



MONTHLY Bundle of Writes

NEWS AND EVENTS FOR IRWA CHAPTER 67

December 2022

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PRESIDENT'S MESSAGE

Rudy Romo, SR/WA
rromo@cityofirvine.org
(949) 724-7303

Happy Holidays!

The holiday season is officially here! I'm sure many, if not most, of you will be visiting with your family and friends, which is what the holiday season is all about. It's that time of year to be thankful for those special people in our lives who bring smiles to us each and every day!

It was good seeing everyone at last luncheon on November 8th. Our two new appointed Board members, Jason Borrás and Duane Ozenne, were announced and welcomed to the Chapter. Jason Borrás, our Membership Chair, presented several new members with their membership pins. We were then honored to welcome Brian J. Bergman Esq. with the BDG Law Firm and he presented on environmental and land use litigation and impacts on property values. The luncheon was well attended and the Board meeting followed. If you missed it, plan on attending the next luncheon on Tuesday, January 10th (see below for more information).

P R E S I D E N T



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matthew.vaneck@kidder.com

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ryan.hargrove@ocgov.com

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jlarsen@rutan.com

Vice President Matthew and I went to Tucson, Arizona on October 29th for the Region 1 Fall Forum hosted by Chapter 73. It was a great event and we learned about the latest happenings from other Chapters and International Headquarters. A key item developed from the Right of Way International Education Foundation (RWIEF) is the offering of a \$2,500 scholarship to be issued to one individual member from each of our 68 Chapters. The application is already out and members pursuing their RWA, RWP, and/or SR/WA are urged to apply. The deadline for submittal is March 1, 2023. For more information, see any of your Board members.

As you know, it's time to renew your membership. While at the Fall Forum we learned that HQ assists Chapters by offering promotions to encourage and remind members to renew their membership, as well as attract new members. Along those lines, we have decided to combine a holiday social with a membership drive on December 14th at the Golden Road Brewery. It will be a great way to keep in touch with current members and meet new ones. Hope to see you there!

The Tri-Chapter Luncheon has once again been postponed. Chapter 1, Los Angeles, has graciously extended an offer to our Chapter to host the Tri-Chapter Luncheon in 2023. We will be selecting a committee in January who will be busy searching for a venue and making arrangements for a fun event.

Our next Chapter luncheon is scheduled for Tuesday, January 10, 2023 with John Ellis, MAI, who will be presenting the 2023 outlook and economic forecast. We look forward to hearing from John as he always provides a very insightful and comprehensive analysis.

I'd like to conclude with a warm welcome to our newest Board member, Ms. Nazani Temourian, Esq. from the law firm of Allen Matkins. She has volunteered to take on the Seminar Chair position for the Chapter. It's always a pleasure to learn of a new up and coming individual who wants to get involved in the IRWA. Welcome aboard Nazani!

I wish all of you a Merry Christmas and a Happy and Prosperous New Year!



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Woodruff, Spradlin & Smart
asuh@wss-law.com

Amanda Fitch, RWA
Mobilitie
amanda.fitch@mobilitie.com

Welcome back readers to the December edition of our newsletter. If you would like to contribute content to the newsletter, advertise, have questions or any ideas to improve the content, please contact us.

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Metropolitan Water District
(213) 217-6324
jvandenakker@mwdh2o.com

NOMINATIONS / ELECTIONS

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So Cal Gas Company
(949) 361-8036
jmunsey@socalgas.com

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hhllc.ca.rr.com

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City of Irvine
(949) 724-7303
rromo@cityofirvine.org

INTERNATIONAL DIRECTOR 2

Matthew VanEck, MAI
Kidder Mathews Valuation & Advisory Services
matthew.vaneck@kidder.com

UPCOMING EVENTS

Membership Drive & Social

Wednesday, December 14, 2022 5:00 PM
Golden Road Brewing Company
2210 E. Orangewood Avenue, Anaheim CA 92806

January Monthly Luncheon

Tuesday January 10, 2023 12:00 p.m.
Speaker: John Ellis, MAI
Integra Realty Resources
Topic: 2023 Economic Forecast

2023 IRWA Education Conference

June 25 - 28, 2023 - Denver, CO



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Rutan & Tucker
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jlarsen@rutan.com

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Kurt Rhodenbaugh
Psomas
(714) 335-1763
krhodenbaugh@psomas.com

ENVIRONMENTAL

Ann M. Johnston
Psomas
(714) 751-7373
ann.johnston@psomas.com

HOSPITALITY

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Southern California Gas Co.
(949) 361-8036
jmunsey@socalgas.com

LEGISLATION

Franci Coleman
Caltrans Retiree
(213) 925-5179
francicole@gmail.com

MEMBERSHIP

Jason Boras
Strategic Property Analytics, Inc.
jason@strategicpropertyanalytics.com

NEWSLETTER / COMMUNICATION

Alyson Suh, Esq.
Woodruff, Spradlin & Smart
(714) 558-7000
asuh@wss-law.com

NEWSLETTER / COMMUNICATION

Amanda Fitch, RWA
Mobilitie LLC
(714) 325-8649
afitch@mobilitie.com

PIPELINES / UTILITIES

Dwayne Ozenne
Southern California Gas Co.
dozenne@socalgas.com

PROFESSIONAL DEVELOPMENT

Rudy Romo
City of Irvine
(949) 724-7303
rromo@cityofirvine.org

PROFESSIONAL DEVELOPMENT

Arianna Perez, SR/WA
Orange County Transportation Authority
aperez1@octa.net

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Kidder Matthews
(949) 557-5047
mvaneck@kiddermatthews.com

RELOCATION

Michele Folk, SR/WA, RW-RAC
Overland, Pacific & Cutler
(949) 951-5263
mfolk@opcservices.com

SEMINARS

Nazani Temourian, Esq.
Allen Matkins
(949) 851-5470
ntemourian@allenmatkins.com

VALUATION

Casey Jones, MAI
George Hamilton Jones, Inc
casey@ghj-inc.com

VALUATION

Stuart Duvall, MAI
George Hamilton Jones, Inc.
stu@ghj-inc.com

DECEMBER LUNCHEON

Membership Drive & Social



Please Join Us

Wednesday, December 14, 2022

5:00 PM

Golden Road Brewing Company

2210 E. Orangewood Avenue


Anaheim, CA 92806

Appetizers and drinks to be served.

Feel free to bring a guest and especially any prospective new IRWA members!

[RSVP HERE](#)

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For questions regarding IRWA education, whether it be information on a particular course, how to register, potential upcoming courses, or the credentialing program, please reach out to James.

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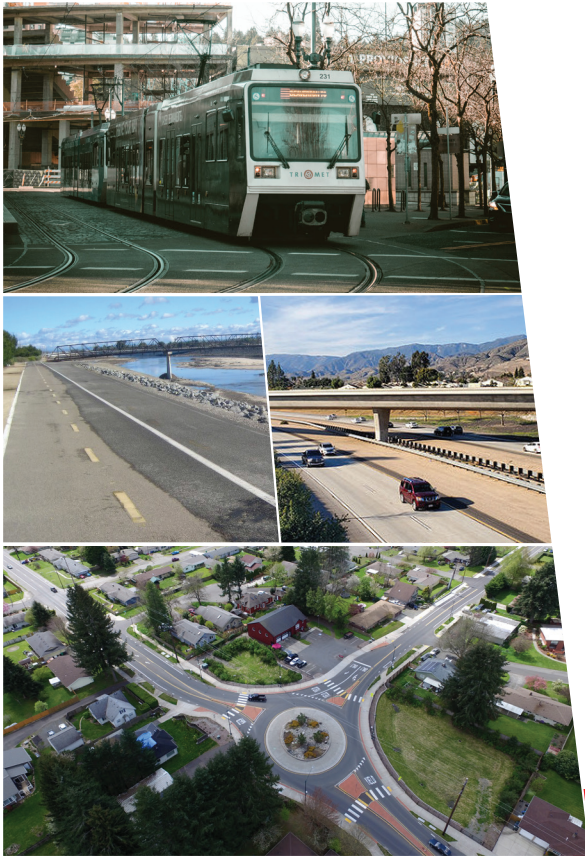
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Funded by the Right of Way International Education Foundation (RWIEF)

The goal of this program is to identify and support IRWA members who can be future IRWA leaders by funding their pursuit of IRWA credentials and professional development. One \$2,500 scholarship toward IRWA education courses will be available to each of IRWA's 68 Chapters within the 10 Regions.

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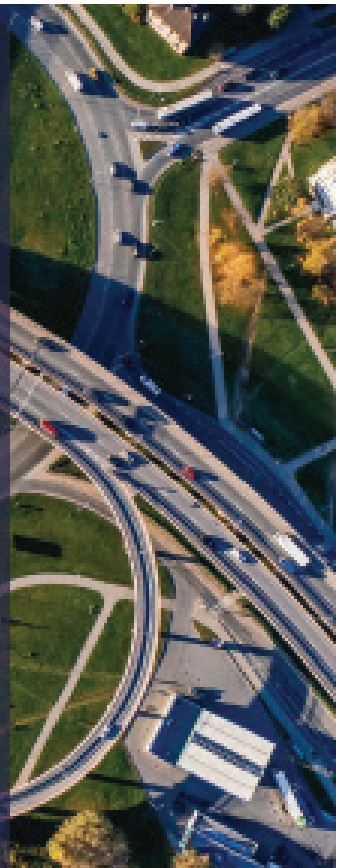
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CASE OF THE MONTH

City Imposed Penalty of One-Year Building Moratorium Does Not Constitute a Taking



*Bradford Kuhn, Esq., Partner
Law Firm of Nossaman LLP*

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Local government agencies sometimes enact short-term building moratoriums for certain areas to further assess changes in land use patterns or slow growth. Those moratoriums imposed across a large area usually do not constitute a taking. But what if a moratorium is imposed solely and specifically as to a singled-out property? Does that moratorium give rise to a taking? According to a recent court of appeal opinion, the answer is no, at least when that moratorium is imposed as a penalty against the property owner for violating local building codes.

Background

In *Lemons v. City of Los Angeles*, 2022 Cal. App. Unpub. LEXIS 6541, the plaintiffs owned a single family residence located in a Historic Preservation Overlay Zone (HPOZ), and their property was designated as a “contributing element”, meaning the residence contributed to the historic significance of the area. The owners sought and secured permits to undertake rehabilitation and repair of the property from the Historic Preservation Board and Cultural Heritage Commission, but they vastly exceeded what was allowed under their permit and mostly demolished the residence, leaving only a small portion of the first story wood flood and foundation. Under the City’s municipal code, one of the penalties for engaging in work without a permit is the imposition of a moratorium on the issuance of any permits for new development on the property. The City ordered a one-year moratorium on plaintiffs’ property.



Lawsuit for Violation of Eighth Amendment (Excessive Fine) and Inverse Condemnation

The property owners filed a lawsuit against the City, claiming that the moratorium was an excessive fine in violation of the Eighth Amendment, and also constituted a taking resulting in inverse condemnation liability. The trial court denied the excessive fine claim, concluding that a moratorium did not constitute a fine. The court also denied the takings claim, finding that the moratorium was not a taking, but instead a government action imposing a penalty under the municipal code. The owners appealed.

Appellate Decision - Moratorium is Not a Fine and Does Not Constitute a Taking

On appeal, the Court explained that the Eighth Amendment only limits the government’s power to “extract payments” as punishment for an offense; a one-year moratorium on new development permits did not require the owners to pay the City a fine. The Court likewise explained that the government “need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance.” The one-year moratorium on new development permits did not constitute a taking because it was a punitive measure imposed for violating the municipal code. Moreover, the concept of inverse condemnation is that the costs of a public improvement benefitting the community should be spread among those benefited rather than allocated to a single member of the community. In contrast, the purpose of a penalty such as the moratorium at issue here is to impose particular burdens on the violators -- there is no benefit transferred to the public at large. The court also rejected the owners’ argument that they were constitutionally entitled to a jury trial on the inverse condemnation claim, explaining that there is no right to a jury trial on the issue of whether there has been a taking in the first instance; the right is limited to the question of damages.

Take-Aways

The case serves as an important reminder that a property owner's failure to comply with local municipal codes can result in significant penalties, including the potential forfeiture of the right to secure new permits for a significant period of time. The case also demonstrates that the imposition of penalties, even if they result in a diminution of value of the property, do not give rise to a claim for inverse condemnation, as there is no "taking" as a matter of law. Finally, the right to a jury trial in an inverse condemnation action only applies to the issue of just compensation or damages - it does not apply to the determination of whether there was a taking. The U.S. Supreme Court ruled last week that the Centers for Disease Control and Prevention (CDC) exceeded its authority when it imposed a national eviction moratorium. More precisely, in *Alabama Association of Realtors v. Department of Health and Human Services*, the Court agreed with a district court determination that the CDC acted unlawfully in banning evictions of residential tenants who declare financial need in counties with high COVID-19 rates. In its decision, the Supreme Court concluded, "If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." While the decision is based on the CDC's authority, it is filled with unconstitutional takings undertones.

Even if Congress were to authorize a further eviction moratorium, the Supreme Court could still find it unconstitutional. In the *Alabama Association of Realtors* decision, the Court considered the moratorium inequitable because "preventing [landlords] from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude."

To support this statement, the Court cited its famous 1982 holding in *Loretto* that requiring landlords to allow installation of cable television equipment on their property was an unconstitutional taking. The Court also emphasized the importance of the right to exclude in its June 2021 *Cedar Point Nursery* takings decision, in which it struck down a California regulation allowing labor organizations to access agricultural employers' property for up to three hours per day, 120 days per year. In sum, the Court has ruled that violations of the "fundamental right to exclude" are unconstitutional takings, and in its recent ruling, the Court stated that the right to exclude tenants who breach their leases is also fundamental. Although this ruling is based mainly on the CDC's lack of authority to impose an eviction moratorium, the Court left the door wide open for property owner claims that eviction bans unconstitutionally violate their fundamental right to evict or exclude non-paying tenants.

It is unclear whether the Supreme Court will decide another eviction moratorium case. Property owners and property management companies have sued the State of California, local cities, and other public entities to overturn eviction bans, citing the Takings Clause among other arguments. However, the moratoriums in California and many other states and cities are set to expire this month. Thus, they may end before the lawsuits filed against them ever reach the Supreme Court. On the other hand, the State of New York just extended its eviction moratorium until January 2022. We will wait and see—and report here—if the Supreme Court rules on whether eviction bans violate the Takings Clause.

Mr. Kuhn is Chair of Nossaman's Eminent Domain & Valuation Group and can be reached at bkuhn@nossaman.com.





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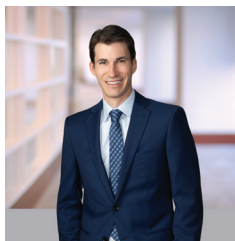
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P S O M A S

ARTICLE

California Legislature Passes Bills to Create Regulatory Framework for Carbon Capture Projects



*Thomas A. Donaho, Esq., Partner,
BakerHostetler*

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After significant lobbying by California Governor Gavin Newsom, the California Legislature passed a flurry of climate bills last week and approved nearly \$54 billion in climate spending. Included in the suite of bills sent to Newsom's desk was significant legislation pertaining to carbon capture, including S.B. 905, S.B. 1314 and A.B. 1757.

S.B. 905: Creation of a Carbon Capture Regulatory Framework

S.B. 905 requires the California Air Resources Board (state board) to establish a Carbon Capture, Removal, Utilization, and Storage Program "to evaluate the efficacy, safety, and viability of carbon capture, utilization, or storage (CCUS) technologies and carbon dioxide removal (CDR) technologies and facilitate the capture and sequestration of carbon dioxide from those technologies, where appropriate." More specifically, the bill requires the state board to:

- Adopt regulations for a unified permit application for the construction of CCUS projects throughout the state to expedite the permitting process. Relevant state agencies would be required to use the unified permit application for all permits and authorizations.
- Develop a centralized database to track the deployment of CCUS and CDR technologies and the development of CCUS projects throughout the state.
- Adopt protocols to support additional and new methods of utilization or storage of carbon dioxide.
- Adopt financial responsibility regulations applicable to CCUS projects.

The California Legislature included in the bill several provisions relating directly to property rights around

CCUS projects. For example, S.B. 905 requires the secretary of the Natural Resources Agency, in consultation with the state board, to publish a framework for governing agreements regarding two or more tracts of land overlying the same geologic storage reservoir utilized in a CCUS project. The framework must include recommended requirements for submission of such agreements to authorized state agencies as well as standards for fair and reasonable compensation to property owners, site access, allocation of liability, allocation of royalty payments associated with leasing of the geologic reservoir, and financial responsibility of operators.

Additionally, the bill provides that title to any geologic storage reservoir is vested in the owner of the overlying surface estate, unless it has been severed and separately conveyed, and establishes specific requirements for conveyance of ownership interest in geologic storage reservoirs. The bill further provides that CCUS project operators must give owners of a surface, subsurface, or storage reservoir estate adjacent to a CCUS project's geologic storage reservoir/complex 60 days' notice before the CCUS project commences.

S.B. 905 also contains numerous provisions relating to protection of the public and environmental health and safety. Those provisions:

- Authorize the state board to require changes in operations of a CCUS project where monitoring and reporting indicate increased seismic activity or carbon dioxide leakage outside the geologic storage reservoir.
- Require the California Geologic Survey to establish a working group, the Geologic Carbon Sequestration Group, to provide expertise on regulatory guidance to the state board and advise on suitable locations for injection wells.

- Require the state geologist to report to the state board seismic activity or leakage of carbon from a CCUS project.

Similar to many state mining laws, S.B. 905 includes financial responsibility provisions that impose certain obligations on a CCUS project operator. More specifically, the bill requires operators to maintain financial responsibility for a period of time sufficiently long to demonstrate that the risk of carbon dioxide leakage poses no threat to public health, safety, and the environment, but not less than 100 years after the last date of injection of carbon dioxide into the geologic storage reservoir.

The operator is further required to:

- Submit a plan to the state board to cover short- and long-term costs associated with corrective action, plugging and abandonment, monitoring, site care and closure, emergency and remedial response, liability associated with resultant seismic activity, loss of carbon dioxide containment, and protection of drinking water quality.
- Show proof to the state board that there is a binding agreement among relevant parties that drilling or extraction that may penetrate the geologic storage reservoir is prohibited for a period of time no less than 100 years.
- Create an air monitoring and mitigation plan to track and minimize potential toxic air contaminants.
- Take steps to avoid any impact on residents in nearby communities and generally comply with state health and safety regulations intended to protect the public from air, water, and soil pollution.

S.B. 1314: Enhanced Oil Recovery and CCUS

With the passage of S.B. 1314, the California Legislature declared that the purpose of “carbon capture technologies, and carbon capture and

sequestration is to facilitate the transition to a carbon-neutral society and not to facilitate continued dependence upon fossil fuel production.” As such, the bill prohibits an operator from injecting a concentrated carbon dioxide fluid produced by a CCUS project into a Class II injection well for enhanced oil recovery or facilitation of enhanced oil recovery from another well.

A.B. 1757: Carbon Sequestration Targets

In A.B. 1757, the California Legislature charged the state’s Natural Resources Agency, in collaboration with various other entities, the state board, and an expert advisory committee, to establish a range of targets for natural carbon sequestration for 2030, 2038, and 2045. The bill both recognizes the role of carbon sequestration in the effort to reach a condition of carbon neutrality and announces the state’s intention to support CCUS efforts.

Summary

S.B. 905 provides the scaffolding upon which the state of California intends to build a regulatory framework for carbon capture projects in the years to come. There remains substantial regulatory uncertainty for potential stakeholders in CCUS projects within the state of California, but S.B. 905 is both a first step toward addressing that uncertainty and a declaration of the state’s intent to play a role in the rapidly developing CCUS economy. This declaration is further documented by A.B. 1757, which charges state agencies with establishing carbon sequestration targets for the next several decades. However, consistent with the state’s previous efforts to facilitate a move away from reliance on fossil fuels, S.B. 1314 will preclude the use of carbon capture technologies for purposes of enhanced oil recovery. With the passage of various climate bills last week, California has begun the process of establishing a regulatory pipeline for desired CCUS projects. However, there remains much work to be done.


Mr. Donaho can be reached at tdonaho@bakerlaw.com.



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MEMBER SPOTLIGHT

Nazani Temourian Volunteers as Chapter 67 Seminar Chair



We'd like to welcome Ms. Nazani Temourian who recently volunteered to step in as the Chapter's Seminar Chair. Ms. Temourian comes to us from the law firm of Allen Matkins and is an Associate attorney in the eminent domain division.

Nazani was born in Los Angeles and recently celebrated a birthday on November 8th. Happy belated birthday Nazani! She currently resides in Granada Hills with her husband, 14 month old daughter, and two cats, Cash and Bowie. She attended the University of California at Los Angeles both as an undergraduate and UCLA School of Law.

Nazani enjoys sushi and tacos and for leisure and pastime, she enjoys yoga, cooking, and crocheting. Nazani likes alternative rock music and the last book she read was "The World of Ice & Fire: The Untold History of Westeros." Her favorite TV show is "The Big Bang Theory" and favorite quote "just keep swimming."

Nazani enjoys going for walks with her daughter and husband and when she has time to relax, she enjoys unwinding on the sofa with a glass of wine, popcorn, and funny sitcom. Her last vacation took her to the red hills of Sedona, Arizona. Her pet peeve in life is when an Oxford comma is not used! Oh no, she will probably need to edit this write up!

When asked about the most influential person in her life, she says "her husband because he motivates me to be better each and every day!" Her proudest accomplishment to date is passing the California bar exam and secret to success is "try and try again."

When asked why she is involved in the IRWA, Nazani says "to learn from and collaborate with like-minded individuals that are excited about transportation infrastructure." Next time you see Nazani at a luncheon, please introduce yourself and welcome her to Chapter 67!



MEMBER SPOTLIGHT

Jason Borrás Becomes Chapter Membership Chair



Jason Borrás recently accepted the Chapter's Membership Chair position and started off with a bang by distributing IRWA membership pins at last luncheon. He is currently working with Aiyana Lopez, HQ Member Services Manager, to drum up renewals and new members. Jason comes to us from Strategic Property Analytics, Inc. and is its Operations Director and Research Analyst. Welcome aboard Jason!

Jason was born in Chino, California and currently resides in Laguna Hills. He attended Arizona State University and received his bachelor's degree in

economics. With regard to cuisine and favorite pastimes, Jason enjoys eating Italian food, playing golf and baseball and beach combing. He is married and has one dog. On occasion you may run into Jason at In-n-Out Burger enjoying a double-double, fries, and coke—yum!

The last book Jason read was "Freakonomics" and last movie seen was "Top Gun". During after hours, Jason watches "The Amazing Race." When asked about the most influential person in his life, he says "his grandmother" because she always provided him with care, nurturing, encouragement and strength. He enjoys hard work and believes it is his secret to success. When asked about his proudest accomplishment, he said "getting married" and biggest challenge is "life" because "life in itself is a challenge".

Jason's last vacation was Hawaii and enjoyed every minute of it. His last embarrassing moment was when he hit a fly ball and thought it was a homerun. Luckily he can chuckle about it now.

When asked why he is involved in the IRWA, he mentioned that he wants to continue his involvement within the right-of-way profession. Jason said he "loves working on these projects and would like to absorb as much information as possible." The next time you see Jason at a luncheon, don't forget to say "hello!"



MEMBER SPOTLIGHT

Dwayne Ozenne Becomes Chapter Pipeline and Utilities Chair



Dwayne Ozenne is in the process of receiving his IRWA Senior (SR/WA) designation and also volunteered to take on the Chapter's Pipeline and Utilities Chair position. Congratulations Dwayne and welcome to Chapter 67! Dwayne recently transferred his membership from Chapter 1, Los Angeles. Dwayne comes to us from the Southern California Gas Company and is a Land Advisor.

Dwayne was born in San Francisco and currently resides in Anaheim Hills. He attended the University

of San Francisco where he received both his Bachelor of Science in Business and Juris Doctorate. Dwayne is married and has two adult children. He enjoys spending time with family and friends and likes to snow ski, golf, cycle, and watch sports.

Dwayne has a 12-year old rescue Golden Retriever. Dwayne enjoys listening to all types of music because he feels most relaxed when listening to music. He also loves Italian and Southern cuisines and when he wants to relax on the couch he will turn on Ted Lasso. The last book he read was "Terminal List" and last movie he saw was "Top Gun Maverick".

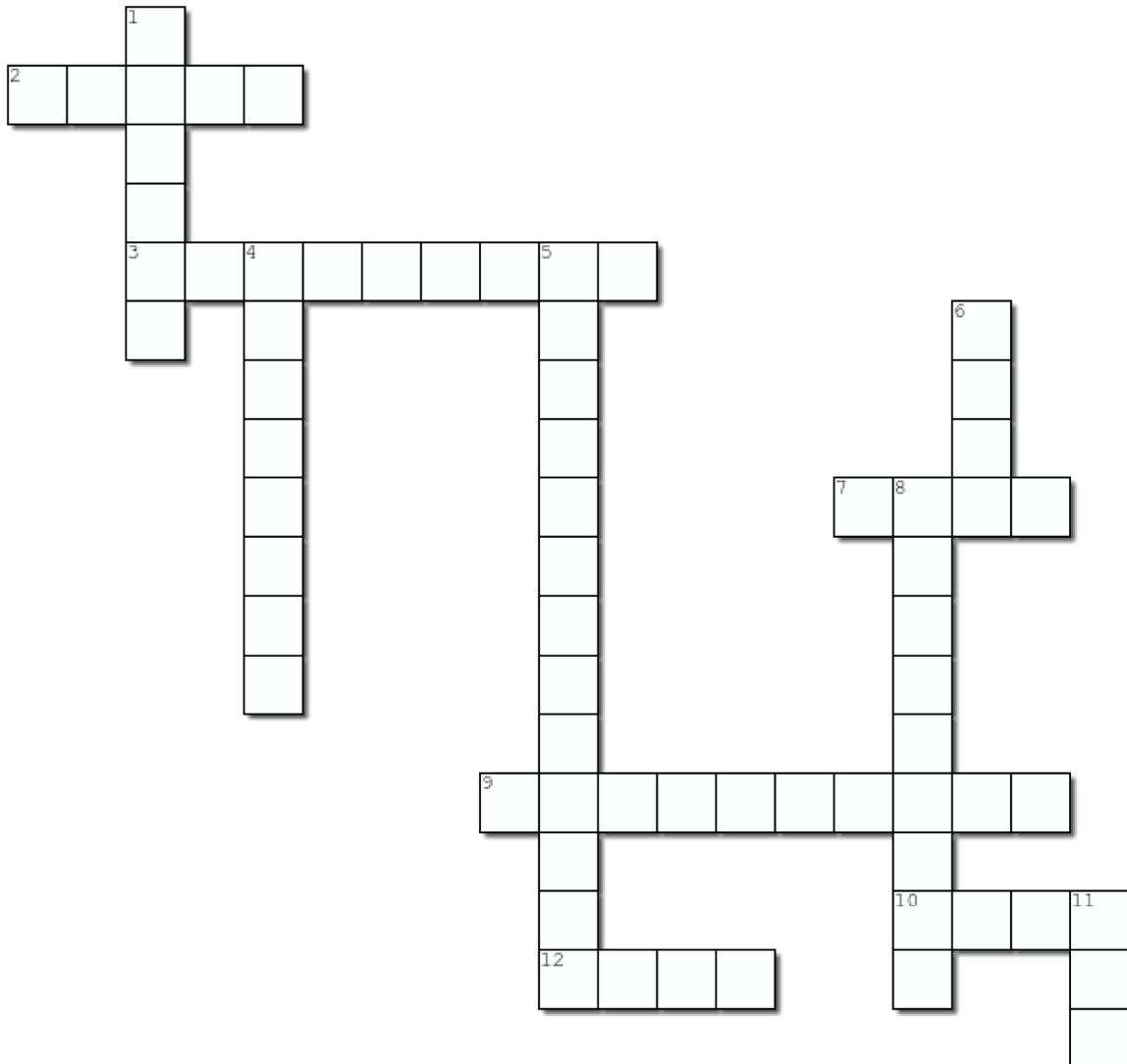
When asked about the most influential person in his life he says it's his father who taught him the value of hard work, yet how to enjoy life. If you ask Dwayne the secret to his success he will tell you "be true to your word."

Dwayne's last vacation was in California's beautiful Central Coast. The first time you meet Dwayne he will try to figure out whether or not you are trustworthy, a trait that he finds extremely important. Dwayne is involved in IRWA in order to help advance the right of way profession and his industry knowledge. The next time you see Dwayne make sure to give him a warm welcome to Chapter 67!



December IRWA Crossword

Complete the crossword puzzle below. First person to send a correctly completed puzzle to info@irwa67.org wins a free ticket to the next luncheon!



Created using the Crossword Maker on TheTeachersCorner.net

Across

- 2.** Form prepared to reimburse occupants displaced from a public project
- 3.** This typical type of tree and garland was used by Egyptians and Romans during winter to signify that spring would return.
- 7.** Over 137million tons of this mineral is used on US roads each winter.
- 9.** This location once booked the coldest day on earth in 1983 at -128.6 degrees F.
- 10.** Location of the first Winter Olympics in 1924 - French _____
- 12.** Type of marker used to mark rights of way by the surveyor

Down

- 1.** Most common residential appraisal is based on this approach
- 4.** The Project _____ typically certifies the right of way requirements.
- 5.** Before R/W Acquisition can commence, the project report and _____ document must be approved.
- 6.** Public projects typically require partial or _____ acquisitions.
- 8.** A property owner is entitled to payment up to \$5k by the agency to obtain their own _____
- 11.** Number of sides every snowflake has