

# Chapter 11 Newsletter

December 2017 - January 2018

## Holiday Luncheon



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

**When? DECEMBER 13, 2017**

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

### COST:

\$25/pp with reservation; No walk-ups are allowed for this luncheon

RSVP MUST BE RECEIVED by **WITH MEAL SELECTION!**

**4:00 p.m. on Thursday, December 7, 2017**

RSVP To Lida Jimenez: [ljimenez@semprautilities.com](mailto: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.

**\*\* see inside for more details \*\***

### Upcoming Events:

#### Luncheon:

December 13, 2017 — 11:45 a.m. to 1:30 p.m.  
at Handlery Hotel, 950 Hotel Cir N, San Diego

#### Executive Board Meetings:

January 24, 2018 — 12:00 noon to 1:00 p.m. at  
the SD County Water Authority, 4677  
Overland Drive, San Diego

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## President Fred Clark, Sr., SR/WA

December 2017 — January 2018



### President's Message



Well, the holiday session is upon us. Like many other folks I feel that this time of year is a special time! A time to reflect on what we have, both physically and emotionally. The things or as some say, stuff that we hold onto. Most of all, it is the relationships that we have. Family, friends, and community. A time to reflect on our past and look forward to something new. A new year. Perhaps a time to change and make things better. Most of our time is spent at work.

A lot of the people we call friends are those that we work with. Some of our identity is in what we do. All this to say that I am so happy and proud to be a part of IRWA and associate with people in this profession. I hope that all of you feel the same. May this coming year be a year of encouragement to one another. A year in which we take more time to just establish a relationship or improve on an existing relationship.

### It's YOUR newsletter ... Be a part of it!

This month we are happy to present articles from Julie Welch Marshall & Breana Campbell, M.A., RPA, Rincon Consultants, Inc. AND Michael Rubin, Esq., Parter Rutan & Tucker, LLP.

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:

[sbottom13@gmail.com](mailto:sbottom13@gmail.com) or text to 760.846.2945.



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# Chapter 11 Holiday Luncheon



## Door Prizes!

Courtesy of Our Fabulous Sponsors

## Raffle Drawings!!

Raffle tickets will be available for purchase to win these extra special prizes so bring plenty of cash with you! (Checks can also be accepted)

Get another chance to win!!!

Bring an unwrapped toy for our **Toys for Tots Drive** in exchange for a FREE RAFFLE TICKET!

Register online at <http://www.irwa11.org/events>

or

RSVP **with your meal choice\***

no later than **Thursday, December 7th, at 4:00 p.m.** to [ljimenez@semprautilities.com](mailto:ljimenez@semprautilities.com)

Please bring a non-perishable food donation for **San Diego Food Bank Drive**  
(most needed items are canned chicken and tuna, dry and canned beans, cereal, rice, canned soup, nuts and seeds and infant formula)

## \*Meal Choices:

Chicken Whiskey, Honey Glazed Ham, or Cheese Tortellini Primavera  
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**Sponsorship opportunities are still available, please see Michael Flanagan for more details! [mike.flanagan@clarklandresources.com](mailto:mike.flanagan@clarklandresources.com)**

## Environmental Assessments for ROW Professionals

*By Julie Welch Marshall, Richard Stolpe, & Breana Campbell, M.A., RPA, Rincon Consultants, Inc.*

Environmental Assessment comes in many forms, whether our projects involve endangered animals or plants, hazardous materials, or historical/cultural/tribal concerns. Yet, how will you know if you have any environmental concerns at your ROW project? Obviously, first we ask “Are there any known environmental concerns at this project location?” Less obvious, are the questions that follow:

- How do we know what the environmental issues are?
- Where are the environmental reports?
- Did we complete all the necessary environmental studies?
- Do we need additional environmental studies?

I wish I could tell you that there is one environmental report with all the answers, but there usually isn't. If you have an Environmental Impact Report (EIR) or Initial Study (IS), you will have most of what you need. However, there are a few other reports to look for and websites to explore.

### ***For hazardous materials/wastes and contamination concerns:***

Look for (or request) a Phase I Environmental Site Assessment (ESA). This report should provide a history of the property or area you are researching. A Phase I ESA includes a site reconnaissance, interviews with property owners, historical resources review (such as aerial photographs, topographic maps, fire insurance maps, city directories, and/or building permits) and a review of regulatory agency hazardous material release records.

(continued on page 5)



The advertisement banner for Overland, Pacific & Cutler, Inc. features a collage of images representing various industries: a city skyline, a modern multi-story building, children playing in a park, and power line towers. The company logo, consisting of stylized concentric circles, is in the top left. The company name and tagline are in the top center. A contact box is on the right. A list of industries served is on the bottom left. The website URL is at the bottom center.

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(continued from page 4)

If this report is not available, there are two online resources that can be used for agency release information and one that can be used for historical aerial photographs and topographic maps.

[www.historicaerials.com](http://www.historicaerials.com) This website includes historical aerials and topographic maps free online, although a fee is required to download the documents. Google Earth™, also allows you to view aerials back to about 1994, sometime further. I've seen some in Google Earth™ back to 1950 and even 1938.



Geotracker and Envirostor are two online resources for regulatory release records. These websites include a mapping tool that allows you to search by address and visually review spills or releases in the vicinity of your project. If the releases are fairly recent (last 10-15 years), these websites may have additional information, and even full reports for review.

<https://www.envirostor.dtsc.ca.gov/public/> The Envirostor website is maintained by the California Department of Toxic Substances Control (DTSC) and in-

cludes all types of sites, including proposed school sites and release sites with local and/or State oversight.

<https://geotracker.waterboards.ca.gov/> The Geotracker website is maintained by the California State Water Resources Control Board (SWRCB) and includes releases with soil and groundwater issues.

### ***For archaeological, historic built environment, tribal cultural, and paleontological (cultural) concerns***

Archaeological, historic built environment, tribal cultural, or paleontological resources often fall under the umbrella term “cultural resources.” Experts in the respective disciplines will prepare technical studies for all or some of the above mentioned disciplines to identify if cultural resources are or have a low to high possibility of being located on a property. A technical study often includes a record search to identify previously recorded archaeological or built environment resources and/ or review known geologic formations (for paleontological resources) that have been identified on a property or within the surrounding area, a site survey, consultation with local interested groups, Native American consultation, and a review of historic maps and local histories. This information is used to identify the potential for cultural resources to be present and provides recommendations to help minimize the potential for significant impact and or adverse effects.

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**For areas with biological concerns:**

Biological resources are all around us, whether we realize it or not. Sometimes they are obvious, as in the example of a lake teeming with birds, fish, frogs, and wetland vegetation. Other times they are less obvious, as in the example of cysts (eggs) from a federally endangered fairy shrimp lying dormant in wait for rain to appear within the dusty soil of a dry, un-vegetated, and trash-covered lot of an otherwise urban landscape. Therefore, it is important to determine what biological resources (visible or not-so-visible) have been identified by previous assessments in the vicinity of the area you are researching.

Look for (or request) a biological assessment. Be aware that a biological assessment is used here as a general term as this type of assessment may go by many names (e.g., “*Biological Inventory (BI)*”, “*Biological Resources Assessment (BRA)*”, and even one specifically called a “*Biological Assessment (BA)*”, just to name a few) depending on their purpose or depth of review. A biological assessment will typically provide a summary of the biological resources at or in relative vicinity to the property or area you are researching. Although the extent of analysis may vary, in general these assessments will include information about habitat or vegetation type, plants and animals present or expected, and sensitive resources such as threatened, endangered, or otherwise protected habitat, plants, and animals.

These types of reports are typically generated during the required California Environmental Quality Act (CEQA) environmental review process for many planning, development, construction, and other actions. A search of available project information and files for one of these types of actions in the vicinity of the area you are researching will frequently reveal the existence and of and sometimes links to the project CEQA documents. If this type of report is not available, there are other resources that can be used to compile biological resource information.

<https://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data#43018410-cnddb-quickview-tool> The presence or even potential presence of sensitive biological resources (e.g., threatened, endangered, or otherwise protected plants, animals, and habitat) on or in the vicinity of the area you are researching is one of the first things to determine. The California Natural Diversity Database (CNDDDB) is an inventory of the status and locations of rare plants and animals in California. CNDDDB staff work with partners to maintain current lists of rare species as well as maintain an ever-growing database of Geographic Information System (GIS)-mapped locations for these species.

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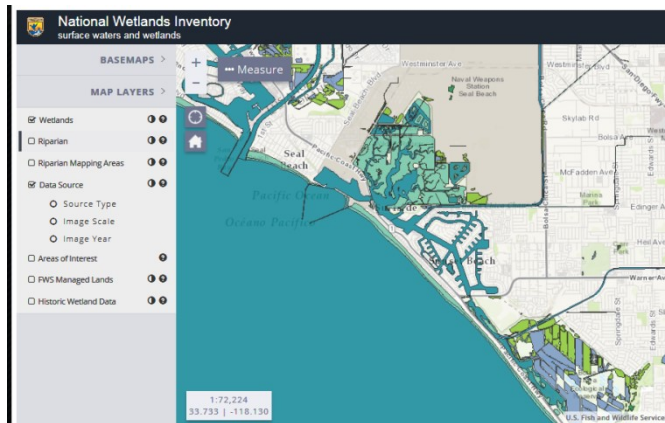


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In most cases due to the sensitive nature of these resources it may be difficult to find information online. In order to access many of the resources these technical experts consult an individual must meet or exceed the Secretary of the Interior's professional standards as a qualified archaeologist, architectural historian or paleontologist.

In some cases redacted reports regarding cultural resources are appended to Environmental Impact reports (EIRs) and Initial Study-Mitigated Negative Declarations (IS-MNDs).

<https://www.fws.gov/wetlands/> Areas of regular or even intermittent water flow are natural areas of concentration for plants, animals, and habitat. Thus, they are important biological resources and it is important to know where they are in relation to the area you are researching. The United States Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) is a publically available resource that provides detailed information on the abundance, characteristics, and distribution of U.S. wetlands. The NWI website hosts a very useful online interactive tool called the Wetlands Mapper that can be used to view the status, extent, characteristics, and functions of known wetland, riparian, and deep water habitats.



Several counties have resource conservation plans, such as a Multiple Species Habitat Conservation Plan (MSHCP), that provide an overview of the county's existing biological and other resources, including sensitive (threatened, endangered, or otherwise designated as regionally important) habitat and species. Frequently within these conservation plans are Subarea Plans that focus on a smaller portion (perhaps a city or group of cities) within the MSHCP. An MSHCP Subarea Plan will provide a greater amount of detail about the area it applies to than a county-wide MSHCP. These types of

plans and biological reports can be found by doing a browser (e.g., Google™) search for the city or county website pertaining to the area of interest and looking on those municipal websites for biological resource documents and plans.

For additional information on any of these environmental concerns, please contact Lauren Roenicke [LRoenicke@RinconConsultants.com](mailto:LRoenicke@RinconConsultants.com) and Julie Marshall [JMarshall@RinconConsultants.com](mailto:JMarshall@RinconConsultants.com). They can put you in touch with professionals familiar with these environmental topics.

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## IRWA Chapter 11 Members' Birthdays

### December, 2018

Julie Blackman  
Robert Backer  
Brenda M. Chilvers, SR/WA  
Ted Hendrickson  
Carole Herrin, SR/WA  
Curtis Jackson, RWA, RWP  
Christina M. Keller  
Bethanee Lussier, SR/WA  
Lee Ann Lardy, SR/WA, RW-AMC  
Madeleine Mamaux  
Anthony Martinez  
Peter McMorris, SR/WA, R/W-NAC  
James Overcamp, SR/WA  
Holly Rockwell, SR/WA, R/W-NAC



### January, 2018

Mickey Aquirre  
Anne T. Baldwin, R/W-AMC  
Rosemary Fraunces, SR/WA  
Mike Hart, LS, CFedS  
Michael D. O'Donnell  
Randy A. Tagg, MAI  
Mia Thayer  
Jane Wiggins, SR/WA



***Sorry if we missed your December or January birthday, -  
it's because we don't have that information in our records.  
Please send your information to  
sbottom13@gmail.com if you would like to be included.***



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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 Hugh Rowles at: [IRWAChapter11education@gmail.com](mailto:IRWAChapter11education@gmail.com).**

## **February 5, 2018 (1 day) - Course 102 Elevating Your Ethical Awareness**

**- Instructor: Lora Gunter, SR/WA**

This course is intended to help resolve ethics and compliance issues by providing the information, tools and resources necessary to make good decisions. Participants will leave this course with an overview of IRWA's Code of Conduct, Rules and Standards. These are what guide us and provide an understanding of how to apply this knowledge in serving our clients and members in the utmost ethical manner while always striving to fulfill our purpose of "improving the quality of people's lives through infrastructure development."

## **February 6, 2018 (1 day) - Course 802 Legal Aspects of Easements**

**- Instructor: Lora Gunter, SR/WA**

In this course, terminology and concepts are brought to life with examples and exercises. By gaining a thorough understanding of all relevant legal considerations, right of way professionals become better equipped to avoid future problems in the appraisal, acquisition and management of easements.

## **March 8-9, 2018 (2 day) - Course 100 Principles of Land Acquisition**

**- Instructor Carol L. Brooks, SR/WA**

This course outlines real estate law terms and concepts. Participants will gain awareness of environmental issues, learn the methods of acquiring and transferring title to realty, three views of engineering plans and the fundamentals in property description systems. Topics also include the requirements of a valid contract, information on easements, deeds, leases, the appraisal process, successful negotiations, and relocation requirements involved with property acquisition and management.

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

**- Instructor Fred Walasavage, SR/WA**

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**

**- Instructor Fred Walasavage, SR/WA**

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.



# ***San Diego Education Opportunities: 2018***

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

**- Instructor Carol L. Brooks, SR/WA**

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**

**- Instructor Carol L. Brooks, SR/WA**

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.

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

**- Instructor Georgia Snodgrass, SR/WA**

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**

**- Instructor Carol L. Brooks, SR/WA**

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**

**- Instructor Jeffrey Swango, SR/WA**

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**

**- Instructor Carol L. Brooks, SR/WA**

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**

**- Instructor Fred Clark Sr. SR/WA**

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.



## WHEN DOES 1 + 1 EQUAL 1?

**Or what is the property unit that is looked to when assessing whether a land use restriction is tantamount to a taking of property?**

*By Michael Rubin, Esq., Parter Rutan & Tucker, LLP*

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(Originally published in *The Override*, by LAAPL—Los Angeles Association of Professional Landmen)

Why should Land Professionals Care about this case? It is an unusual year when the United States Supreme Court renders a decision relevant to eminent domain practitioners. While most right of way professionals (as opposed to public entity planners and decision makers) are not involved with regulation of land use, right of way professionals need to be aware of major developments in takings law in order to talk the talk, to be part of the relevant conversation. Besides, you look clever when you make 1 + 1 equal 1.

### Background Facts.

The property owners (Murrs) owned two adjacent 1.25 acre parcels on the St. Croix River in Wisconsin, a scenic river designated as a federally protected river area in 1972 under the Wild & Scenic Rivers Act. One (Lot F) was acquired in 1994 and the other (Lot E) was acquired in 1995. Wisconsin state and local regulations provided well before 1994 that if a person owns adjacent parcels along the riverfront, they can only be separately sold or developed if they each have more than 1 developable acre. Because of the terrain, the developable acreage on the total 2.5 acres was less than 1 acre, so the regulations precluded sale of one lot without the other, and precluded developing them as two separate lots, effectively merging the two parcels into one, absent a hardship exemption from the regulations. The Murrs desired to sell Lot E to raise funds to develop Lot F and sought, but were denied, a hardship exemption from the local entity. They sued alleging that but for the common ownership of both properties, the parcels could be separately sold or developed, and the regulations effectuated a “taking” of Lot E for which just compensation must be paid.

For purposes of the summary judgment, the Court accepted the allegation that as an undevelopable separate lot, Lot E was worth only \$40,000.

(continued on page 12)

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The Court also accepted that Lots E & F were reduced in value to a total of \$698,000 if treated as a single merged parcel, whereas the two parcels would be worth a total of \$771,000 if they were allowed to be two separate buildable parcels (as they would be if they were in separate ownership).

At the trial court, the Murrs argued that whether there was a taking or not had to be evaluated based upon the impacts of the regulations on Lot E alone, since Lot E was a distinct legal parcel under state law. The trial court disagreed and granted summary judgment to the State, holding that whether there was a taking must be evaluated based upon what state law considered to be the parcel, and since the parcels were treated as merged under state law, there could only be a taking if the merged parcel met the test for a taking (and it did not). This judgment was upheld by the State Court of Appeals leading to the review of the decision by the United States Supreme Court.

Issue & Analysis: In determining whether regulations have so great an impact on private property that they constitute a taking under the Fifth Amendment, what is the proper unit of property against which to assess the effect of the challenged governmental regulation?

While there was a time when it may have been felt that a taking of property only occurs when private property has been physically occupied by governmental action, the U.S. Supreme Court held in an opinion by Justice Holmes in *Pennsylvania Coal Co. v Mahon*, 260 U.S. 393 (1922) that “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” 260 U.S., at 415. Over the years, the U.S. Supreme Court has developed two separate tests for when land use regulations effect a taking. As summarized in the Murr opinion (at pp 1942-43): “First, ‘with certain qualifications ...a regulation which ‘denies all economically beneficial or productive use of land’ will require compensation under the Takings clause’”. [citing *Palazzolo v Rhode Island* 533 U.S. 606, 617]. The second test was summarized as follows (at p. 1943):

Second, when a regulation impedes the use of property without depriving the owner of all economically beneficial use, a taking still may be found based on “a complex of factors,” including (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action.

The first test is extremely hard to meet since loss of all economically beneficial use is required. The second test, often referred to as the “Penn Central” factors, after the U.S. Supreme Court case where it was first articulated, is highly factually, and arguably subjective, particularly in its reliance on the “expectations” of the owner. It requires an inquiry into what expectations are reasonable given all of the circumstances applicable to the owners, the property and the community.

Either of these tests require an assessment of the severity of the restrictions on the property in question. But the question never before answered was: what is the unit of property that is looked to in applying these tests? If one were to look at only Lot E, and note that it cannot be sold individually, or developed individually, and that its value dropped to \$40,000 with the restrictions, whereas it could be sold for \$398,000 as a separate developable lot, the argument for a taking is much stronger than if one were to look at the combined parcels as being the relevant unit of property to which the takings tests are applied.

(Continued on page 14)

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2221 Camino del Rio South, Suite 202  
San Diego, California 92108  
Telephone (858) 565-2400  
Facsimile (858) 565-4916

# Chapter Bulletin Board

SHARE YOUR NEWS WITH US!!

## MEMBER NEWS!!

### NEW DESIGNEES:

ROBINSON, Sandra E., RWA

### NEW SR/WA's:

CHILVERS, Brenda M., SR/WA

### PROMOTIONS:

Barry Sloten, SR/WA

Program Manager | Acquisitions Division  
City of San Diego

### December Luncheon

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

\* Replacement badges are now \$12.50, please  
contact Bethanee Lussier, SR/WA, Membership  
Co-Chair for assistance:  
[bethanee.lussier@clarklandresources.com](mailto:bethanee.lussier@clarklandresources.com)

\*\*Due to family matters, Mike Hucul is looking for work from home and can be contacted at  
[hucul@sbcglobal.net](mailto:hucul@sbcglobal.net)



Brenda Gomez (nee States) got married on October 20th!!



### SAVE THE DATE:

Chapter 11's **Valuation and Legal Update Seminar** will be held on March 2nd at  
Caltrans (all day seminar), Watch for the emails and check out our February Newsletter  
for all the details!!

### 2018 NEW MEMBER CAMPAIGN, CHAPTER INCENTIVE PLAN

All new members that sign up before the end of the year will receive a few perks. First, their Application Fee of \$25 will be waived. Additionally, membership will begin immediately and continue through the 2018 calendar year, so the sooner you sign up, the more bonus membership months you will receive.

## JOB OPPORTUNITIES

**North County Transit District**, Real Estate Administrator, Oceanside, CA

To apply click [here](#)

**San Diego County Regional Airport Authority**, Business Asset Manager (Concessions &  
Real Estate Focus) San Diego, CA

To apply click [here](#)

**PSOMAS**, Project Manager - Survey, San Diego, CA

To apply click [here](#)

**City of San Diego -Real Estate Assets Department**, Supervising Property Agent - ROW  
Acquisitions Division, San Diego, CA

\*\*Please check the City's website for posting of this position in mid-December to Mid-January\*\*



(Continued from 12)

The U.S. Supreme Court determined that the relevant unit in this case was the two lots together, but the Court rejected both the bright line rule proposed by the property owners (any distinct legal parcel must be viewed as a separate economic unit), and the bright line rule proposed by the State (accept all state regulations to define the parcel, including the challenged merger regulations). Instead, the Court stated (at page 1945):

[N]o single consideration can supply the exclusive test for determining the denominator. Instead, courts must consider a number of factors. These include the treatment of the land under state and local law; the physical characteristics of the land; and the prospective value of the regulated land. The endeavor should determine whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel, or, instead, as separate tracts. The inquiry is objective, and the reasonable expectations at issue derive from background customs and the whole of our legal tradition.

Applying this multi-layered test, the court determined that the property unit to scrutinize for taking analysis were the two lots together since (i) state law provided for a merger of the parcels, and this restriction pre-dated the ownership of the parcels, (ii) the physical terrain made it challenging to utilize the parcels separately and they were located in an environmentally protected area, and (iii) the value of the properties as merged lots was only 10% less than their combined values as separately developable lots.

Five Justices joined in the opinion by Justice Kennedy, while three dissented including Chief Justice Roberts and Justices Thomas and Alito (newest Justice Gorsuch did not participate). The dissenters pointed out that the test for a taking was a complex multi-factored analysis that included the distinct investment-backed expectations of the owner, and now a similar multi-factored test gauged to expectations of the owner has been created to determine the parcel unit. Seeing the use of the complex test for one prong of the takings analysis as enough complexity, they urged that the parcel unit always be the boundaries used for distinct parcels under state law (in which case 1 + 1 would continue to equal 2).

Mr. Rubin can be contacted at [mrubin@rutan.com](mailto:mrubin@rutan.com).



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# INTERNATIONAL NEWS!



In November 2017, right of way professionals from around the world gathered in Mexico City for the 2<sup>nd</sup> Annual Congress for Global Infrastructure Real Estate.

The two-day event was filled with networking opportunities, memorable sites and valuable insight into the future of IRWA's global membership.



Look for our feature story in the January/February 2018 issue of Right of Way Magazine.

To explore the program,  
click here.

To explore keynote presentations,  
click here.

To explore photos of the event,  
click here.



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

### Please make these corrections to your Roster:

GAINES, John C., SR/WA  
245 W. Bobier, Space 79  
Vista, CA 92083

SYKES, Jeffery L..... 858-385-2279  
Land Manager  
NV5  
17883 Sintonte Drive  
San Diego, CA 92128..... sykes@earthlink.net

ZEICHICK, Mickey, SR/WA..... 619-861-3071  
Senior Right of Way Agent  
Bender Rosenthal, Inc.  
750 B Street  
San Diego, CA 92101  
..... m.zeichick@benderrosenthal.com

### Please add the following new Members:

KORSTAD, Ann..... 858-382-9285  
Clark Land Resources, Inc.  
110 Civic Center Drive, Ste. 208B  
Vista, CA 92084 ..... ann.korstad@clarklandresources.com

RHEA, William..... 619-890-1004  
Clark Land Resources, Inc.  
110 Civic Center Drive, Ste. 208B  
Vista, CA 92084 ..... will.rhea@clarklandresources.com

SVELLING, Zachary Brandon..... 619-994-2747  
Caltrans  
3096 Jamul Highlands Rd.  
Jamul, CA 91935..... zsvelling@aol.com

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

- |          |   |
|----------|---|
| Dec. 13  | Chapter Luncheon<br>Handlery Hotel & Resort<br>11:30 a.m. to 1:30 p.m.        |
| Jan. 24  | Chapter Board Meeting<br>SD County Water Authority<br>12:00 p.m. to 1:00 p.m. |
| Feb. 21  | Chapter Luncheon<br>Handlery Hotel & Resort<br>11:30 a.m. to 1:00 p.m.        |
| Feb. 28  | Chapter Board Meeting<br>SD County Water Authority<br>12:00 p.m. to 1:00 p.m. |
| March 28 | Chapter Board Meeting<br>SD County Water Authority<br>12:00 p.m. to 1:00 p.m. |
| April 18 | Chapter Luncheon<br>Handlery Hotel & Resort<br>11:30 a.m. to 1:00 p.m.        |
| April 25 | Chapter Board Meeting<br>SD County Water Authority<br>12:00 p.m. to 1:00 p.m. |
| May 23*  | Chapter Board Meeting<br>SD County Water Authority<br>12:00 p.m. to 1:00 p.m. |

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



**JAMES (BUZZ) NAUGHTON, JR., MAI**

♦ *Certified General Appraiser – Real Estate Appraisal/Consultation* ♦

14272 Half Moon Bay Drive  
Del Mar, CA 92014  
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# Regional News

20th Anniversary Conference, Back in Los Angeles *Live!*



## EMINENT DOMAIN

Litigation, Legislation, Valuation & More

January 18-19, 2018 • DoubleTree Downtown • Los Angeles

Dear Colleague:

For 20 years, attorneys, appraisers, consultants, engineers, and other professionals involved in the eminent domain field have flocked to participate as speakers and attendees at CLE International's annual Southern California Eminent Domain Conference.

**"Great seminar, good topics, and expert faculty."**

- Wesley G. Beverlin, Esq., Lewis Brisbois, Los Angeles

**"Good mix of topics."**

- Norman E. Matteoni, Esq., Matteoni, O'Laughlin & Hechtman, San Jose

**"Kudos on giving an opportunity to speak to several younger professionals. It was nice to see/hear some new voices and the experience will benefit the professionals greatly."**

- Madeleine Marnaux, CFA, ASA, Desmond, Marcello & Amster, Los Angeles

Our experts will present valuable insight and multiple, in-depth points-of-view on important topics such as:

- Eminent Domain Legislation in California
- The Future of Regulatory Takings
- Upcoming Projects
- Testimony
- Utilities Takings by Public Agencies
- The Paralegal as a Key Member of the Eminent Domain Team
- Right of Entry
- Jury Selection
- Goodwill
- ... and more!

Whether you've been with us since the beginning, or this is your first time attending, you won't get a better value for your educational dollar.

We look forward to seeing you in Los Angeles!

Sincerely,



### CONFERENCE LOCATION & HOTEL ACCOMMODATIONS



#### DoubleTree by Hilton Hotel Downtown

120 South Los Angeles Street  
Los Angeles, California 90012

Conference hotel sold out last year,  
so reserve and register today!

Conveniently located off the 110, 101, and 5 freeways, this contemporary downtown Los Angeles hotel is ideally situated less than a mile from major attractions. Visit the Los Angeles Convention Center, discover the LA Live Attractions (Staples Center, Nokia Theatre, and Grammy Museum), and walk to iconic cultural attractions, such as the Museum of Contemporary Art.

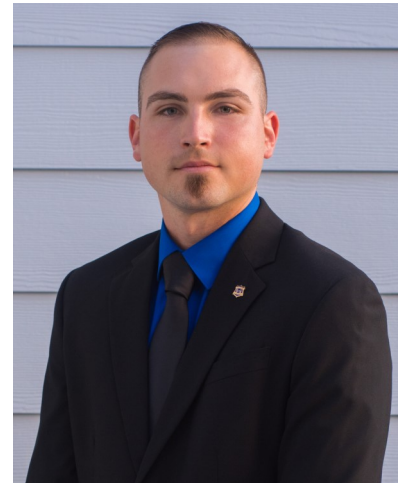
#### Hotel Reservations

Please call (800) 222-TREE or  
(800) 222-8733 and reference the  
Eminent Domain Conference.

Conference links: [Register Now](#) or [Conference Information](#)

# **Meet Your Colleague**

This month we hear from member **David Hall , Right of Way Assistant** at **Clark Land Resources Inc.** David has worked in the Right of Way Industry and at his current position for 2 years. Here in his own words, is a personal sketch of our colleague, **David**:



## **What are your current job responsibilities?**

*My current job is assisting SDGE with corrective maintenance. My responsibilities include records research, easement interpretation and working with property owners to resolve easement encroachments. This allows me to follow individual encroachments from start to finish. I find this very fulfilling as I can help provide a safe working space for utility workers while working to cause minimal impact to property owners.*

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

*My favorite project I have worked on so far is the project I am currently working on. No two encroachments are the same which always creates new challenges. I also never cease to be amazed by how creative these encroachments can be.*

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

*My path to the ROW industry started in the Real Estate Finance industry. I spent 3 years working in home loan processing working closely with homeowners, Escrow, Title, and land issues. While working in this industry I was approached by a Clark Land employee and advised to move into the ROW Industry. I enjoy working in ROW due to the many facets of our work allowing constant change and challenges.*

## **What hobbies or activities do you enjoy outside of work?**

*My time in Boy Scouts working towards Eagle Scout gave me a true appreciation for nature. Any activities in the outdoors give me a chance to reflect and focus on the important things in life. In the last few years I have also developed a love-hate relationship with golf and spend most of my weekends on the course.*

## **What is your ideal vacation destination?**

*I was lucky enough to have my dream vacation last year. I traveled to Switzerland in order to spend time with my family while traveling the country. While I enjoy exploring new places, the Alps, glaciers, and time spent with family will always make Switzerland my favorite place to go on vacation.*

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

*I would have to say a day in the job of motorcycle racing would be an amazing experience. I have owned 6 motorcycles over the years, and the feeling of taking a motorcycle to its limits is something that cannot be duplicated.*

# Meet Your Colleague (continued)

## Whom do you admire and why?

*I have the utmost respect to my parents. After becoming a quadriplegic, my father worked another 18 years to make sure his family had anything they needed. My mother has stayed by his side for 36 years of marriage and is his only caregiver. They have shown me that anything is possible with hard work and dedication.*

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

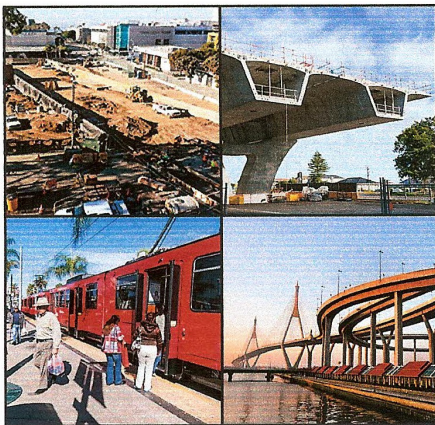
*At the age of 19 I became the world's youngest certified Polygraph Examiner. I completed my education at the Backster School of Lie Detection followed by a field study and 3-year internship as an Interview and Interrogation Specialist at the San Diego Police Department.*

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

*I would really like to see more work on developing an efficient public transit system in San Diego. When traveling in Europe I experienced a very efficient and enjoyable public transit system. With traffic congestion in San Diego rapidly growing and many workers needing to travel into the city a more efficient option is much needed.*

## Do you have any advice to newly hired ROW professionals?

*Yes, I would suggest reaching out to your fellow IRWA members. Our chapter has a wealth of knowledge. I have found members are more than happy to share this knowledge in order to help advance the industry in a positive direction. The opportunity to attend educational conferences can also be an eye-opening experience. Conferences not only are a great learning opportunity, they help to bring to light just how important our industry is and the positive impact we can have on so many lives.*



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# Chapter Luncheon



## SR/WA RECOGNITION LUNCHEON

**Past Presidents, SR/WAs, 25+ Year Members and Retired Members!  
Introduction to your Chapter 11 Board Member Chairs.**



## 2017 – 2018 Chapter 11 Executive Board, Committees and Communities of Practice (CoP)

### OFFICERS:

|                 |                          |  |
|-----------------|--------------------------|--|
| President:      | Fred Clark, SR/WA        | <a href="mailto:FredW.Clark.Sr@clarklandresources.com">FredW.Clark.Sr@clarklandresources.com</a> |
| Vice President: | Nick von Gymnich, SR/WA  | <a href="mailto:nvongymnich@sdewa.org">nvongymnich@sdewa.org</a>                                 |
| Treasurer:      | Eric Schneider, MAI, ASA | <a href="mailto:eric@jrcvaluation.com">eric@jrcvaluation.com</a>                                 |
| Secretary:      | Lauren Kodama Roenicke   | <a href="mailto:lroenicke@rinconconsultants.com">lroenicke@rinconconsultants.com</a>             |

### EXECUTIVE BOARD MEMBER:

|                 |                      |  |
|-----------------|----------------------|--|
| Past President: | Mike Flanagan, SR/WA | <a href="mailto:Mike.Flanagan@clarklandresources.com">Mike.Flanagan@clarklandresources.com</a> |
|-----------------|----------------------|--|

### STANDING COMMITTEES:

|   |                     |  |
|---|---------------------|--|
| Nominations and Elections:  | Carol Brooks, SR/WA | <a href="mailto:cbrooks@cornerstonemanagementskills.com">cbrooks@cornerstonemanagementskills.com</a> |
| (Committee Members : Lucy Galvin, SR/WA, Carole Herrin, SR/WA, Bill Mac Farlane, SR/WA, Vince McCaw, SR/WA) |                     |  |

|   |                       |  |
|---|-----------------------|--|
| Professional Development:   | Kathleen Hider, SR/WA | <a href="mailto:kathleen.hider@sdcounty.ca.gov">kathleen.hider@sdcounty.ca.gov</a> |
| (Committee Members: Vince McCaw, SR/WA and Nick von Gymnich, SR/WA) |                       |  |

|                       |                         |  |
|-----------------------|-------------------------|--|
| Education:            | Hugh Rowles             | <a href="mailto:hugh.rowles@sdcounty.ca.gov">hugh.rowles@sdcounty.ca.gov</a>                         |
| Membership Co-Chairs: | Lisa Murphy, SR/WA      | <a href="mailto:LMurphy2@semprautilities.com">LMurphy2@semprautilities.com</a>                       |
|                       | Bethanee Lussier, SR/WA | <a href="mailto:bethanee.lussier@clarklandresources.com">bethanee.lussier@clarklandresources.com</a> |

### INDUSTRY COMMITTEE CHAIRS:

|                       |                    |  |
|-----------------------|--------------------|--|
| Electric & Utilities: | vacant             |  |
| Public Agencies:      | Carolyn Lee, SR/WA | <a href="mailto:carolynlee@san.rr.com">carolynlee@san.rr.com</a>                     |
| Oil & Gas Pipeline:   | Sue Cope, RWP      | <a href="mailto:sue.cope@clarklandresources.com">sue.cope@clarklandresources.com</a> |
| Transportation:       | Daniel Furr        | <a href="mailto:Dfurr@opcservices.com">Dfurr@opcservices.com</a>                     |

### COMMUNITY OF PRACTICE (CoP) REPRESENTATIVES:

|                         |                       |  |
|-------------------------|-----------------------|--|
| Asset Management:       | vacant                |  |
| Environment:            | Julie Marshall        | <a href="mailto:jmarshall@rinconconsultants.com">jmarshall@rinconconsultants.com</a>     |
| Relocation:             | Walt Evans, SR/WA     | <a href="mailto:walt.evans@clarklandresources.com">walt.evans@clarklandresources.com</a> |
| Surveying & Engineering | Julie Blackman        | <a href="mailto:jblackman@clarklandresources.com">jblackman@clarklandresources.com</a>   |
| Valuation:              | Mark Hendrickson, MAI | <a href="mailto:mark@hendricksonapprail.com">mark@hendricksonapprail.com</a>             |

### CHAPTER COMMITTEE CHAIRS & PARLIAMENTARIAN:

|                      |                         |  |
|----------------------|-------------------------|--|
| Advertising:         | Dennis Alviso           | <a href="mailto:dennis.alviso@ctt.com">dennis.alviso@ctt.com</a>                         |
| Luncheon:            | Lida Jimenez, SR/WA     | <a href="mailto:ljimenez@semprautilities.com">ljimenez@semprautilities.com</a>           |
| Newsletter:          | Sarah Bottom, RWP       | <a href="mailto:sbottom13@gmail.com">sbottom13@gmail.com</a>                             |
| Parliamentarian:     | Cynthia Colburn, SR/WA  | <a href="mailto:cyncolburn@gmail.com">cyncolburn@gmail.com</a>                           |
| Roster:              | Carole Herrin, SR/WA    | <a href="mailto:c-pherrin@msn.com">c-pherrin@msn.com</a>                                 |
| Website:             | Nick von Gymnich, SR/WA | <a href="mailto:nvongymnich@sdewa.org">nvongymnich@sdewa.org</a>                         |
| Young Professionals: | David Hall              | <a href="mailto:david.hall@clarklandresources.com">david.hall@clarklandresources.com</a> |