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AREA 51

United States of America v. 400 Acres of Land

Nevada Test & Training Range (NTTR)

How much is land worth inside this secret military base?

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Disclaimer

- This presentation is intended to give an overview of the facts and issues surrounding this case, specifically as it relates to the approach and methodology of valuing the Subject Property.

- The evidence, testimony and issues are summarized and not exhaustive. As such, there is additional context and discussion that may not be included in this presentation.

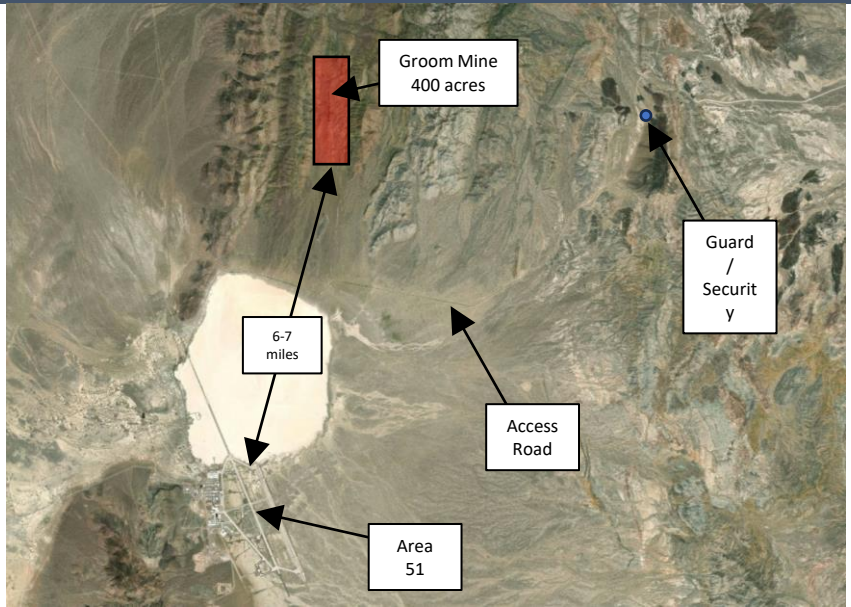
The Case
400 Acres of Land

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- October 17, 1984, Land Withdrawal: US government "withdrew" 89,600 acres of federal land from the public. (Too many people were hiking onto the ridge areas and looking at the secret military base)

- Approximately 400 acres of land remained, known as "Groom Mine", which had patented and unpatented mining claims.
  - The property was landlocked (donut hole).
  - The government worked with the property owners so that they could access the property (as well as their business visitors – although the mine was destroyed by an explosion in the 1950's)
  - When the family or any visitors were at the property, the Air Force ceased their missions and cleared runways of any craft.

The Case
400 Acres of Land



The Case

U.S. Condemned Groom Mine on September 10, 2015

- When the government seizes land (known as condemnation or eminent domain), a property owner must be compensated Fair Market Value for their property.
- Of the 400 acres, the landowners retained legal rights (similar to fee simple interest) in 87.49 acres of patented mining claims.
- Therefore, what is the value of the 87.49-acre property given everything that was known and knowable as of September 10, 2015?
- U.S. Federal Court assembled a Land Commission in early 2020 to hear the case, consisting of two retired judges and one retired State Supreme Court Justice.

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Select Themes Discussed

- Foundation (Basis) in Valuation
  - Defensible assumptions
  - Empirical market data
  - Proper methodology
- Legally Permissible Use*
  - Requirements for zoning, entitlements, permits or approval
- Hypothetical Buyer/Investor Considerations
  - Evaluation of real estate risk and certainty
  - Requirements to purchase property
- Proper Rebuttal Testimony
- Valuation Concepts
  - Fair Market Value & Investment Value

**Legally permissible use in this presentation is not concerning legal opinions. Rather, the use that can ultimately be achieved on the property is reflective of how the property would be considered and analyzed by the real estate industry, which consists of reasonably experienced and knowledgeable developers, investors, lenders and other real estate professionals.*

Overview

Area 51 - Ultra Secretive Military Base

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- US Airforce acquired the site in 1955 during the onset of the Cold War era (1945-1989)
- Legend began after the 1960's when the OXCART program flew over 2,850 test flights on a craft that was often mistaken for a UFO
- Planes were fast (2,000 mph) and flat, to evade radar detection
- CIA finally acknowledged existence of the base in 2013



UFO & Alien Phenomenon

AREA 51

- 1989 Bob Lazar claimed he reverse-engineered alien aircraft on the base. Media and tourists flocked to the area.
- 1996: State of Nevada declares SR-375 to be the Extraterrestrial Highway to cash in on the furor.
- The base was still secret and not acknowledged by the CIA (until 2013).



Roswell

- 1947: newspaper headline suggests that a flying saucer was captured on the Roswell Army Airfield.
- Interest in the topic declined thereafter.
- 1994: Mayor Jennings began to market the city as the "UFO capital of the world" to boost tourism and visitors (like Loch Ness monster).

Landowners Perspective

Property Attributes

- Only privately held property inside Area 51 with a view of the secret military base.
- In place agreement: U.S. government allows the landowners to access the property for themselves and "business" visitors.
- There are no restrictions on the number of visitors the owners can have at the property.
- There is high demand, thanks to pop culture and alien enthusiasts, to actually "see" Area 51.

Landowners Valuation

87.49 Acres of Land (Fee Simple)

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- Owners could have sold the property on September 10, 2015, to an acquirer/investor who in turn would ground lease the property to a tourist commercial operator.

- The operator would pay ground rent (rental fee) to the new investor/owner equal to 10% of gross revenues, creating $4M to $5M in annual net revenue. (An investor would value the ground lease using an 8.5% discount rate.)

- Gross revenues were determined as follows:
  - 250 visitors daily (5 buses per day; 50 people each)
  - Ticket price: $400 per visitor (plus additional spending for food/souvenirs at property)
  - Tour picks you up at your hotel in Las Vegas; 2.5 hour drive to the site; stand on the property to view the base for 1 hour; then board the bus to drive 2.5 hours back to Las Vegas.

- The value of the 10% rental fee is estimated at $50 million.

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Questions

- Demand: How do we know 250 people will visit the property 365 days per year, year after year after year?
- Price Point: How do we know visitors will pay $400 per person to stand on the property for 1 hour?

Are these assumptions defensible and supported empirically? Or are they speculative? (You cannot use assumptions that are speculative or guess work)

Appraiser's Foundation for Demand / Proof of Market

Number of visitors to Las Vegas per year (based on LVCVA survey):	43,370,021
Percentage of Las Vegas visitors that visit a nearby place:	16%
Number of Las Vegas visitors that visit a nearby place each year:	6,939,203
Estimated percentage of persons that would visit Area 51:	4% of the 16% 6,939,203 x 4% = 277,568 persons/year
Reduction of the 277,568	250 persons per day or 91,250 annually

Question: Is a developer/investor comfortable with this justification for demand?

Appraiser's Justification for $400 Entrance Fee

- Appraiser based it on discussions he had with 12 booking companies as well as that Adventure Photo Tours charges $200 for an Area 51 Tour, where tourists do not see Area 51.
  - One booking agency said that a tour operator could charge $1,000 for overnight stays.
  - A second booking agency said a tour operator could charge $300 to go to Area 51.
  - The appraiser did not testify what the other 10 operators told him.
  - No testimony on what the appraiser told the two booking representatives.
  - No testimony regarding how long the two unnamed individuals had been booking tours and whether why had any knowledge or expertise regarding how much tours should cost.

Supposed Demand Indicator

STORM AREA 51 (September 20, 2019)

- Facebook craze to storm Area 51
- 2 million replied “going” and 1.5 million replied “interested”
- Local business owners created “Alienstock” and “Area 51 Basecamp” (a two-day festival)
- Included entertainment by DJ Paul Oakenfold
  - “Father of EDM music”; gets paid $350,000/show; agreed to play this event for free
  - By the time he went on, the organizers had waived the $51 entrance fee and only 100 people were in the audience
- The second day of the festival was ultimately cancelled, and the Storm Area 51 events were financial failures.

Framing the Issue: Purchaser Risk Considerations

Fair Market Value and Investment Test

Is a hypothetical buyer willing to write a check for $50 million on September 10, 2015?

- Is there a proven market and is demand *sustainable*?
  - 250 people every day for perpetuity
- Is the price people will pay truly $400 per person?
  - Is this price point proven and sustainable for the long-term

What is the risk to a buyer?

What is the market evidence to support these critical questions?

US DOJ

Framing the Issue: Tour Considerations

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- Security constraints for visitors to Area 51
  - Submit to background check via SSN (must provide info in advance)
  - *No electronics, computer devices, cameras, binoculars or telescopes allowed (must leave at security station)*
  - Must stay on the confines of the designated property area
- What is the experience of the other tours?
  - Multiple viewing points, taking pictures, walk thru caves, hiking – the experience is the picturesque view and immersion in a National Park
- How do other tours from Las Vegas compare to standing on the property and looking at buildings 6-7 miles away for only one hour?
- Is $400 *sustainable*?
  - What do you see at the property?
  - What happens after the first couple months of Yelp reviews and word gets out?
  - What happens to existing tours? Are they out of business?
  - Is the $400 an add-on to the existing tours, so it becomes $600?
- Ticket sales and seasonality?

US DOJ – Market Evidence
Quantifiable Demand

- Fact: While there are a purported 12 booking agencies, there is only ONE company that conducts the tours, called Adventure Photo Tours. Tour includes:
  - A luxury SUV for the entire day; pick-up/drop-off at hotel
  - Entertaining tour guide
  - Lunch at the Little A'Le'Inn
  - View Native American petroglyphs
  - See Joshua Tree forest
  - Go to various Area 51 sites, including back gate, black mailbox, the Alien Research Center and McCarran International Airport (to see Janet Airlines)
- Second indicator: owner of Little A'Le'Inn stated 1,500 to 2,000 people come through annually on tours.

Adventure Photo Tours
Annual Guests

Guests per Tour	18
Tours per Week	2
Tour Guest per Week	**36**
Guests per Additional Tour	4
Additional Tours per Week	0.5
Additional Guests per Week	**2**
Total Guests per Week	**38**
Annual Tour Guests	**1,976**

Source: London Moeder Advisors, Scott Robertson (Owner) of Adventure Photo Tours

MOEDER: when you go from empirically defensible of 2,000 people to a next level of 91,250, there is no evidence of that. It's speculative and unreliable.

US DOJ – Market Evidence

Entrance Fee of $400 per person

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Cost of other Tours:

Hoover Dam:		$109	
Valley of Fire:	$169		
Zion:			$244
Grand Canyon South Rim:	$244		
Grand Canyon West Rim:	$259		

Area 51:
$200

← Only 1,950 people go on this tour annually

Is a developer/investor comfortable with the justification for $400 PP?

What It Boils Down To

SPECULATIVE: 91,250 people @ $400 per person
(unproven market)

vs

MARKET EVIDENCE: 1,950 people @ $200 per person
(existing Area 51 tours)

Supposedly Comparable Attractions

Through testimony, the Landowners' appraiser identified these attractions as being "comparable".

(Table and data prepared by US DOJ and its expert)

Supposedly Comparable Attractions Supporting Demand For Groom Mine Tourism		
Attraction	Entrance Fee	Record Cite(s)
Roswell Crash Site	**Sold for cattle ranch**	Pl.'s Exs. 556, 556a; Vol. V, Tr. 260:14-262:12 (DiFederico)
Roswell UFO Museum	**$5**	Vol. V, Tr. 18:14-23, 161:19-21 (DiFederico)
Roswell Festival	**FREE**	Vol. VI, Tr. 55:10-17 (Moeder)
Alien Research Center	**FREE**	Vol. V, Tr. 21:11-22:5 (DiFederico); Vol. IV, Tr. 160:1-3 (Harris)
Little A'Le'Inn	**FREE**	Vol. V, Tr. 22:6-23, 164:18-24 (DiFederico)
Nevada National Security Site Tour	**FREE**	Vol. V, Tr. 38:15-23, 163:25-164:8 (DiFederico)
Virginia City	**$8**	Vol. V, Tr. 40:10-41:1, 165:10-14 (DiFederico)
Oatman	**FREE**	Vol. V, Tr. 41:10-18, 166:9-12 (DiFederico)
Calico	**$8**	Vol. V, Tr. 42:1-2, 165:15-19 (DiFederico)
National Atomic Testing Museum (Las Vegas)	**$22**	Vol. V, Tr. 18:5-10, 166:4-8 (DiFederico)
Stonehenge	**£20**	Vol. V, Tr. 39:22-40:3 (DiFederico); Vol. VI, Tr. 62:16-63:5 (Moeder)
Laughlin	**FREE**	Vol. V, Tr. 36:11-14 (DiFederico)[8]

Supposedly Comparable Attractions

Through testimony, the Landowners' appraiser identified these attractions as being "comparable".

(Table and data prepared by US DOJ and its expert)

Supposedly Comparable Attractions Supporting Demand For Groom Mine Tourism		
Attraction	Entrance Fee	Record Cite(s)
Red Rock Canyon	**$15** (vehicle)	Vol. V, Tr. 34:22-24[9]
Bryce Canyon National Park	**$35** (vehicle)	Vol. V, Tr. 34:1-2 (DiFederico)[10]
Zion National Park	**$35** (vehicle)	Vol. V, Tr. 33:7-12 (DiFederico); Vol. VI, Tr. 67:7-8 (Moeder)
Death Valley National Park	**$30** (vehicle)	Vol. V, Tr. 30:13-17 (DiFederico)[11]
Grand Canyon National Park	**$35** (vehicle)	Vol. V, Tr. 31:3-6 (DiFederico); Vol. VI, Tr. 67:7-8 (Moeder)
Grand Canyon West	**$80**	Vol. V, Tr. 31:7-32:9, 163:1-9 (DiFederico); Vol. III, Tr. 191:16-194:6 (Sheahan)

Legally Permissible Use as of DOV
Zoning & Entitlement Issues

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- Is property zoned for large-scale commercial use?
  - No - Zoned A-5, agricultural district.
  - Large-scale commercial tourism requires, at minimum, a special use permit.
  - Landowners spent thousands of dollars to obtain a “post-taking advisory opinion” from the Lincoln County planning commission on the possibility of a special use permit and zone change.
  - Of course, Lincoln County would approve a use that brings more visitors (and spending)
  - However, was it a fully vetted hearing? Was there any opposition? How would the planning commission have voted if the Air Force opposed it?

- Testimony: Director of Planning for Lincoln County
  - The economic fiber of Lincoln County includes the Air Force, which is not only a major employer, but which pays a significant sum per year to the County in lieu of taxes.
  - Not a large population of people would ever come to the Groom Mine as part of any tourism business. Therefore, Lincoln County would not have put at risk the Air Force jobs and its annual payment.
  - Certainly, the County would consider any Air Force objections and those objections could be addressed through conditions such as a limitation on the number of days or hours a tourism business can operate at the Groom Mine.

Investor/Buyer Issues and Required Guarantees

Developers are in the business of minimizing risk, therefore:

Is the Air Force amenable to large-scale tourist commercial?

- It is known that the Air Force shuts down its operations when people are at the property. Therefore, is the Air Force amenable to 250 people every day of the year at the property?

MOEDER: This is the first and most fundamental question that a buyer of the property on the DOV would ask.

Investor/Buyer Issues and Required Guarantees

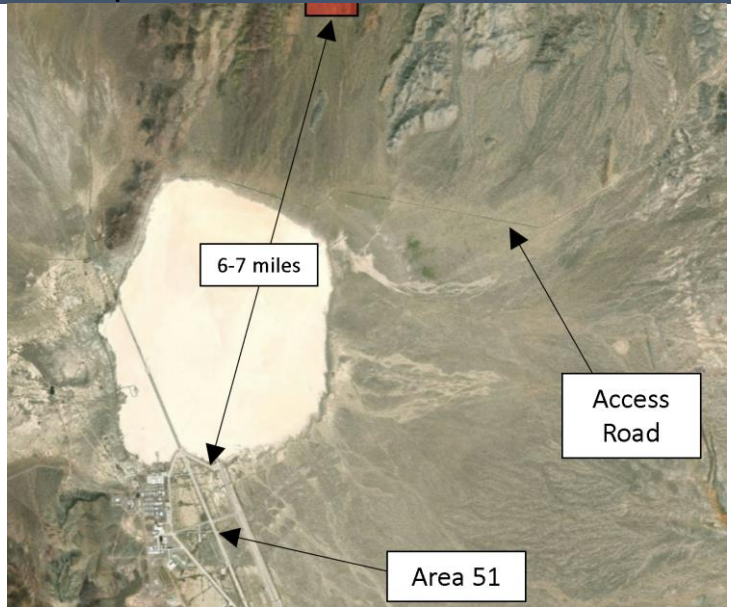
1. A developer would require a contract in writing that the Air Force is amenable to, and will allow, 250 people on the property every day of the year.
   - To ensure there is compatibility with neighbors – that you can operate your business every day of the year (even if you may have the legal right).
   - What if the Air Force cannot operate at all and closes the base? Buildings would be demolished, and the land would revert to the public. How would that affect the value of the property?

Investor/Buyer Issues and Required Guarantees

2. Exclusivity: a developer would require a contract in writing that the property is the only parcel open to the public with a view of Area 51.

   - Developer would want to create a right to exclusivity, which did not exist on September 10, 2015.
   - What if the government decides to let the public in at the same hours that the private property owners have visitors? Government could carve out a parking lot that is along the access road (with a closer view of Area 51). It could also charge the equivalent of a National Park Entrance ($35 for a car up to 15 people; $20 for adults, under 16 is FREE)

A developer would not pay $50 million without these guarantees.



Fundamental Questions to Valuation (Moeder)

Would a buyer write a check for $50 million on September 10, 2015

- Why has it not been developed in the past? Why now?
- Is demand proven and sustainable in perpetuity?
- Are ticket prices achievable, and sustainable at $400/visitor?
- Are the approvals and permits in place to allow such a large-scale use?
- Is the Air Force amenable and willing to provide necessary contracts and guarantees to the buyer of the property?

Overarching Conclusions (Moeder)

Fundamental Valuation Issues

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- Failure to account for and analyze real estate risk
- Subject property is the most speculative type of real estate investment
- No evidence that anybody wanted to develop recreational tourism at the site

Other Landowner Issues

- Demand Study: (assumed daily traffic numbers were annual, when the data was daily, resulted in negative demand; hearsay on % passerby traffic; wrong time periods and CAGR for national parks)
- Faulty/Biased Survey Data
- Appraiser: faulty income approach (excluded)

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Land Commission Findings

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Pre-Trial Order on Motions

Proper Rebuttal

Landowners further argue that Moeder's opinion is unreliable because he criticized Landowners' experts for failing to calculate demand, pricing, and financial feasibility of the tourist commercial use without making these calculations himself. (See ECF No. 398 at 8-9.) The government argues that Moeder's opinions are proper rebuttal and that Landowners are shifting their burden of proof to Moeder. (ECF No. 427 at 12-15.)

The Court agrees with the government. Moeder's opinions constitute proper rebuttal because he questioned the methodologies, assumptions, and data used by Landowners' experts, and he investigated, analyzed, and opined on methods and facts they did not consider. For example, Moeder found that Landowners' experts failed to account for various types of risk that real estate investors consider when advising clients.

Fair Market Value & Investment Value

Landowners next argue that Moeder's opinion is unreliable because he misunderstands the concept of "fair market value." (ECF No. 398 at 7-8.) Landowners again mischaracterize Moeder's testimony. Moeder understands that appraisers define "fair market value" as "what a willing buyer would be willing to pay a willing seller at an arm's length transaction as an all cash transaction." (ECF No. 398-1 at 49.) Moeder is testifying about something different—how developers, investors, and lenders use rates of return and development costs to evaluate prospective developments on vacant land. (ECF

Moeder does not seek to testify about circumstantial evidence a lay person could understand. Rather, Moeder plans to testify about how sophisticated investors and developers make informed business decisions. Moeder also will testify that Landowners' experts failed to consider factors that investors and developers would consider. This testimony is relevant and based on Moeder's specialized knowledge.

The government has suggested that Moeder's testimony is related to investment value rather than market value. (See ECF No. 427 at 16.) Landowners argue that Moeder should not be permitted to testify about investment value when the relevant legal consideration is market value. (ECF No. 478 at 6.) The Court rejects this argument because Landowners' proposed market value depends on investment. (ECF No. 427-1 at 6 ("[T]he likely buyer of this property is a regional or even international investor that would have purchased the property to operate or lease the property to an operator of a tourist commercial development. . . .").) Investment value is therefore relevant to the factfinder.

Legally Permissible Use

122. Regardless, there is no evidence that a buyer would simply assume that large-scale tourism was legally permissible on the Date of Value. As Mr. Moeder explained, before developers or investors will pay a significant sum for a tourist commercial property, they require written assurances that the property can be put to that intended use. Vol. VI, Tr. 66:8-18

123. A reasonable buyer also would be aware that if the buyer changed the existing use of the Groom Mine from rural recreation to commercial tourism, the Air Force, as the neighboring property owner, could file an objection with the planning commission to prevent that use—even if the zoning permitted a tourism use as of right. Vol. IV, Tr. 68:8-12 (Lytle).

124. For all of these reasons, no reasonably knowledgeable buyer would assume large-scale tourism was legally permissible at the Groom Mine on the Date of Value without permission from Lincoln County.

Sustainable Demand for Large-Scale Tourism

114. In addition, Mr. DiFederico's proposed large-scale tourism use must be rejected as speculative because Landowners failed to put forward credible market evidence of sustainable demand. As Mr. Moeder explained, establishing sustainable demand is critical: "If the demand is not there permanently or [is not] sustainable and it falls off, the value of that investment plummets. So a developer and investor wants to know that it is sustainable, number one." Vol. VI, Tr. 55:3-6 (Moeder).

115. Landowners failed to carry their burden of proving that demand for large-scale tourism at the Groom Mine could be sustained year after year. For this additional reason, their proposed highest and best use of large-scale commercial tourism is speculative and not reasonably probable in the reasonably near future.

Entrance Fee of $400

96. The entrance fees for the attractions Mr. DiFrederico used to support market demand for visitors to pay $400 each to visit Groom Mine do not support his market demand analysis. The entrance fee for each attraction is a small fraction of Mr. DiFederico's hypothetical $400 entrance fee for the Groom Mine, as shown in the table below:

Conclusion of Highest and Best Use

The Commission was instructed that highest and best use "is not necessarily what the owner was using the property for at the time of taking. However, in the absence of proof to the contrary, the current use is presumed to be the best use." Commission Instruction No. 13. For the reasons explained in this report, the Commission finds that the highest and best or most profitable use on the date of value was its existing rural residential use. Landowners did not present sufficient evidence to overcome the presumption that the property's existing use on the date of value was its highest and best use. Although Landowners presented evidence to the contrary, they did not meet their burden of showing by a preponderance of the evidence that there was market demand or the prospect of market demand for their proposed large-scale tourist commercial use in the reasonably foreseeable future.

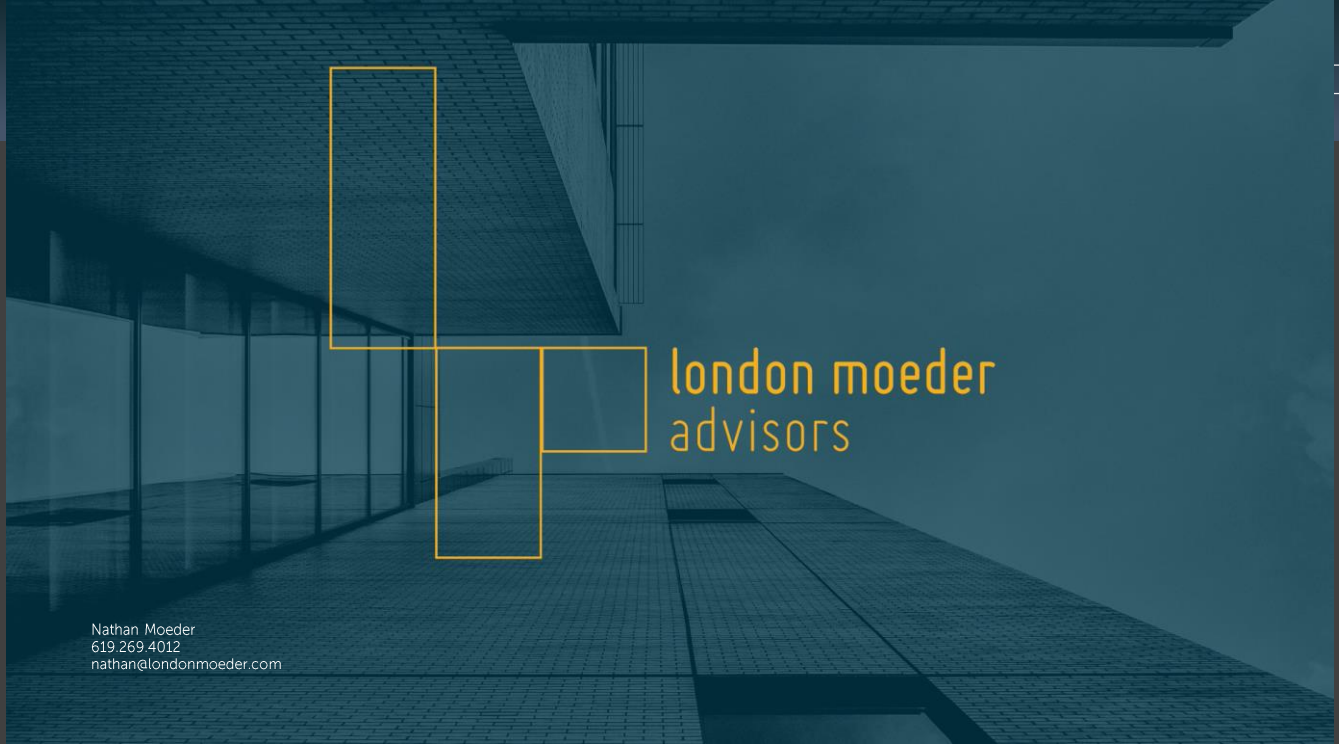
C. Landowners Did Not Present Other Rural Recreation Sales Or Challenge Mr. Neville's Sales-Comparison Analysis

153. Landowners disputed Mr. Neville's highest and best use conclusion but otherwise did not seriously challenge his valuation.[20] For example, Landowners did not present any alternative sales of properties having a highest and best use of rural recreation.

166. The Property is unique and one-of-a-kind because of its view of Area 51 and its historic use as a family owned mining operation. The Commission finds the uniqueness of the Property establishes it would command a premium in the real estate market above Mr. Neville' Sale No. 1 of $10,000 per acre. Just compensation for the taking is $1,100,000 (87.49 x $12,500 = $1,093,625, rounded to $1,100,000).

IV. CONCLUSION

For the reasons explained in this report, it is the Commission's deliberate judgment that just compensation for the taking is $1,100,000.



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