

# LOS ANGELES



November  
2008

IRWA  
CHAPTER 1

## Upcoming Events



## President's Message

By: Andrew Thompson,  
SR/WA

There are only two more months until the end of my term as President. I'm glad that I have had the opportunity to serve the Chapter in this capacity.

Honestly, I was a little hesitant to become involved in the association's leadership but it has been one of the best experiences of my career. For those who are looking to become more involved, I highly recommend volunteering your time and seek to become active members on our leadership board.

## Membership Luncheon

### December 9, 2008

Tri Chapter Installation Luncheon on the "Endless Deams" cruise Ship

Speaker: Faith Roland, IEC President

Contact: Vivian Howell

Please be advised of the following education opportunities coming up...

## November

Course 803 – Eminent Domain Law Basics (11/20 to 11/21)

## ELECTIONS

Our annual election of the 2009 Chapter 1 Officers was held during our October membership luncheon. Our membership has elected the following slate of officers for 2009:

PDC:	Michael Popwell
Secretary:	David Graeler
Treasurer:	Konstantin Akhrem
President Elect:	William Larsen

Vivian Howell, 2008 President Elect will be our 2009 President per our Chapter by-laws. Congratulations to our new officers!

## TRI CHAPTER INSTALLATION LUNCHEON

The annual Tri Chapter Installation Luncheon will be held on December 9, 2008. It looks like it will be a fun filled event aboard the "Endless Dreams" cruise ship. Our Installation speaker will be IEC President Faith Roland. For details on this event please see the attached flyer and don't delay in sending in your reservation as space is limited!

We are looking for additional corporate sponsors to help off-set the cost of this event. If you would like to donate, please contact Vivian Howell at [vhowell@lawa.org](mailto:vhowell@lawa.org).

**IRWA Chapter 1  
2008 Officers and Executive Board**

<i>President and International Director</i>	<b>Andrew Thompson, SR/WA</b> Southern California Gas Company	213-244-5032	<a href="mailto:athompson@semprautilities.com">athompson@semprautilities.com</a>
<i>President-Elect and International Director and Tri-Chapter Chair</i>	<b>Vivian Howell, SR/WA, R/W-RAC, R/W-NAC</b> LAWA	310-417-0450	<a href="mailto:vhowell@lawa.org">vhowell@lawa.org</a>
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<i>Secretary</i>	<b>Konstantin Akhrem</b> Paragon Partners, Ltd.	714-379-3376	<a href="mailto:kakhrem@paragon-partners.com">kakhrem@paragon-partners.com</a>
<i>Professional Development</i>	<b>Michael Popwell, SR/WA</b> Com Redev Agency	213-977-2620	<a href="mailto:mpopwell@cra.lacity.org">mpopwell@cra.lacity.org</a>
<i>Nominations and Awards</i>	<b>Bryan Riggs, MAI, SR/WA</b> Riggs & Riggs, Inc.	805-578-2400 ext 101	<a href="mailto:riggsinc@sbcglobal.net">riggsinc@sbcglobal.net</a>
<i>Education</i>	<b>Keith Dang, MAI, SR/WA</b> AFI Valuation Group, Inc.	310-378-0309	<a href="mailto:afivaluation@aol.com">afivaluation@aol.com</a>
<i>Membership</i>	<b>Dan Kazden</b> Riggs & Riggs, Inc.	805-578-2400 ext 104	<a href="mailto:dankazden@sbcglobal.net">dankazden@sbcglobal.net</a>
<i>Luncheon</i>	<b>Cheryl DeMucci</b> Epic Land Solutions, Inc.	310-378-2061	<a href="mailto:cheryldemucci@epicland.com">cheryldemucci@epicland.com</a>
<i>Webmaster</i>	<b>Mark Brusca</b> Riggs & Riggs, Inc.	805-578-2400 ext 105	<a href="mailto:markbrusca@sbcglobal.net">markbrusca@sbcglobal.net</a>
<i>Newsletter</i>	<b>Natalie Michelson</b> JPI Studios, Inc.	818-634-6932	<a href="mailto:aunttalie@aol.com">aunttalie@aol.com</a>
<i>Law</i>	<b>Michael Yoshiba, Esq.</b> Richards, Watson & Gershon	213-626-8484	<a href="mailto:myoshiba@rwglaw.com">myoshiba@rwglaw.com</a>
<i>Valuation Seminar</i>	<b>Artemis Manos</b> Southern California Gas Company	714-634-3141	<a href="mailto:agmanos@semprautilities.com">agmanos@semprautilities.com</a>
<i>LA Infrastructure Seminar</i>	<b>Kelly Kitasato</b> City of Pasadena		<a href="mailto:kkitasato@cityofpasadena.net">kkitasato@cityofpasadena.net</a>
<i>Fall Seminar</i>	<b>David Graeler, Esq.</b> Nossaman, Guthner, Knox & Elliott LLP	213-612-7800	<a href="mailto:dgraeler@nossaman.com">dgraeler@nossaman.com</a>
<i>Historian</i>	<b>Heather Riggs</b> Riggs & Riggs, Inc.	805-578-2400	<a href="mailto:hnriggs@sbcglobal.net">hnriggs@sbcglobal.net</a>
<i>Engineering/Survey</i>	<b>Art Cordero, PLS, SR/WA</b> City of Los Angeles	213-482-7192	<a href="mailto:apcor75a@yahoo.com">apcor75a@yahoo.com</a>
<i>Environmental</i>	<b>Mohammed Estiri, PhD</b> Eco & Associates, Inc.	714-289-0995	<a href="mailto:mestiri@panenv.com">mestiri@panenv.com</a>
<i>Pipeline/Utility</i>	<b>Gary Valentine, MAI, SR/WA</b> Valentine Appraisal & Assoc.	661-288-0198	<a href="mailto:gsv@valentineappraisal.com">gsv@valentineappraisal.com</a>
<i>Property Management</i>	<b>Duncan Robb, SR/WA, R/W - AMC</b>	909-627-2590	<a href="mailto:duncary@msn.com">duncary@msn.com</a>
<i>Liaison</i>	<b>Tom Hanley, P.E.</b> Paragon Partners	714-379-3376 ext 222	<a href="mailto:thanley@paragon-partners.com">thanley@paragon-partners.com</a>
<i>Title</i>	<b>Teri Kortens</b> Land America Commercial Services	213-330-3084 310-210-6741 cell	<a href="mailto:tkortens@landam.com">tkortens@landam.com</a>

**Membership Drawing**

At each chapter luncheon we draw a name from the Chapter 1 roster and if that person is in attendance, they win a cash prize. The drawing starts at \$100 and increases \$10 for each month that there isn't a winner. We haven't had a winner in a while. November's drawing will be for \$180 so be sure to be there in case your name is drawn!

## New Members

<u>Name</u>	<u>Company Name</u>	<u>Referred By</u>
Stephanie Arlaud	Community Redevelopment Agency, City of LA	Michael Popwell
Jeffrey Wolpin	Accredited Business Appraisals )& Brokerage	Edward Lear
Barry McDaniel	Overland, Pacific, & Cutler, In.	Faith Roland, SR/WA

## Case of the Month

### California Court of Appeal Opens the Door to Regulatory Takings Claims

By Bradford B. Kuhn and K. Erik Friess

California courts have traditionally displayed little interest in holding cities and other government agencies liable for damages when those agencies over-regulate property. But the California Court of Appeal recently took an unusual interest, holding that a city's moratorium limiting development on unstable property constitutes a regulatory taking, potentially requiring the city to pay the landowners just compensation.

The decision has implications for government agencies, landowners, and developers throughout California:

- Cities and other agencies may now face a more palpable risk that their development restrictions constitute a compensable taking;
- Cities and other agencies may face greater difficulty justifying development restrictions under their powers to regulate nuisances;
- Cities and other agencies may not succeed in inoculating themselves from liability for a regulatory taking by purporting to allow some limited use or development of properties; and
- Landowners and developers may not need to go through the entire administrative process before suing for a regulatory taking, particularly if the process is expensive and appears unlikely to result in a different outcome for the developer.

#### The Decision:

On October 1, 2008, the California Court of Appeal held in *Monks v. City of Rancho Palos Verdes* that the City of Rancho Palos Verdes' rules preventing development on an area susceptible to landslides constituted a regulatory taking that was not justified by the City's power to regulate nuisances and protect the public interest.

#### The Background:

*Monks v. City of Rancho Palos Verdes* involves a two-square-mile area in the City of Rancho Palos Verdes with a history of landslides dating back over 100,000 years. In the late 1970's, the City enacted a moratorium on the construction of new homes in the landslide area, and the area was eventually broken down into different zones for purposes of remediation efforts and residential development. The plaintiffs owned 16 undeveloped lots in a zone covered by the moratorium. Each lot was approximately one acre, most with ocean views.

In 2002, the property owners applied to the City for an exception from the moratorium, requesting permission to build single-family residences on their lots. While the application was pending, the City approved a resolution that toughened the criteria for anyone in the plaintiffs' zone to obtain an exclusion from the moratorium. Specifically, it required applicants to demonstrate that the entire zone -- as opposed to just the applicant's own property -- met the City's stability standards. The applicant's cost to obtain such geological data was estimated at between \$500,000 and \$1,000,000.

With the new enactment, the plaintiffs decided not to pursue their pending application for exclusion, and instead filed a writ of mandate and sued the City for inverse condemnation. The trial court reviewed the administrative record and held that the resolution did not constitute a taking. On an initial appeal, the case was remanded with an order for the trial court to conduct a trial on the plaintiffs' claims.

At trial, the property owners' experts testified that it was safe to build the homes and that each of the applicants' properties met the necessary stability standards. The City's experts testified that the zone in general did not meet the stability standards. The trial court sided with the City's experts and concluded that the evidence demonstrated an uncertainty regarding the stability of the plaintiffs' property zone. The trial court held that (1) the moratorium was not a permanent taking since the plaintiffs could seek an exclusion by establishing the necessary stability factor, and (2) the moratorium was proper based on the City's ability to regulate nuisances and protect the public interest.

On a second appeal, the Court of Appeal disagreed, finding that (1) the moratorium was, in effect, a permanent taking, and (2) the City's uncertainty as to whether permitting development would pose a significant harm was insufficient to allow the City to prevent development. The court again remanded the case in order for the trial court to fashion an appropriate remedy based on this holding. (We understand the City settled at least some of the plaintiffs' claims while the appeal was pending.)

### Implications:

The Court of Appeal's decision has several important implications for government agencies, landowners, and developers:

- *Moratoriums that are, in effect, permanent can constitute a regulatory taking.* Temporary regulatory takings, such as moratoriums, are traditionally not compensable. In *Monks*, however, the Court of Appeal recognized that despite the title of "moratorium," the City had already determined that it was never going to permit development on the property owners' lots. As such, the regulation was, in effect, permanent and could constitute a taking.
- *Nuisance law will not justify development restrictions where potential harm is not well established.* Through their police powers, cities and other agencies can traditionally regulate activities in order to protect public health and safety. However, the *Monks* court found that in order for the City's moratorium preventing development to come within these powers, the City must demonstrate a reasonable probability that the construction of homes on the plaintiffs' lots would pose a significant harm to persons or property. Despite conflicting reports of the land's stability, in *Monks*, the court found that the evidence of such harm was uncertain, and thus insufficient.
- *Regulations allowing limited uses of property may still deprive an owner of all economically viable uses.* A long line of cases have held that a regulation must deprive an owner of "all economically viable use" of a property before it arises to the level of a regulatory taking. And in *Monks* the moratorium allowed the owners of the undeveloped lots to build "temporary minor nonresidential structures" on their properties. But the court found this insufficient, calling the restriction "severe" (it limited the non-residential structures to a maximum of 320 square feet), and finding that the resolution still constituted a taking despite the permitted limited uses.
- *Developers need not seek permit approval when such efforts are clearly futile.* Permit applicants normally must "exhaust" their administrative remedies by pursuing their application until it is ultimately denied by the government agency. The court in *Monks*, however, held that a land owner is not required to continue pursuit of its permit once the permissible uses of the property are known to a reasonable degree of certainty. The court held that the property owners were not required to pursue their applications any further because it was certain that the City was going to deny the applications. Notably, in making its determination the court used as a criteria that the property owners would be required to expend huge amounts of money to continue their pursuit.

The *Monks* court's rejection of the City's argument that it needed to enact the building restriction in order to protect itself from future lawsuits should a future landslide occur is also notable. According to the *Monks* court, such "purely speculative" lawsuits cannot justify a regulatory taking.

In sum, following the *Monks* case, cities and other agencies can expect to come under greater scrutiny -- and face greater risk of paying damages -- when they substantially restrict development of property.

*Brad Kuhn specializes in business and commercial litigation with an emphasis on eminent domain, inverse condemnation and other real estate disputes. He can be reached at [bkuhn@nossaman.com](mailto:bkuhn@nossaman.com) or 949.833.7800.*

*K. Erik Friess is the Chair of Nossaman's Eminent Domain Practice Group and is an experienced trial attorney dealing with eminent domain, inverse condemnation and other real estate and business disputes. He can be reached at [kfriess@nossaman.com](mailto:kfriess@nossaman.com) or 949.833.7800.*

## **SPECIAL MEMORANDUM**

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**DATE: September 2008**

**TO: All Chapter Leaders**

**RE: Seeking Candidates for IRWA's 2009 Facilitators Clinic**

Here's your opportunity to get that fantastic local member in your Region to become an IRWA Facilitator (please see enclosed general requirements for qualifications). The International Right of Way Association (IRWA) will be conducting a Facilitator Clinic in conjunction with the Federal Agency Update (FAU – Public Real Estate Symposium (PRES) in Las Vegas, Nevada. The Clinic is scheduled immediately preceding the event on *Sunday, January 11 and Monday, January 12, 2009.*

The Clinic is designed specifically for those individuals interested in becoming a Facilitator for the IRWA, and who have not completed a “Train-the-Trainer” program through a comparable professional organization approved by the International Professional Development Committee (IPDC), or are not a College/University level Instructor. The Clinic registration fee, which will be collected after a Candidate is selected, is \$565.00 (U.S. Dollars) per person and there is a \$100.00 application fee. This year we have again scheduled David Layne, SR/WA and IPDC representative, to facilitate the clinic.

The purpose of this clinic is to provide a one-day training program and refinement of presentation skills in the latest instructional methods and techniques. A maximum of 12 Candidates will be selected to attend the Clinic. Application forms will be available on line through the IRWA website. The deadline to submit an application is October 15, 2008.

Should you have any questions, please feel free to contact Valerie Fries, Director of Chapter & Region Relations, via E-mail, at [fries@irwaonline.org](mailto:fries@irwaonline.org) or by telephone at (310) 538-0233 ext. 143.

Should you have any questions, please feel free to contact me via e-mail, at [fries@irwaonline.org](mailto:fries@irwaonline.org), or by telephone at (310) 538-0233 ext. 143.

Sincerely,



Valerie J. Fries,  
Chief of Education

## Updating your IRWA Membership Information

1. Visit [www.irwaonline.org](http://www.irwaonline.org)
2. Highlight "Resources" in the upper right hand corner and then click on "Membership Directory".
3. Click on Update Member Profile.
4. Enter your User Name and Password and click on Login. Your User Name is your membership number (contained on your membership card and dues renewal notice) and the Password is your last name. The Password is case sensitive, so ensure you capitalize the first letter and leave the rest in non-caps.
5. Update your information and click on "Submit. A new page will come up and you can choose to "Exit" or "Logout".
6. That's it! Your information will be automatically updated on the headquarters master list, which is also the one the Chapter uses for communications. Going forward, Chapter 1 monthly newsletters will be sent out via e-mail so it's important to ensure your e-mail address is current.
7. If you do not have access to the Internet or have any questions about updating membership information, call Bonnie Gray at 310-538-0233.

**Below are the classes Chapter 1 has scheduled for 2008. If you would like to coordinate a class that you need (and get the class free, close to your work/home, and on a date you select!), please contact Keith Dang, the Education Chair for 2007-2008 at [AFIValuation@aol.com](mailto:AFIValuation@aol.com).**

### Chapter 1 2008 Education Schedule

Course/Seminar	Date	Location	Coordinator
803 – Eminent Domain Law Basics	November 20–21	MWD	Lizeth Olague



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www.irwaonline.org

## Coming Soon!

### Course 803: Eminent Domain Law Basics for the Right of Way Professional

### Course 803: Eminent Domain Law Basics for Right of Way Professionals

#### Course Description:

"Eminent Domain Law Basics" familiarizes participants with the basic theories behind, and practical aspects of, the various laws, rules and regulations applicable to acquisition of private property for public use through exercise of the power of eminent domain.

This course focuses on introduction to eminent domain, primary sources of law, breakdown and analysis of the modern rule, just compensation and legal aspects of valuation, and the roles of right of way professionals in eminent domain.

#### Prerequisites:

It is recommended that participants have a minimum of one (1) year of right of way experience prior to attending this class.

#### Topics:

- Introduction to subject, characteristics of the power, brief historical perspective, distinguished from other governmental powers, delegation of the power
- Primary sources of law, constitutional provisions, statutory provisions rules, regulations, policies, procedures; court decisions
- Breakdown/analysis of the Modern Rule, types of property which can be taken meaning of "taken", meaning of "or damaged" , meaning of "public use"
- Just compensation/legal aspects of valuation, market value standard, incidental losses/special problems; laws affecting scope, approach, methodology; laws affecting substantive aspects of valuation, planning and pre-condemnation activities, damages to remainder, benefits, special problems such as trees, crops, minerals; condemnation proceedings
- Roles of right of way professionals engineers, title investigators, appraisers, negotiators, relocation agents

#### Course Tuition Includes: Participant's Manual

**Who Should Take This Course:**  
This course is intended for right of way practitioners and individuals involved in the acquisition of private property for public use through the exercise of eminent domain.



**IRWA – Chapters’ 1, 57 and 67**  
Cordially invite you to **Come Aboard the**  
**“Endless Dreams” for the 2008 Annual**

## **Tri-Chapter Installation Luncheon Cruise**

**December 9, 2008**  
**11:15 a.m. to 3:00 p.m.**

**Rainbow Harbor Long Beach Harbor**  
**Dock 6A at the end of Pine Street**  
**@ Shoreline Drive**

**Parking:**  
**\$12.00 @ Long Beach Aquarium**  
**or**  
**\$20.00 @ Rainbow Harbor (closest)**

**Faith Roland, SRWA**  
**IRWA International President**  
**Installing Officer & Speaker**

**(Limited Ticket Availability – RSVP Requested By November 23rd)**

\_\_\_\_ Tickets @ \$50.00/ticket for IRWA Current Members \* \_\_\_\_ Tickets @\$60.00/ticket for Nonmembers  
(IRWA Members are Entitled to Purchase a Maximum of 2 Tickets at the \$50.00 ticket price)

Total Amount of Check Enclosed \$ \_\_\_\_\_

Your IRWA Chapter No. \_\_\_\_\_

Please Print Name: \_\_\_\_\_ IRWA Membership # \_\_\_\_\_

**Choice of Entrée (please indicate your preference)**

\_\_\_\_\_ **Wellington Breast of Chicken w/cognac sauce wrapped in French pastry**

\_\_\_\_\_ **Vegetarian Selection - Portobello Ravioli with Fire Roasted Tomatoes, Onions, Peppers and Artichokes**

**Salad Accompaniment: Savory Spinach and Panzanella**  
**Surprise Desserts**

**Corporate Partners that desire to place an advertisement message on the Commemorative DVD, please contact Vivian Howell**

**Make Checks Payable to IRWA Chapter 1 and mail by November 23<sup>rd</sup> to**

**Vivian Howell, SRWA**

**President-Elect IRWA Chapter 1**

**P. O. Box 56242, Los Angeles, CA 90056-0242**

**(310) 417-0450**

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