital Realty Analysis Phone: 760-564-6222*  
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# Property Detail Report

For Property Located At

RealQuest.com

,CA

## Owner Information:

Owner Name: HAYES NORMA L  
 Mailing Address: PO BOX 327, YUCCA VALLEY CA 92286-0327 B003  
 Phone Number: Vesting Codes: MW / / SE

## Location Information:

Legal Description: LOT 104 SEC 14 TP 1N R 5E EX MNL RTS RESERVATION OF RECORD 5 AC  
 County: SAN BERNARDINO, CA APN: 0597-021-08-0000  
 Census Tract/Block: 104.11 / 1 Alternate APN:  
 Township-Range-Sect: Subdivision:  
 Legal Book/Page: Map Reference: 160-D1 /  
 Legal Lot: 104 Tract #:  
 Legal Block: School District: MORONGO UNIF  
 Market Area: Munic/Township:  
 Neighbor Code:

## Owner Transfer Information:

Recording/Sale Date: 08/10/2005 / 07/29/2004 Deed Type: INTERSPOUSAL DEED  
 Sale Price: 1<sup>st</sup> Mtg Document #:  
 Document #: 583579

## Last Market Sale Information:

Recording/Sale Date: 07/21/2005 / 06/17/2005 1<sup>st</sup> Mtg Amount/Type: /  
 Sale Price: \$67,000 1<sup>st</sup> Mtg Int. Rate/Type: /  
 Sale Type: FULL 1<sup>st</sup> Mtg Document #:  
 Document #: 527151 2<sup>nd</sup> Mtg Amount/Type: /  
 Deed Type: GRANT DEED 2<sup>nd</sup> Mtg Int. Rate/Type: /  
 Transfer Document #: Price Per SqFt:  
 New Construction: Multi/Split Sale:  
 Title Company: NEW CENTURY TITLE COMPANY

Lender:  
 Seller Name: BERARDINO J N & B J TRUST

## Prior Sale Information:

Prior Rec/Sale Date: / Prior Lender:  
 Prior Sale Price: Prior 1<sup>st</sup> Mtg Amt/Type: /  
 Prior Document #: Prior 1<sup>st</sup> Mtg Rate/Type: /  
 Prior Deed Type:

## Property Characteristics:

Gross Area:	Parking Type:	Construct Type:
Living Area:	Garage Area:	Heat Type:
Tot Adj Area:	Garage Capacity:	Exterior wall:
Above Grade:	Parking Spaces:	Porch Type:
Total Rooms:	Basement Area:	Patio Type:
Bedrooms:	Finish Bsmnt Area:	Pool:
Bath(F/H): /	Basement Type:	Air Cond:
Year Built / Eff. /	Roof Type:	Style:
Fireplace: /	Foundation:	Quality:
# of Stories:	Roof Material:	Condition:
Other Improvements:		

## Site Information:

Zoning:	Acres:	5.00	County Use:	VACANT LAND
Flood Zone:	Lot Area:	217,800	State Use:	
Flood Panel:	Lot Width/Depth:	x	Site Influence:	
Flood Panel Date:	Res/Comm Units:	/	Sewer Type:	
Land Use:			Water Type:	

VACANT LAND (NEC)

## Tax Information:

Total Value:	\$5,247	Assessed Year:	2005	Property Tax:	\$112.61
Land Value:	\$5,247	Improve %:		Tax Area:	23003
Improvement Value:		Tax Year:	2005	Tax Exemption:	
Total Taxable Value:	\$5,247				

# Instructions For Processing Conflict of Interest Code

(Taken from CA Code of Regulations § 18750.1)

**Our office will coordinate the following required steps with you:**

(c) Every agency which proposes to adopt a conflict of interest code or to amend its existing code shall:

- (1) Conduct a public hearing or establish a written comment period.
- (2) Prepare an initial proposed code or an initial proposed amendment.
- (3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code. This notice shall:

- (A) Describe the proposed code or amendment in general terms and if the proposed action includes amendments to an existing code, include a concise, clear summary of the provisions of the existing code, if any, which will be affected by the proposed amendments, and a summary of how those provisions will be affected by the proposed amendments;
- (B) State that copies of the proposed code or amendment are available to interested persons and indicate where the copies may be obtained;
- (C) Specify the location where written comments concerning the proposed code or amendments may be submitted;
- (D) Specify the date by which comments submitted in writing relating to the proposed code or amendments must be received in order for them to be considered by the agency before it adopts or amends the code;
- (E) State the time and place of any public hearing that is scheduled on the proposed code or amendment; or if a public hearing on the proposed code or amendment is not scheduled, include a statement that any interested person or his or her duly authorized representative may request, no later

than 15 days prior to the close of the written comment period, a public hearing;

(F) State the name and telephone number of an agency officer to whom inquiries concerning the proposed code or amendment may be directed;

(G) State that the agency has prepared a written explanation of the reasons for the designations and the disclosure responsibilities, and has available all of the information upon which its proposal is based.

(4) File a copy of the notice with the Commission at least 45 days before the public hearing or close of the comment period.

(5) Provide notice pursuant to the requirements of Government Code Section 87311, including providing a copy of the notice to each employee of the agency affected by the proposed code or amendment at least 45 days before the hearing or close of the comment period by serving the employees individually with a copy of the written notice, by posting the notice on employee bulletin boards, or by publishing the notice in an employee newsletter.

(6) Make the exact terms of the proposed code or amendment available for inspection and copying to interested persons for at least 45 days prior to the public hearing or the close of the comment period.

(7) Accept written comments from interested persons through the conclusion of the public hearing or the close of the comment period.

(d) If the procedures set forth in subsection (c) have been followed, a proposed code or amendment, which has been changed or modified from that which was made available to the public, may, without further notice or hearing, be adopted if the code or amendment adopted is substantially similar to the initially proposed code or amendment and all employees affected by the proposed code or amendment as adopted by the agency had adequate notice.

(e) The agency shall submit three copies of the final proposed code or of the existing code with the final proposed amendment in ~~strikeout~~/underline form to the Commission accompanied by one copy of the following:

(1) For a code or amendment:

(A) A declaration by the chief executive officer of the agency declaring that the Code specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest and the agency has satisfied the requirements of subsection (c) preliminary to formulation of the Code;

(B) A summary of any hearing held by the agency with appropriate identification of any areas of controversy and the manner of their resolution.

(C) Copies of all written submissions made to the agency regarding the proposed Code or amendment, unless the person making the written submission requests its omission;

(D) A written explanation of the reasons for the designations and the disclosure responsibilities of officers, employees, members or consultants of the agency. In the case of an amendment, provide a written justification for any changes including all changes in or additions to the designations or disclosure responsibilities;

(E) The names and addresses of all persons who participated in any public hearing of the agency on the proposed code or amendment and all persons who requested notice from the agency of the date of the Commission hearing on the adoption of the code or amendments;

(F) The most current organizational chart of the agency;

(G) Job descriptions for all designated employees or employees newly designated by the amendment.

(2) For a new conflict of interest code:

(A) A copy of a joint powers agreement or a copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;

(B) A copy of the last annual or regular report prepared by the agency or submitted by the agency to the person or body to whom the agency reports or, if there is no report, copies of recent minutes of agency meetings;

(C) A brief description of the duties and the terms of all consultants working for the agency who are not designated employees.

(f) When an agency proposes a new conflict of interest code or an amendment to an existing code, the Executive Director shall either:

(1) Prepare a notice which specifies the establishment of a written comment period; includes a statement that any interested person, or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing; specifies the date by which comments submitted in writing must be received in order for them to be considered; includes a clear and concise summary of the proposed action; provides the name and telephone number of the agency officer to whom inquiries concerning the proposed action may be directed and that the text of the proposed code or amendment is available for inspection and copying at the agency and at the Commission offices. This notice shall be sent to the agency and to all persons who have requested notice at least 45 days before the close of the written comment period; or

(2) Return the proposed code or amendment to the agency with written recommendations for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subsection

(h) of this regulation.

(g) If no hearing is requested as set forth in subsection (f)(1) above, the Executive Director at the end of the 45-day written comment period shall either:

(1) Approve the code as submitted; or

(2) Return the proposed code or amendment to the agency for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subsection (h) of this regulation.

(h) If a public hearing on this matter has been requested, the Commission shall afford any agency or interested person or his or her duly authorized representative, or both, the opportunity to present statements, arguments or contentions in writing on, or prior to, the date of the hearing. Oral testimony shall be encouraged; however, oral statements may be limited at the discretion of the Chairman. The Commission shall consider all relevant

matters presented to it prior to and during the public hearing, or appearing on the record of such hearing prior to taking action on the proposed code or amendment.

(i) After a full hearing as provided herein above, the Commission shall:

(1) Approve the proposed code or amendment as submitted and return the code or amendments to the agency;

(2) Revise the proposed code or amendment and approve it as revised; or

(3) Direct the Executive Director to return the proposed code or amendment to the agency for revision and resubmission within 60 days.

(j) If a code or amendment is approved, the Executive Director shall return a copy of the code or amendment to the agency with notification of approval.

(k) A conflict of interest code or amendment to a code shall become effective on the thirtieth day following the approval of the code or amendment.

(l) Each agency's code shall be maintained in the office of the chief executive officer of the agency, who shall make the code available for public inspection and reproduction during regular business hours commencing with the effective date of the code. No conditions whatsoever shall be imposed upon persons desiring to inspect the conflict of interest code of the agency, nor shall any information or identification be required from such person. Copies shall be provided at a charge not to exceed ten cents (\$.10) per page.

(m) The Commission shall maintain copies of each agency's code for public inspection and copying at its offices in Sacramento, California.

**TO BE PREPARED ON LETTERHEAD  
OF THE  
ANIMAL CARE JOINT POWERS AUTHORITY**

DATE

**RE: NOTICE OF INTENTION TO ADOPT A CONFLICT OF INTEREST  
CODE**

To All Interested Parties:

Please be advised that pursuant to the Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations, § 18750.1, the ANIMAL CARE JOINT POWERS AUTHORITY ("Authority") intends to adopt a Conflict of Interest Code ("Code").

The Political Reform Act (Government Code Sections 81000, et seq.), requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation along with the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the Animal Care Joint Powers Authority ("Authority").

All officials and designated employees required to submit a statement of economic interests shall file their statements with the Secretary of the Board of Directors as the Authority's Filing Officer. The Filing Officer shall make and retain a copy of all statements filed by officials who manage public investments and forward the originals of such statements to the Clerk of the Board of Supervisors. The Filing Officer shall retain the statements of all other designated employees and make the statements available for public inspection and reproduction during regular business hours.

Copies of the proposed Code are available to interested persons and can be viewed at the offices of the Authority located at \_\_\_\_\_, or may be obtained by contacting the Secretary of the Authority at \_\_\_\_\_.

Written comments concerning the proposed Code may be submitted to the Secretary of the Authority at \_\_\_\_\_.

All comments to the proposed Code must be submitted in writing no later than \_\_\_\_\_, 2009, in order for them to be considered by the Authority before it adopts the Code.

At this time, no public hearing is scheduled; however, any interested party can request a public hearing on this matter, by submitting said request to the Authority no later than \_\_\_\_\_, 2009, which date is at least 15 days prior to the close of the written comment period.

All inquiries concerning the proposed Code may be directed to the Secretary of the \_\_\_\_\_ Authority at \_\_\_\_\_ The Secretary of the Authority's phone number is \_\_\_\_\_.

The Authority has prepared a written explanation of the reasons for the designations and the disclosure responsibilities, and has available all of the information upon which its proposal is based.

A copy of the proposed Code has been submitted to the Fair Political Practices Commission.

Dated: \_\_\_\_\_

\_\_\_\_\_  
President, Board of Directors  
ANIMAL CARE JOINT POWERS  
AUTHORITY

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
ANIMAL CARE JOINT POWERS AUTHORITY  
ADOPTING A CONFLICT OF INTEREST CODE PURSUANT TO THE  
POLITICAL REFORM ACT OF 1974

**WHEREAS**, the Legislature of the State of California enacted the Political Reform Act of 1974, Government Code Section 8100 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the Animal Care Joint Powers Authority ("Authority") and requires all public agencies to adopt and promulgate a conflict of interest code; and

~~WHEREAS~~, the Authority was formed by way of a Joint Powers Agreement which became effective November 18, 2008, and was filed with the California Secretary of State on \_\_\_\_\_, 2008; and

**WHEREAS**, the Authority now desires to adopt a Conflict of Interest Code (the "Code") in compliance with the Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations § 18750.1; and

**WHEREAS**, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the Authority being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

**WHEREAS**, at least forty-five (45) days notice was provided for public comment on the proposed Code was provided each affected designated employee and publicly posted for review at the offices of the Authority; and

~~WHEREAS~~, no public hearing was requested pursuant to C.C.R. § 18750.1(f) (1), and forty-five (45) days have elapsed since the end of the written comment period on the proposed Code.

**NOW, THEREFORE BE IT RESOLVED** that the Board of Directors of the Animal Care Joint Powers Authority does hereby adopt the proposed Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Secretary of the Board and available to the public for inspection and copying during regular business hours;

**BE IT FURTHER RESOLVED** that the Code shall be become effective 30 days after its approval as set forth above.

APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
President, Board of Directors  
Animal Care Joint Powers Authority

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors  
Animal Care Joint Powers Authority

**CONFLICT OF INTEREST CODE**  
**OF THE**  
**ANIMAL CARE JOINT POWERS AUTHORITY**

The Political Reform Act (Government Code Sections 81000, et seq.), requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation (attached) along with the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the Animal Care Joint Powers Authority ("Authority").

All officials and designated employees required to submit a statement of economic interests shall file their statements with the Secretary of the Authority as the Authority's Filing Officer. The Filing Officer shall retain the statements of all designated employees and make the statements available for public inspection and reproduction during regular business hours.

**Regulations of the Fair Political Practices Commission, Title 2, Division 6,  
California Code of Regulations § 18730**

**§ 18730. Provisions of Conflict of Interest Codes.**

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this

agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and

(C) ~~The filing officer is the same for both agencies.~~

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months

prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Government Code section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to 2 Cal. Code Regs. section 18754.

(D) Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting. Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure. When an investment or an interest in real property is required to be reported, the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B) Personal Income Disclosure. When personal income is required to be reported, the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars

(\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$420.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$420 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by

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banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan,

date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken

collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$420 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 and 2 Cal. Code Regs. sections 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

# APPENDIX "A"

## DESIGNATED POSITIONS

### GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Members of the Board of Directors	1, 2, 3, 4, 5, and 6
Finance Officer/Treasurer	1, 2, 3, 4, 5, and 6
Financial Consultants	1, 2, 3, 4, 5, and 6
General Counsel	1, 2
Consultant <sup>1</sup>	

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<sup>1</sup> Consultants shall be included in the list of Designated Employees and shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The Secretary of the Authority may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this Section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Program Director's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

## APPENDIX "B"

The disclosure categories listed below identify the types of investments, business entities, sources of income, including gifts, loans and travel payments, or real property which the Designated Employee must disclose for each disclosure category to which he or she is assigned.

CATEGORY 1: All investments and business positions in business entities, and sources of income that are located in, do business in, or own real property within the jurisdiction of the Authority.

CATEGORY 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of the Authority.

CATEGORY 3: All investments and business positions in, and sources of income from, business entities that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the Authority.

CATEGORY 4: All investments and business positions in, and sources of income from, business entities that are banking, savings and loan, or other financial institutions insurance companies, title companies, or financial consultants.

CATEGORY 5: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Authority.

CATEGORY 6: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's department, unit, or division.

**BYLAWS  
OF THE  
ANIMAL CARE JOINT POWERS AUTHORITY**  
(County and Town of Yucca Valley)

**A. NAME AND AUTHORITY**

**Name.** The name of this organization is the Animal Care Joint Powers Authority, hereinafter referred to as the "Authority."

**Authority.** The Authority was formed through the approval of a Joint Powers Agreement, as may be amended from time to time, hereinafter referred to as the "Agreement," between the Town of Yucca Valley and the County of San Bernardino. Section 2.09, Bylaws, of the Agreement specifies that the Authority may adopt Bylaws for the conduct of its business and as necessary for the purposes of the Agreement.

**B. BOARD OF DIRECTORS**

The Authority shall be governed and administered by a Board of Directors, hereinafter referred to as the "Board," composed as set forth in Section 2.03, Board of Directors, of the Agreement. All power of the Authority shall reside in the Board.

**C. PURPOSE AND POWERS OF THE AUTHORITY**

The purpose and powers of the Authority are as set forth in Article II, General Provisions

Regarding Purpose and Creation of the Authority, and Article IV, Powers, of the Agreement.

**D. OFFICERS AND EMPLOYEES**

The officers of the Authority and their duties are as set forth in Article III, Officers and Employees, of the Agreement. The Board shall have the power to appoint and employ such other employees, consultants and independent contractors as may be necessary for the purpose of the Authority. The Board may, if required, designate a sergeant-at-arms of the Board who shall attend meetings at the request of the Chair or Vice-Chair. The sergeant-at-arms shall be available to respond to all meetings immediately upon call. The sergeant-at-arms shall carry out all instructions given by the Chair or Vice-Chair for the purpose of maintaining order and providing security at Board meetings.

## E. MEETINGS OF THE BOARD OF DIRECTORS

**Meetings.** All meetings of the Board shall be held as set forth in Section 2.06, Meetings, of the Agreement. Any deviation to the number of meetings held each year shall be as specified by the Board.

**Order of Business for Regular and Special Meetings.** The order of business for regular and special meetings will generally be as follows:

- Call to Order
- Closed Session (or at end of Agenda, as necessary)
- Approval of Minutes for any previous meetings
- Director Reports/Updates
- Presentation, discussion and action on Authority business
- Public Comments
- Adjournment

**Setting and Cancellation of Meetings.** The Secretary, in consultation with the Chairman, may set or cancel any Authority meeting provided each Authority member is informed accordingly.

**Closed Sessions.** The Authority may conduct Closed Sessions that are not open to the public. No Closed Session shall be conducted without the Secretary advising the Authority's Legal Advisor of the specific purpose or purposes of such meeting and receiving advice from the Legal Advisor that it is legal to hold such Closed Session or meeting.

**Addressing The Board.** Any member of the public may address the Board: (1) on an agenda item before or during the Board's consideration of the item, and (2) on any matter not on the agenda that is within the subject matter jurisdiction of the Authority at the time provided on the agenda for public comment. The person wishing to address the Board shall, when recognized by the Chair, announce his or her name and organization. The Chair shall, in the interest of facilitating the business of the Board, limit the amount of time that a member of the public may use in addressing the Board to three (3) minutes on each action item, unless the Chair, or a majority of the Board determines that a different time is appropriate. In addition, the Chair shall, in the interest of facilitating the business of the Board, limit the total amount of time that a member of the public may use in addressing the Board on all agenda items to twelve (12) minutes, unless the Chair, or majority of the Board, determines that a different limit is appropriate.

**Disruptive Conduct – Removal From Meeting.** In the event that any meeting of the Board is willfully disrupted by a person or by a group or groups of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of persons willfully disrupting the meeting to leave the meeting or be removed from the meeting. Disruptive conduct includes, but is not limited to, addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the floor when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner.

**Reconsideration.** At the same meeting or at the meeting succeeding that at which a final vote on any question has been taken, said vote may be reconsidered on the motion of any Director, but only if notice of intention to move such reconsideration has been given at the meeting at which such final vote was taken by a Director voting with the majority.

**Roberts' Rules of Order.** Except as otherwise provided in these Bylaws, all meetings shall generally be conducted in accordance with parliamentary procedures set forth in the most recent addition of Roberts' Rules of Order.

**Waiver of Rules.** The Chair, or majority of the Board, may waive any meeting rule contained in these Bylaws not required by law or the Agreement.

#### F. RECORDS

**Minutes.** The Secretary shall prepare official minutes of each regular and special meeting indicating attendance and recording actions taken at each meeting in accordance with Section 2.07, Minutes, of the Agreement.

**Maintenance of Authority Records.** In addition to the books and records required to be maintained by the Secretary and Treasurer of the Authority, the Secretary shall keep an up to date record of each Member's, Officer's, Director's and Alternate's name, address, e-mail, phone and fax numbers. The Secretary shall keep at its principal office the original or a copy of the Agreement and Bylaws, as amended to date, as well as the minutes of all meetings.

**Inspection by Directors.** Every Director shall have the right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Authority for a purpose reasonably related to the Director's duties as a Director.

#### G. BUDGET AND FISCAL REPORT

**Annual Budget.** The Board shall adopt an annual budget for each Fiscal Year as set forth in Section 2.10, Annual Budget, of the Agreement.

**Annual Operational and Fiscal Report.** The Board shall cause an annual operational report and annual fiscal report to be prepared and provided to each Member as set forth in Section 2.11, Annual Operational and Fiscal Report.

#### H. CONTRIBUTIONS AND ASSETS

**Contributions.** Members may make contributions from their treasuries as set forth in Section 5.01, Contributions.

**Assets.** Upon termination of this Agreement, the assets of the Authority shall be distributed as set forth in Section 5.02, Distribution of Assets upon Termination.

I. GENERAL PROVISIONS

**Instruments in Writing.** All checks, drafts, demands for money, and notes of the Authority, and all written contracts of the Authority, shall be signed or endorsed by the officers or agents provided in the Agreement or these Bylaws or designated by the board of directors from time to time by resolution. No officer, agent, or employee of the Authority shall have power to bind the Authority by contract or otherwise, unless authorized to do so by the Agreement or these Bylaws or by action of the Board.

**Fiscal Year.** The fiscal year of the Authority means the calendar period from July 1<sup>st</sup> to and including the following June 30<sup>th</sup>, unless and until changed by a resolution of the Board.

**Committees.** The Board has the authority to appoint such standing and special committees in addition to the Policy and Technical Advisory Committee, as it may deem necessary.

J. CONSTRUCTION AND AMENDMENT OF BYLAWS

**Bylaws Provisions Contrary to or Inconsistent with Provisions of Law.** Any provision of these Bylaws that is contrary to or inconsistent with any applicable provision of law or the Agreement, shall not apply as long as the provision of law or the Agreement remains in effect, but this result shall not affect the validity or applicability of any other portions of these Bylaws.

**Amending the Bylaws.** The Bylaws may be adopted, amended or repealed by majority vote of the Board.

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**CERTIFICATE OF SECRETARY**

I certify that I am the duly appointed Secretary of the Animal Care Joint Powers Authority and that the above Bylaws, consisting of five (5) pages, including this page, are the Bylaws of this body as adopted by a majority of the Board of Directors on \_\_\_\_\_, 2009.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary