Chapter 11 Newsletter

April-May 2018

VOTING LUNCHEON

2018-2019 slate of Officers will be presented and voted on!

IRWA
BUILDING A BETTER WORLD TOGETHER.

And Presentation on:

SDSU WEST

Speaker: Frederick W. Pierce, *President and CEO of* Pierce Education Properties ("PEP") – a student housing investment and operating company. Mr. Pierce will review the SDSU West project which will include Research & Tech Center; Stadium, River Park and overall Campus Expansion.

Where? **Handlery Hotel**
950 Hotel Cir N, San Diego CA 92108

When? April 18, 2018

Registration:	**11:30 a.m. - 11:45 a.m.**
Luncheon:	**11:45 a.m. - 1:00 p.m.**

Cost:
$25/pp with reservation; Non-members and walkups $30/pp

RSVP MUST BE RECEIVED by:
2:00 p.m. on Friday, April 13, 2018
RSVP To Lida Jimenez: ljimenez@semprautilities.com
Or online at http://www.irwa11.org/events/

NO-SHOWS: IRWA is billed for meals based upon your reservation whether you attend or not. If you make a reservation and do not attend, you will be invoiced $30 for the meal to recover costs. Thank you for your consideration.

Upcoming Events:

Executive Board Meetings:

April 25, 2018 —12:00 noon to 1:00 p.m. at the SD County Water Authority, 4677 Overland Drive, San Diego

May 16, 2018 —12:00 noon to 1:00 p.m. at the SD County Water Authority, 4677 Overland Drive, San Diego
***Last Meeting of the Year*

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President Fred Clark, Sr., SR/WA

April - May 2018

President's Message

As always there is a lot going on at IRWA. Especially this time of year. The Educational Conference is just around the corner. We will be going before the membership to elect next year's Board members. As for the Education Conference, several of our members will be attending the conference. Members from all over the world will also be attending. Because of so many attending there is a great need for volunteers. So, if you are planning on going I would encourage you to volunteer.

There are changes to our Chapter with our new Board. Now is the time to jump in and get involved with those changes. If you have been thinking about being a Chapter Chair for one of the committees or being on a committee you can discuss this with one of the 2018 Board members.

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2018-2019 SLATE OF OFFICERS

Nick von Gymnich, SR/WA, President and International Director,
San Diego County Water Authority

Eric Schneider, MAI, SRA, Vice President and International Director,
Jones, Roach & Caringella, Inc.

Cody Ragsdale, Treasurer,
Clark Land Resources, Inc.

Julie Marshall, Secretary,
Rincon Consultants, Inc.

Do you have time to volunteer and want to become more involved with IRWA? Chapter 11 has vacancies and could use you! Please contact any board member (see page 16) for more information!

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San Diego Education Opportunities: 2018

Sign up as a Course Coordinator today to become eligible for free classes.

For information on becoming a Course Coordinator, please contact Education Chair Bethanee Lussier at: bethanee.lussier@clarklandresources.com

April 5, 2018 (1 day) - Course 600 Environmental Awareness

This course provides basic principles of ecology, history of the environmental movement, a review of federal/ state/local environmental legislation, the right of way professional's role in the environmental process, and mitigation of environmental impacts. Participants will become familiar with environmental issues and problems facing companies and agencies acquiring or managing real property and rights of way, will learn various environmental issues and the mitigating measures used to decrease environmental impacts, and will gain increased awareness of environmental laws, regulations and associated regulatory agencies.

April 6, 2018 (1 day) - Course 604 Environmental Due Diligence and Liability

This course provides the right of way professional with an understanding of the environmental due diligence components. Participants learn to recognize when a due diligence report should be ordered, as well as how reports should be analyzed.

May 7-9, 2018 (3 day) - Course 201 Communications in Real Estate Acquisition

Utilizing self-learning exercises, role-playing and simulations of actual acquisition interviews, this course helps to instill confidence in participants and to enhance their communication/negotiation skills. Participants are given the opportunity for extensive individual participation, and are encouraged to experiment with the practical application of communication concepts and skills presented and discussed. Following the self-learning exercises and role-playing sessions, participants receive feedback regarding what they are doing effectively, as well as the areas in which they are in need of improvement.

June 6-8, 2018 (3 day) - SR/WA Comprehensive Review Study Session & Exam

This three (3) day seminar is designed to prepare Candidates to take the SR/WA Comprehensive Examination by reviewing the seven (7) core disciplines of the right of way profession. It is intended to allow participants to brush up on areas in which they may have limited experience or knowledge. The Comprehensive Exam (United States version) will be administered at the conclusion of the review session, in the afternoon of the third day, and covers the seven (7) core disciplines: Engineering, Law, Negotiation, Valuation, Environment, Relocation, and Asset Management.

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steve@jrcvaluation.com Telephone (858) 565-2400
www.jrcvaluation.com Facsimile (858) 565-4916

San Diego Education Opportunities: 2018

July 12-13, 2018 (2 day) - Course 700 Introduction to Property Management

This course addresses all major aspects of property and asset management. Participants will learn how to establish a cost-effective management plan that increases profitability, conserves resources and reduces risk exposure for properties managed.

August 6-7, 2018 (2 day) - Course 200 Principles of Real Estate Negotiation

This course focuses on a unique blend of the communication skill associated with successful, real-world right of way negotiations. With an emphasis on the practical as opposed to the theoretical, participants will explore their own negotiation skills, habits and styles with the goal of improving settlement rates of right of way acquisitions.

September 13-14, 2018 (2 day) - Course 400 Principles of Real Estate Appraisal

This course enables participants to demonstrate a basic knowledge of the valuation process and its components. Two case studies (residential and commercial) are utilized throughout the course.

October 4-5, 2018 (2 day) - Course 205 Bargaining Negotiations

This course teaches the skills required to win at bargaining negotiations. Problem-solving negotiations are widely accepted as the preferred type of negotiations. However, successful acquisition professionals must be effective at both bargaining and problem-solving negotiations so they are thoroughly prepared in the event that they encounter an attorney or property owner who insists upon a hard bargaining stance.

November 8-9, 2018 (2 day) - Course 215 Right of Way Acquisition for Pipeline Projects

This course is designed specifically for right of way professionals working in the pipeline industry but useful for any linear right of way acquisition program, including electric transmission lines. This comprehensive course emphasizes areas of pipeline right of way acquisitions that benefit both executive and entry level professionals. In addition to the topic chapters listed below, participants will receive sample checklists, charts, forms, reference lists, facts sheets, glossary of pipeline related words, and sample correspondence letters, all of which are designed to help the pipeline professional.

Regional News

Region 1 Spring Forum Report

On March 24, 2018, leaders of IRWA Region 1 met in Monterey California at the annual Spring Forum to discuss the state of the Chapters within Region 1, preview any proposals to be voted on by the Board of Directors at the upcoming international Education Conference and conduct elections for new Region Officers.

Region Officers consist of an elected Chair, Vice-Chair and Secretary/Treasurer. Issues are voted on by two International Directors from each of the 13 Chapters in the Region. In Chapter 11, the President and Vice President serve as the two Directors. Fred Clark and Nick von Gymnich currently fill these positions.

As a part of the Region business meeting, Joe Currie SR/WA, current Region 1 chair (and Chapter 11 member), referred Directors to the IRWA website to preview this year's proposed IRWA annual budget. Directors will be asked to vote on the budget at the conference. Joe announced that voting on future conferences would be conducted only three years in advance now, rather than the typical five years in advance as has been the practice in the past. The reason for the change is due to the stronger economy and increased pricing power of the hotels. Most hotels are now unwilling to guarantee food and room rates for 5 years. After the Edmonton conference, the IRWA has contractual commitments for the next four conferences. Those locations are; Portland, Minneapolis, San Antonio and Cleveland. The next vote for conference location will take place in 2020.

There are no proposed bylaw changes scheduled for discussion at this year's conference. The new Region leaders elected for the upcoming two-year terms are: Chair – Yoli Matranga SR/WA Chapter 2, Vice Chair – Mike Flanagan SR/WA Chapter 11, Secretary/Treasurer – Ray Mehler SR/WA Chapter 1.

Bay Views, the newsletter produced by Chapter 2, San Francisco was voted the Region Newsletter of the Year, outgaining the Chapter 11 newsletter by only one vote!! Karen Williams SR/WA Chapter 28, Phoenix was selected as Region Professional of the Year, Kevin Blair, Chapter 2, San Francisco, was selected Young Professional of the Year.

The International Education Conference is scheduled for June 24-27, 2018 in Edmonton, Alberta, Canada. The Region 1 Fall Forum is scheduled for October 20, 2018 in Las Vegas.

Eminent Domain and Valuation Seminar

On March 2nd, members of our chapter took part in the Eminent Domain and Valuation Seminar. It had been five years since Chapter 11 presented on legal and valuation issues impacting the right of way profession, so we invited local experts to discuss important changes since that time.

The morning session included an update on case law, both published and unpublished, that have occurred over the last five years. Emily Chaidez and Bruce Beach of Best Best & Krieger as well as Steve Roach, MAI, SRA, AI-GRS of Jones, Roach & Caringella, Inc. discussed legal and valuation issues related to the case. They also provided pertinent insight on the impact of the decisions on our industry. Each attendee was given a summary of the cases for future reference.

After an amazing buffet lunch at Casa Guadalajara, we had the privilege of hearing Orell Anderson, MAI discuss valuation trends related to transmission lines. Mr. Anderson, along with his team, assembled research since 2010 conducted across the globe related to valuation issues pertaining to transmission lines. His well-researched presentation summarizes an article written in the Appraisal Journal, which can be found at the following URL: http://www.myappraisalinstitute.org/taj/

Continued on page 8

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Eminent Domain and Valuation Seminar (continued from page 7)

Following Mr. Anderson's presentation was an update on San Diego transportation provided by John Haggerty, Director of Rail for the San Diego Association of Governments (SANDAG). Mr. Haggerty updated the group on what has been accomplished in recent years, on the contracting methods used for projects, and on current projects in San Diego, including the Mid-Coast Trolley and the North Coast Corridor. For those that were unable to attend the seminar, much of this information can be found on SANDAG's website (www.sandag.org).

For the last panel, we welcomed back John Haggerty, who joined Bill Rose and Rob Caringella, MAI, SRA, AI-GRS to discuss "war stories" related to acquiring property and constructing the project. Each panelist brought years of experience related to working on projects in San Diego, including issues that had occurred and what steps were taken to mitigate them.

On behalf of Chapter 11, we want to truly thank each presenter for taking time to prepare and share their expertise. Another big thank you to Caltrans for allowing our chapter to use (and continue to use) their facilities. If you have any ideas for future seminar topics, please let us know. Until then, we look forward to seeing you for the next update!

Mike J. Flanagan, SR/WA, R/W-NAC
Eric C. Schneider, MAI, SRA
Nicolaus A. Von Gymnich, SR/WA

Seminar Coordinators

JAMES (BUZZ) NAUGHTON, JR., MAI
•Certified General Appraiser – Real Estate Appraisal/Consultation •
14272 Half Moon Bay Drive
Del Mar, CA 92014
Telephone: (858) 481-2123
Cell: (619) 980-3742
E-Mail: bznaughton@aol.com

IRWA Chapter 11 Members' Birthdays

April, 2018

Mel Barosay, SR/WA
Susan M. Cope, RWP
Dennis Daley
Ellen R. Duya
Mike Flanagan, SR/WA, R/W-NAC
Donna Fritts
Daniel F. Furr
Troy Anthony Goodenough, Sr.
Charles D. Gray
David C. Hall
Mike Harris, R/W-NAC
Bianca K. Lee-Cristaldi
Francesca Pham
Kelsey A. Powell

May, 2018

William Anderson
Vladimir Balotsky, SR/WA
John Berggren
Gerry C. Canfield, SR/WA
Sandra Durbin, SR/WA
Colleen E. Fino, SR/WA
Pete Golding
Debra S. Lundy, SR/WA, R/W-NAC
Vince McCaw, SR/WA, R/W-RAC
Alex K. Mockus
Patrick Nash, SR/WA, R/W-AMC
Scott Noya
Tiffany Pichardo (Clark)
Hugh W. Rowles
Jennifer L. Smith, SR/WA
Kristen Steinke-Combe
Nicolaus Von Gymnich, SR/WA
William (Bill) Yee, SR/WA

June, 2018

Dennis Alviso
Bruce Beach
Rob Caringella
Halbert C. Casey
Walt E. Evans, III, SR/WA, R/W-RAC, R/W-NAC
Sean P. Quinn
Bill Rose
Patrick J. Ryan
Diane Schooler
James Shepard
Lidia Sosinsky
Zachary B. Svelling
C. Nick Tabor
Mickey Zeichick, SR/WA

July, 2018

Antonio Barragan
James Brabant
Roger Bush, SR/WA, SRA, MAI
Jeffrey K. Davis, RWA
Cecilia Echeverria, SR/WA
Lauren Fritts
Lucy Galvin, SR/WA, R/W-EC
Carmela Gutierrez
Carl Harry
Kathleen Hider, SR/WA
Thurman Hodges, SR/WA, R/W-AMC
Ian S. Hodgson
Lida F. Jimenez, SR/WA, R/W-RAC
Rosa A. Jones
Stephen Kiley, SR/WA
Corbin M. White

Sorry if we missed your birthday, - it's because we don't have that information in our records. Please send your information to: irwach.11newsletter@gmail.com if you would like to be included.

Chapter Bulletin Board

SHARE YOUR NEWS WITH US!!

In Memory of:

Lee C. Johnson, MAI, 09/26/1931 - 02/06/2018. Lee was the past president of the Society of Real Estate Appraisers, the Appraisal Institute, and the International Right of Way Association. Lee was also an instructor at UCSD from 1953 to 1983. He was a prison volunteer at Donovan State Prison, and was awarded the Certificate of Recognition for being named Outstanding Community Volunteer by the state legislator for his work with inmates.

Young Professional's Hosted Luncheon—
Event announcement at the April Luncheon.*
**Slated for the end of April*

Find us on Facebook

Search: "San Diego Chapter 11 of the International Right of Way Association"

April Luncheon

WEAR YOUR **IRWA** BADGE TO HAVE AN EXTRA OPPORTUNITY TO WIN AN ATTENDANCE PRIZE!*

*** Replacement badges are now $12.50, please contact Lauren Fritts, Membership Co-Chair for assistance: lauren.fritts@clarklandresources.com**

JOB OPPORTUNITIES

Residential Real Estate Appraiser, Property Sciences : apply here

Commercial Real Estate Appraiser , Property Sciences: apply here

Real Property Agent II - Acquisition, County of San Bernardino, CA: apply here

Senior Project Manager, Overland Pacific & Cutler, Inc., Long Beach, CA: apply here

Right-of-Way Agents – Licensed, Acquisition Sciences, Ltd., Phoenix, Arizona, email resumes to: CAROLINET@ACQSL.COM

PLEASE MAKE THESE CORRECTIONS/ADDITIONS TO YOUR 2017-2018 ROSTER:

Please make these corrections to your Roster:

GALVIN, Lucille H., SR/WA, R/W-EC, MAI .. 619-846-5928

HARRIS, Mike, R/W-NAC 619-540-2648
Senior Right of Way Agent ..... FAX: 760-560-1662
Clark Land Resources, Inc.
3610 Suffolk Drive
San Diego, CA 92115
..... michael.harris@clarklandresources.com

PLEASE NOTE THE FOLLOWING NEW DESIGNEES:

DAVIS, Jeffrey K., RWA
FRITTS, Austin, RWA
MARTINEZ, Jenny A., RWA
O'DONNELL, Mike, SR/WA

Please insert the following new members into your roster:

CABANILLA, Katherine 310-357-1177
Relocation Specialist/Right of Way Agent
Clark Land Resources, Inc. ..... FAX 760-560-1662
4167 Avenida De La Plata, Ste. 108
Oceanside, CA 92056
..... kathy.cabanilla@clarklandresources.com
(Transferred from Chapter 1)

CORIA, Monica 619-557-4520
San Diego Metropolitan Transit System
1255 Imperial Avenue
San Diego, CA 92101 ..... ucsdurbanplanning@gmail.com

ESQUIVEL, Elsie Manalo 760-758-1562
Clark Land Resources, Inc.
1014 Burga Loop
Chula Vista, CA 91910
..... elsie.esquivel@clarklandresources.com

FLANAGAN, Michael II 858-213-9965
Clark Land Resources, Inc.
3902 Mt. Aladin Avenue
San Diego, CA 92111
.....flanagan2.mike@clarklandresourses.com

RASMUSON, Wendy A. 619-300-4196
Supervising Property Specialist-Valuation
City of San Diego, Real Estate Assets Department
8383 Distinctive Drive

CALENDAR OF UPCOMING CHAPTER 11 MEETINGS FOR THE 2017-2018 YEAR:

April 18	Chapter Luncheon Handlery Hotel & Resort 11:30 a.m. to 1:00 p.m.
April 25	Chapter Board Meeting SD County Water Authority 12:00 p.m. to 1:00 p.m.
May 16*	Chapter Board Meeting SD County Water Authority 12:00 p.m. to 1:00 p.m.

*** Last Meeting before going dark for the summer!**

ALL CORRECTIONS ARE UNDERLINED

Meet Your Colleague

This month we hear from member **Kristin Vandenberg, *SR/WA, Sr. Real Estate Advisor*** at Sempra Infrastructure (previous employer – Oak Creek Energy Systems, Inc.). Kristin has worked at her current position for 3.5 years and in the Right of Way Industry for 12 years. Here, in her own words, is a personal sketch of our colleague, **Kristin**:

What are your current job responsibilities?

In my current role, I contribute to my company's real estate efforts related to renewable energy and natural gas infrastructure projects throughout the United States. This involves working on all aspects of real estate including: existing real estate interests, land acquisition, land disposition, reviewing and analyzing projects for acquisition, and project due diligence on sales and financings. This involves interfacing and collaborating with various teams including development, construction, permitting, operations, insurance, legal, accounting, finance, and asset management teams.

What has been your favorite project you have been involved with?

I worked on the original land acquisition and siting of the Alta Windpower project which was awarded the largest wind energy contract (1,550 MW) in US Renewable Industry History (2006) and is located in the Tehachapi/Mojave Wind Resource Area, Kern County, California.

What path did you take to arrive in the ROW industry?

I found the Right of Way Industry and IRWA through my land acquisition work on renewable energy projects.

What hobbies or activities do you enjoy outside of work?

Riding and training horses/mules, going to rock 'n roll concerts, reading/TV, working out and learning to play golf.

What is your ideal vacation destination?

I love road trips, traveling the back roads and discovery new places and people.

If you could try another job for a day what would it be?

Epidemiologist. I have always been interested in medical geography.

Whom do you admire and why?

Interesting people who have strong character and can laugh at themselves.

Tell us about an experience you consider part of your 15 minutes of fame.

LOL, I've rubbed elbows with a few famous people, does that count?

Is there a ROW/public improvement project you would like to see developed in the region?

High Speed Rail from So Cal to Las Vegas.

Is there any one question in particular that you would like to ask your ROW colleagues?

What's your 30 second ROW speech?

Do you have any advice to newly hired ROW professionals?

Find a mentor and take advantage of the educational and networking opportunities within the IRWA.

INTERNATIONAL NEWS

Conference Location:

Shaw Conference Centre
9797 Jasper Ave.
Edmonton, AB T5J 1N9, Canada

Conference Dates:

Sunday, June 24th - Wednesday, June 27, 2018

Registration Rates (all Rates are listed in US $)

	By March 9	March 10 - April 27	After April 27
Member - Full Registration	$ 525	$ 625	$ 700
Non-Member - Full Registration	$ 625	$ 725	$ 800
Young Professional (ages 35 and under)	$ 420	$ 500	$ 560
Companion	$ 250	$ 250	$ 300
Daily Registration (per day)	$ 225	$ 250	$ 275

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Fairmont Macdonald Reservations Link

The Westin Edmonton

Rates starting at $215/night CAD

Westin Edmonton Reservations Link

Courtyard Marriott

Rates starting at $169/night CAD

Courtyard Marriott Edmonton Reservations Link

Chateau Lacombe Hotel

Rates starting at $159/night CAD

Chateau Lacombe Reservations Link

NEW HOTEL BOOKING POLICIES IN 2018!

- Details on booking your hotel will be available once you've registered for the conference.
- If a hotel reservation is booked without a conference registration, the reservation is subject to cancellation by IRWA.
- All hotels will require a one night's deposit upon booking.

Please note the change in hotel booking policies. This is to ensure that everyone attending the conference has an opportunity to book a room within the group blocks.

If you have any questions, please contact Jade Meador, CMP, Director of Events, at (310) 538-0233 x146, or meador@irwaonline.org.

Why an Inverse Condemnation Damage Case (For Freeway Noise Enhanced by a Paraglass Sound Wall) Cannot be Tried Like Your Ordinary Condemnation Case

By Michael Rubin, Esq., Partner, Rutan & Tucker, LLP

Permission to Publish, All Rights Reserved

A Case Reported for Chapter 67, IRWA March 13, 2018 Luncheon Meeting

Weiss v. People ex rel. Department of Transportation and the Orange County Transportation Authority et al., Court of Appeal, Fourth District, Division 3, California, (March 1, 2018) Cal.Rptr.3d, 2018 WL 110094, 2018 DJDAR 1996.

The central issue in this case was whether a party to an inverse condemnation action could utilize specialized direct condemnation procedures, particularly the procedures under Code of Civil Procedure 1260.040 authorizing parties to file motions at least 60 days before trial to have the court determine legal issues that affect the determination of compensation.

The *Weiss case involved* residential property that was negatively impacted by an I-5 freeway sound wall intended to protect adjoining properties from freeway noise. The homeowners that sued claimed that because the portion of the sound wall that was constructed along the I-5 freeway bridge that crosses El Camino Real was built with Paraglass, a lightweight, clear material instead of the traditional masonry material, it was much more reflective of sound, significantly increasing freeway noise, vibration, glare and dust onto their residential properties.

The owners sued for inverse condemnation and for nuisance. An inverse condemnation lawsuit is where an owner files a lawsuit against a public entity claiming the public entity has taken or damaged the owner's property without going through formal condemnation proceedings and the owner requests damages/ compensation for the taking/damaging. A direct condemnation lawsuit is where the public entity sues the private owner, after a resolution of necessity is adopted authorizing the direct condemnation action, and where the public entity seeks to pay just compensation in return for the property being taken for public use. There is a well-developed set of laws that govern direct condemnation proceedings with special procedures geared to the determination of just compensation and to the adjudication of the right to possession.

Code of Civil Procedure 1260.040 provides in most relevant part:

> If there is a dispute between plaintiff and defendant over an evidentiary or other legal issue affecting the determination of compensation, either party may move the court for a ruling on the issue. The motion shall be made not later than 60 days before commencement of trial on the issue of compensation. The motion shall be heard by the judge assigned for trial of the case.

This can be a useful procedure in a condemnation case because appraisers may operate under different assumptions, such as what the larger parcel is, or whether a sale is admissible in evidence, and the resolution of legal issues relating to those assumptions could greatly reduce the gap between the parties, perhaps leading to settlement without a trial and at a minimum, reducing the need for trial continuances to revise appraisals that would otherwise be rendered inadmissible.

The attorneys for the State and OCTA in the Weiss case filed such a motion under CCP 1260.040 requesting the Court to rule that there could be no liability for inverse condemnation because the alleged increased noise, vibration, glare and dust were **intangible intrusions** as opposed to physical damage to the owners' property property, and there can only be liability in inverse condemnation for intangible intrusions "when the intrusion has resulted in a burden on the property that is direct, substantial, and peculiar to the property itself." Judicial notice was requested of evidence that other nearby property owners had filed their own lawsuits for noise damages, and therefore the intrusion to the Weiss owners could not be peculiar to their property. The State and OCTA similarly requested dismissal of the nuisance claims on the grounds of various public entity immunities.

Continued on Page 15

Continued from Page 14:

Judge Nakamura granted the motions to dismiss and the owners appealed. This was not surprising, because the Court of Appeal for the Second District, Division 2, in *Dina v People ex rel. Department of Transportation,* (2007) 151 Cal. App. 4th 1029, had already ruled that a motion under CCP 1260.040 could be used to determine liability in an inverse condemnation and nuisance case involving damages for noise, vibration and dust arising from the extension of a freeway close to the claimants' residences.

The Court of Appeals reversed, holding that the special procedures for direct condemnation actions were not expressly applicable in inverse condemnation lawsuits, and that the CCP 1260.040 motion to dismiss procedure could not be utilized in an inverse condemnation action to have the court make a ruling on whether the public entity was liable for inverse condemnation. In reaching this result, the court bluntly disagreed with the *Dina* decision as being not well reasoned.

The appellate court noted that 1260.040 is by its terms to be used for an "evidentiary or other legal issue affecting the determination of compensation", which it viewed as different than an evidentiary or legal issue affecting liability. It rejected the argument that a determination of liability necessarily affects compensation since without liability there is no compensation. The appellate court left open the possibility that a CCP 1260.040 motion might be used in an inverse condemnation case on an issue that clearly related to compensation (reasoning that ruling on a motion to dismiss does not facilitate settlement while a motion to determine evidentiary or legal issues relevant to compensation might facilitate a settlement, and a key purpose behind the motion procedure was to facilitate settlements). On the other hand, the decision leaves room in future cases to argue that none of the special procedures in the eminent domain statutes have application to inverse condemnation cases.

The appellate court also reversed the dismissal of the nuisance claims since there was even less of an argument that the direct condemnation procedures had application to nuisance actions.

Continued on Page 16

Continued from Page 15

Takeaways:

1. Just because you have an appellate case on all squares in your favor, doesn't mean you are going to win. One appellate court is not required to follow the decisions of another appellate court from a different district, even though the decision may have some persuasive value. Of course, all California lower courts must follow California Supreme Court precedent.

2. The various special procedures applicable to direct condemnation actions may not be usable in an inverse condemnation lawsuit. This may create particular complexities when an owner files an inverse condemnation cross-complaint in a direct condemnation action. The procedures for discovery, exchange of expert lists and expert information, and on and on, are markedly different for direct condemnation actions than those that apply to ordinary civil lawsuits, making for an awkward hybrid if both sets of procedures were to govern a single lawsuit.

3. While established law, it is worthy to repeat that when the only taking/damage suffered is for an intangible intrusion such as noise, vibration, glare and dust (as opposed to physical damage to property) there is a high hurdle to prove liability. There can only be liability in inverse condemnation for such intangible intrusions "when the intrusion has resulted in a burden on the property that is direct, substantial, and peculiar to the property itself."

It's YOUR newsletter … Be a part of it!

This month we are happy to present articles from Michael Rubin, Esq., Partner, Rutan & Tucker, LLP., and your board members.

If you want to contribute an article you've written, have photos (especially the San Diego skyline!), want to suggest a possible topic or project to be covered, have event or general announcements, job postings, regional or international updates, or are available to be interviewed for our "Meet Your Colleague" feature, please email newsletter editor Sarah Bottom at:
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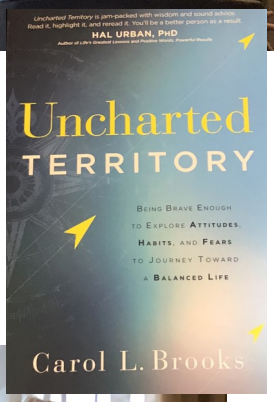
INTERNATIONAL REAL ESTATE CONSULTATION AND FORENSIC VALUATION

CHAPTER LUNCHEON

How to Stay Cool in the Heat of Conflict

Presented By: Carol Brooks, SR/WA



NEW SR/WA!

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