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QUARTERLY Bundle of Writes

NEWS AND EVENTS FOR IRWA CHAPTER 67

Q4 2024

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PRESIDENT'S MESSAGE

Jillian Friess Leivas, Esq.
jleivas@nossaman.com

Happy Fall! I hope everyone has been able to enjoy the changing season and back to school. Around Halloween, I had the opportunity to take my little one to the Irvine Regional Park's pumpkin patch, where we saw an impressive Atlantic Giant Squash grown by our chapter's own Kevin Donahue. It was great to see in-person! Check out the article and photos in this newsletter for more details.

At our November luncheon, we heard from Frank Rizzo, ERM, on stakeholder engagement during a project lifecycle. Thank you, Frank! On December 4th, make sure to join us at the Tri-Chapter luncheon, hosted by Chapter 57 (Inland Empire). The event will be located at the Victoria Club, in Riverside, CA, and Holly Rockwell, LA Metro, will be the guest speaker. After the holidays, kick off the new year with us on January 14th for our first luncheon of 2025. John Ellis is joining us to reflect back on market trends in 2024 and give us a preview of 2025.

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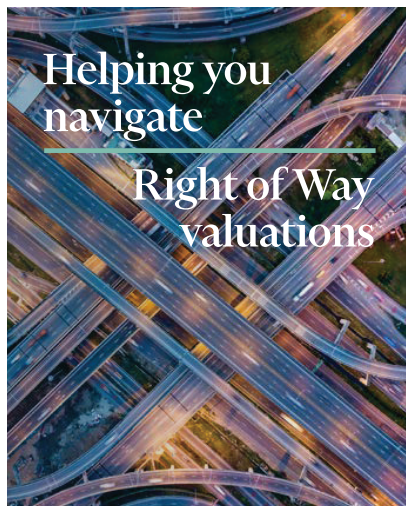
Free luncheon tickets! Are you new to IRWA or curious about joining? If you work for a public agency or are a student, please reach out to me to inquire about a free luncheon ticket. We have a select number of luncheon tickets available to encourage attendance and grow our numbers.

Our schedule for luncheons and board meetings for the rest of the 2024-2025 year is below. Anyone is welcome to join!

- December 4, 2024 – Tri-Chapter Event
- January 14, 2025 – Luncheon and In-Person Board Meeting
- February 18, 2025 – Virtual Board Meeting
- March 11, 2025 – Luncheon
- April 11, 2025 – Virtual Board Meeting
- May 13, 2025 – Luncheon (Elections)
- June 10, 2025 – Luncheon (Officer Installation) and In-Person Board Meeting

Don't forget that IRWA annual membership renewals for 2025 have started! If you have any questions on membership, please reach out to Jason Borrás, Membership Chair.

We look forward to seeing you at our upcoming events!



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MAI, FRICS, CRE
Executive Vice President
john.g.ellis@cbre.com
+1 818 290 5455

Beth B. Finestone
MAI, AI-GRS, FRICS, CRE
Executive Vice President
beth.finstone@cbre.com
+1 818 290 5455

Adam M. Bogorad
MAI

J. Richard (Rick) Donahue
MAI

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EDITOR'S CORNER

Brian English, Esq.

Allen Matkins

benglish@allenmatkins.com

Welcome back readers to the Q4 2024 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 me.

Newsletter advertisement renewals are due in January 2025. If you would like to continue to advertise in this award-winning newsletter and on the Chapter's LinkedIn page, please contact us to renew your advertisement.

EXECUTIVE BOARD

CHAPTER ADVISOR

Joseph Larsen, Esq.
Rutan & Tucker
jlarsen@rutan.com

EDUCATION

James Vanden Akker, SR/WA
Metropolitan Water District
(213) 217-6324
jvandenakker@mwdh2o.com

NOMINATIONS / ELECTIONS

Joe Munsey, RPL
So Cal Gas Company
(949) 361-8036
jmunsey@socalgas.com

PDC Chair

Sharon Hennessey, MAI, AI-GRS, SR/WA
Hennessey & Hennessey
appraisals@h-hllc.com

MEMBERSHIP CHAIR

Jason Borras
Strategic Property Analytics
jason@
strategicpropertyanalytics.com

UPCOMING EVENTS

Tri-Chapter Luncheon

Wednesday December 4, 2024 11:30 AM - 2:00 PM
The Victoria Club, 2521 Arroyo Drive, Riverside, CA 92506

Speaker: Holly Rockwell
Senior Executive Officer - Transit Oriented Communities and Real Estate LA Metro



Chapter 67 Is now on LinkedIn!

[Please join us. here.](#)



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Joseph Larsen, Esq.
Rutan & Tucker
(714) 641-3423 / (714) 641-3418
jlarsen@rutan.com

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Colin Valles
Paragon Partners
cvalles@paragon-partners.com

ENGINEERING / SURVEY

Kurt Rhodenbaugh
Monument ROW
(714) 335-1763
krhodenbaugh@monumentrow.com

ENVIRONMENTAL

Julie Welch
Terraphase Engineering
julie.welch@terraphase.com

HOSPITALITY

Joe Munsey, RPL
Southern California Gas Co.
(949) 361-8036
jmunsey@socalgas.com

MEMBERSHIP

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

NEWSLETTER / COMMUNICATIONS

Brian English, Esq.
Allen Matkins
benglish@allenmatkins.com

NOMINATIONS & ELECTIONS

Rudy Romo
City of Irvine
rromo@cityofirvine.org

PIPELINES / UTILITIES

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

PROFESSIONAL DEVELOPMENT

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

PROFESSIONAL DEVELOPMENT

Maggie Quon
Orange County Transportation Authority
mchen@octa.net

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RELOCATION

Michele Folk, SR/WA, RW-RAC
Transystems
mfolk@transystems.com

SEMINARS

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

VALUATION

Ryan T. Hargrove, MAI, SRA, AI-GRS, R/W-AC
County of Orange
ryan.hargrove@ocgov.com

VALUATION

Jacinto Munoz, MAI, SRA AI-GRS, AI_RRS
Cogito Realty Partners
jacinto@cogitop.com



IRWA

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CHAPTER 57

2024 Tri-Chapter Luncheon

1993



The Victoria Club

December 4, 2024
11:30 am to 2:00 pm

Guest Speaker:
Holly Rockwell,
L.A. METRO Senior Executive Officer

Registration Now Open!

Buy Tickets
Here



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Includes 1 Large Poster displayed during luncheon

All Sponsors will receive a special Thank You in Chapter 57's January newsletter and will be promoted on Chapter 57's website and LinkedIn

All promotional items can be displayed throughout the venue. Please contact us to coordinate.

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EDUCATION

James Vanden Akker
 Metropolitan Water District
 JVandenAkker@mwdh2o.com (213) 217-6324

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.

IRWA's Virtual Classroom

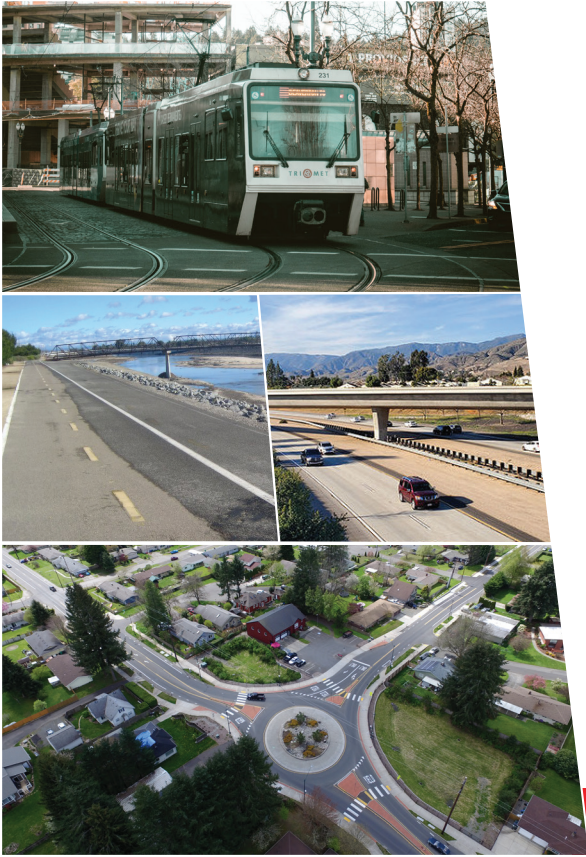
IRWA's virtual classes let you engage in courses delivered in real-time from your desk, home or anywhere with an internet connection. Through an easy-to-use digital platform, IRWA instructors facilitate live interactive courses, creating a classroom experience in a virtual environment.



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23rd ANNUAL IRWA RIGHT OF WAY Competition

Enter your map today!

Sponsored by IRWA's International Surveying & Engineering Committee, this annual competition will be held in conjunction with IRWA's 71st Annual International Education Conference in June of 2025 in Virginia Beach, Virginia.

Winners will be announced in Right of Way Magazine and at the Annual Education Conference, where winning maps will also be displayed. Winners will receive recognition at a national, Regional or local IRWA meeting.

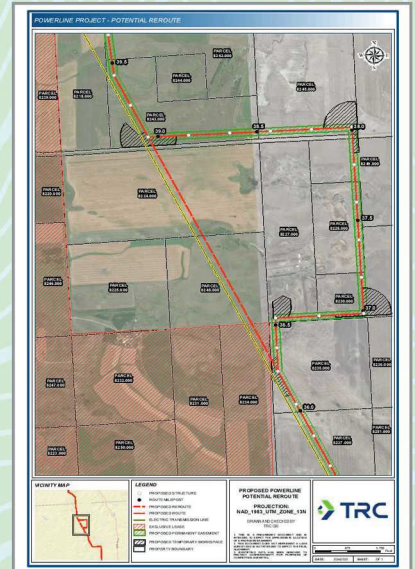
Eligibility: Anyone can enter, however, each entry must be sponsored by an IRWA member. Members may sponsor multiple entries. Maps must be associated with the right of way profession including related disciplines.

Prizes: The Grand prize winner will receive a complimentary registration for IRWA's 71st Annual International Education Conference. In addition, a cash prize of \$250 will be given to the individual winners in the following categories: Transportation, Oil & Gas, Electric & Utility, GIS, SUE Mapping, Engineering and Industry General.

Rules: One entry per person in each category. A map may only be entered in one category. Each entry shall be a standalone single sheet. Maps and entry forms must be submitted digitally using Adobe pdf files. Entries under the transportation, oil & gas and electric & utility categories must be maps/plats prepared for, or in support of, boundary/right of way line retracement or acquisition. This includes, but is not limited to, property or right of way survey maps and plats. Entries under the GIS and industry general categories shall be maps or exhibits related to highways, pipelines, utility lines, telecommunication lines (or associated facilities) prepared for general purposes such as public hearings, presentations, conceptual plans, etc. Examples include, but are not limited to, ownership exhibits and aerial photos (with or without overlays), etc.

Judging: Entries will be judged on overall presentation, orientation and the effective use of graphics, legends, symbols and innovative methods

Disclaimer Information: If contractual confidentiality precludes submission, the title block can be cleared of all pertinent information and state "Prepared for Competition due to Jurisdictional Confidentiality."



23rd Annual Right of Way Mapping Competition

Deadline: February 26, 2025

Official Entry Form (please print or type)

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Entrant's Name _____

Company Name or Agency _____

Address _____ City _____ State/Province _____ Zip/Postal _____

Phone _____ Email _____

Category

- Transportation
- Oil & Gas
- Electric & Utility
- GIS
- Industry General
- SUE Mapping
- Engineering

Email PDF entries to:
Tony.Pollack@hdrinc.com

ARTICLE



J. Munoz

Wrong Property Rights? Part 1: The Importance of Identifying the Rights to be Appraised

*Jacinto Munoz, MAI, SRA, AI-GRS, AI-RRS
Joseph Cormier-Knopp, MAI, AI-GRS*

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2024 edition of Right of Way Magazine."*



J. Cormier-Knopp



In the world of real estate appraisal, where critical decisions are made, one fundamental principle stands paramount – the understanding of property rights. Thus, the valuation of property may be considered the foundation for all real estate activity. As guardians of value, real estate appraisers wield a unique lens through which we scrutinize and decipher the intricate tapestry of property rights, recognizing them as the cornerstone upon which the edifice of real estate value is erected.

Property rights, often misconstrued as mere legal constructs, hold profound significance in shaping the dynamics of the real estate market. They delineate the bundle of entitlements conferred upon property owners, encompassing the rights to possess, use, hypothecate, transfer and exclude others from the property. Yet, beyond their legal delineation, property rights symbolize the essence of ownership and embody

the nexus between individuals and the tangible manifestations of the benefits stemming from an owner's rights in property.



In the context of appraisal, comprehending the nuances of property rights is akin to deciphering a cryptic code that unlocks the latent value embedded within real estate assets. Whether it be fee simple, leased fee, leasehold, easements or restrictive covenants, each permutation of

property rights engenders a distinct configuration of value drivers and constraints, shaping the asset's marketability, utility and investment potential.

Moreover, the appraisal profession's fidelity to the tenets of property rights extends beyond mere academic exercise. In essence, it serves as the linchpin for upholding the integrity and reliability of valuation outcomes. By meticulously parsing the complexities of property rights, appraisers navigate through the labyrinth of market intricacies, wielding their expertise to distill the essence of value with precision and impartiality.

Appropriately understanding and analyzing property rights is so fundamental to our profession that a significant revision was made to a segment of our Body of Knowledge (BOK), which underscores the critical importance of comprehending and analyzing property rights within our profession. The most recent edition of "The Appraisal of Real Estate, 15th Edition" (TARE) directed significant attention toward the meticulous description of property rights as integral to ensuring the credibility of valuations, which ties directly into our professional standard requirements of identifying the subject and its relevant characteristics.

Indeed, the ramifications of neglecting property rights reverberate far beyond the confines of appraisal reports. In a world where real estate transactions serve as the bedrock of economic activity, misapprehensions or oversights regarding property rights can catalyze a cascade of adverse consequences, ranging from contentious legal disputes to suboptimal investment decisions.

Hence, as stewards of value, real estate appraisers are duty-bound to embrace the imperative of understanding property rights with unwavering diligence and acumen. By doing so, appraisers not only safeguard the integrity of the profession but also fulfill their mandate to illuminate the path towards informed decision-making in the dynamic landscape of real estate.

In this two-part article, we will embark upon a journey to unravel the complex tapestry of property rights, delving into their intricacies, implications, and imperatives within the realm of real estate appraisal. As we navigate through this terrain, let us remain steadfast in our commitment to uphold the sanctity of public trust and the appropriate identification of property rights, for therein lies the essence of our profession's *raison d'être*.

Appraisers Value Property Rights, Not Property

Precisely what does a real estate appraiser value? In simplest terms, real property rights are valued, not the real estate itself. In real estate appraisal, an important distinction is made between the term's real estate and real property. Although some laws and court decisions treat the terms synonymously for legal purposes, in appraisal practice the terms real estate and real property are distinct concepts.

Real estate is the physical land and appurtenances affixed to the land (e.g., structures, minerals, timber, site improvements), while real property is comprised of the interests, benefits, and rights inherent in the ownership of physical real estate. While many market participants, including brokers, attorneys, courts and others, routinely use the term "real estate" as an overly broad characterization of what appraisers value or synonymously with the term "real property," it is important to maintain the distinction between the concepts as it directly impacts how one understands an appraiser's valuation.



While these tangible, immobile and physical components are ostensibly what give rise to value, as the “estate” reflects what is owned, it is actually how the “interests” generate a benefit to the estate that value is created. For instance, a property might have mineral deposits, but no viable means can be employed to extract these deposits. While the minerals physically exist, the inability to make use of them beyond the possibility of creating an attractive landscape, or view amenity, substantially impacts their contribution to value relative to a viable mining operation. Thus, it becomes clear that the benefit generated to the ownership is what influences and generates value, not the physical components of the property.

The terms estate and interest may be used differently depending on the jurisdiction or the discipline (see the “Dictionary of Real Estate Appraisal, 7th Edition,” pages 65 and 98). However, in valuation practice, interest is another term for property rights, while estate references the magnitude, or extent of the interests held in a property.

While these terms continue to be used interchangeably, there is an opportunity to foster greater conceptual consistency by better defining terminology in the future. Perhaps a more refined definition of “real estate” would better relate it to the concept of “estate” as defined in the “Dictionary of Real Estate Appraisal, 7th Edition,” rather than the physical property. However, such a change may not be possible given the usage of the terms in other professions or for historical reasons. Therefore, at present, appraisers must resign themselves to being vigilant and consistent in their use of terminology to avoid confusion.

Given the above difficulties with understanding existing terminology, being able to categorize interests is helpful when identifying what is to be appraised, with developing an appropriate scope of work, and in communicating with clients about their valuation needs. Property interests can be sorted into four broad categories: economic, legal, physical and financial. Let us briefly

discuss each category before turning to more involved matters.

Categories of Property Interests

Economic property interests refer to those interests created by a lease agreement. Examples include leasehold interests, leased fee interests and subleasehold/sandwich lease interests. This category of property rights is generally associated with a property owner transferring the right to use and occupy a property to another in exchange for a specified rent, thus granting this property right to a third party for a specified period of time. When approaching this category of property rights, it is therefore essential to comprehensively review the applicable lease agreements to ascertain the degree to which who controls use, for what duration, and under what terms.

Legal property interests are those created by agreements that place restrictions on use. Interests falling into this category can rapidly become nuanced and complex as agreements can take many forms and include just about any conditions imaginable. As an example, properties encumbered by declarations, special assessments, deed restrictions, covenants or easements (utility, conservation, subsurface, etc.), limit the potential uses to which a property can be put, as defined within the corresponding deed language, document or agreement.

In some instances, this results in a change of highest and best use while in other instances there is limited immediate impact given the prevailing economic climate, patterns of development and location of restriction within a property. Another example includes affordable housing restrictions, wherein units can only be leased to qualifying households that fall within the specified household income levels. This type of restriction on use can significantly alter the income generation of a property and can impact financial feasibility of proposed development (and thus highest and best use).

The third category, or **physical property interests**, pertains to those interests dealing with physical aspects of the real property. Examples include water rights, air rights, mineral rights, timber, etc. These rights can be vertical or horizontal in nature and often times are severed from the primary ownership of the real property. Examples includes mineral rights retained by the seller, or water rights transferred to a distant property not contiguous to the natural water flow (where legally permitted).

Finally, **financial property interests** deal with equity and mortgage interests. While a mortgage interest requires the collateralization of the real property, the equity interest exists without this process occurring. These rights become important especially in instances where mortgage-backed securities are involved or when dealing with fractional/minority interests.

As intimated earlier, part of the appraiser's task is to identify not only the estate but also the limitations on the interests associated with the estate. Part of identifying a property's relevant characteristics involves identifying the source and definition of market value. Available through numerous laws and regulations, textbooks, codes, professional standards, and many other resources, there are an assortment of differing market value definitions. The definition from the "Dictionary of Real Estate Appraisal, 7th Edition" provided below embodies the concepts that are most commonly accepted and represents the concept of value in exchange:

Market Value

*The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the **specified property rights** should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.*

As noted above, USPAP requires that an

appraiser cite and source their definition of market value and as a result, many appraisers use the exact definition above or a precise definition available through one of the many resources previously noted. However, some will also augment these definitions to include language that will enable the intended user(s) to appropriately understand how the appraiser's opinions and conclusions were developed.

The same logic is used in another component of identifying a property's relevant characteristics – property rights. As previously noted, a real property appraiser is not only responsible for valuing and identifying a property's estate (fee simple, leased fee, leasehold, etc.) but also the impacts of any associated interests such as the previously described known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, private or public restrictions, etc., as dictated by professional standards.

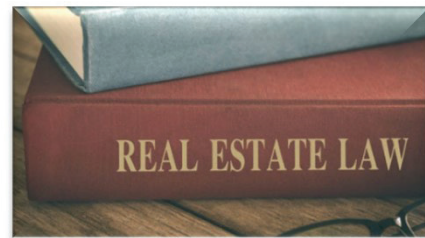
Furthermore, as indicated in "The Appraisal of Real Estate, 15th Edition," "[I]n valuation practice, it is not necessary to label estates and interests in a prescriptive manner as long as all relevant property rights are identified in a manner that the intended users can understand." In identifying the property rights to be valued, there is no requirement for an appraiser to use a specific definition; however, if a specific definition is helpful for the intended user(s) to properly understand the developed opinions and conclusion, then a definition of the rights or interests should be included, but as demonstrated in the "market value" example above, the appraisers can and should augment the definition, as to be clear and not misleading.

As a result, these attributes, along with the defined value and intended use of the appraisal, which form the context for which credibility is determined, guide the selection of data and analyses required for the scope of work. Therefore, the foundational steps to proper identification or problem solving that are sequenced in Step 1 of the valuation process necessitate that the appraiser start their decision-making process early in the development of an assignment and specifically, for property rights and things that impact property rights (i.e., intangibles, easements, encumbrances, restrictions, etc.), as required in Standards Rule 1-2(e). Thus, placing the burden of proof for conclusions about which property characteristics (physical, economic and legal attributes that affect the property's value), on the appraiser.

Closing Thoughts

As has hopefully become illuminated in the above discussion, the identification of property

rights is foundational to the role of appraisers and valuation practitioners. This is tied not only to mandates from standards of practice but also to clarity and consistent use of terminology in limiting confusion. Part two of this article (to be printed in the subsequent edition of this publication) will build on this foundation to discuss some practical situations wherein the importance of identifying property rights can significantly impact a valuation analysis. This will include a brief discussion of the difference between partial and fractional interests, why condominiums represent an ownership type rather than a property right, and a discussion of fee simple versus leased fee valuation scenarios.







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ARTICLE

SEC Eliminates ESG Task Force

*Rebecca Fike, Esq., Partner
Jon Solorzano, Esq., Counsel
Josh Rutenberg, Esq., Associate
Vinson & Elkins LLP*

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Rebecca Fike



Jon Solorzano



Josh Rutenberg



Ed. Note: This information is provided by Vinson & Elkins LLP for educational and informational purposes only and is not intended, nor should it be construed, as legal advice.

Over the last few months, the U.S. Securities and Exchange Commission (“SEC”) discretely disbanded the Climate and ESG Taskforce (“ESG Task Force”) of its Division of Enforcement. The move follows a wave of recent pushback against ESG by some companies and investors, along with certain U.S. state officials and courts.

The ESG Task Force, established in 2021, had been charged by the SEC with identifying ESG-related misconduct and evaluating ESG-related whistleblower complaints. During its brief existence, the ESG Task Force pursued a handful of significant enforcement actions. For instance, in May 2022 the ESG Task Force charged BNY Mellon Investment Adviser, Inc. for material misstatements and omissions related to considerations of ESG matters in making investment decisions for certain mutual funds that it incorrectly represented as subject to an ESG quality review. The ESG Task Force also

reached a \$55.9 million settlement with Vale S.A. in March 2023 for false and misleading disclosures by Vale S.A. about its ESG efforts.

While the ESG Task Force no longer exists, reports of the death of ESG at the SEC may be greatly exaggerated. ***Although no longer housed within a single group [emphasis added]***, the responsibilities and expertise of the ESG Task Force will likely now be dispersed throughout the agency. Furthermore, issuers still face liability for any material misstatements or omissions, ESG-related or otherwise, in their disclosures, with the SEC increasingly scrutinizing topics such as greenwashing. The SEC remains focused on ESG-related topics at the macro level as well, with the recently announced Spring 2024 Regulatory Agenda continuing to include topics such as corporate board diversity and human capital management disclosure.

Accordingly, companies should continue to ensure the accuracy and consistency of their ESG-related disclosures. Companies should also

continue to regularly confirm their policies and procedures are designed to prevent inaccurate or incomplete statements. Finally, companies should be mindful about making only statements they can substantiate, as private litigants and left-leaning attorneys general continue to pursue actions against companies for greenwashing.

Please reach out to your Vinson & Elkins team to discuss the potential impacts on your business and how you should be preparing for these developments.


Ms. Fike can be reached at rfike@velaw.com

Mr. Solorzano can be reached at jsolorzano@velaw.com

Mr. Rutenberg can be reached at jrutenberg@velaw.com

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MEMBER NEWS

Kevin Donahue, MAI, Participates in the Great Pumpkin Weigh-Off Competition

Kevin Donahue, MAI, of Donahue and Company, Inc, participated again this year in the Great Pumpkin Weigh-Off competition held at Irvine Regional Park. With a history of record-breaking and award-winning giant pumpkins, Kevin tried something new this year and grew an Atlantic Giant Squash. The giant squash is sort of a first cousin to the giant pumpkin, but has a recessive gene that keeps it from turning orange and is typically smaller than giant pumpkins.

Kevin's goal was to attempt to beat the state record of 1530 pounds for the Atlantic Giant Squash. His squash came in at 1419 pounds! While it didn't break the state record this year, it was the third largest grown in the country this year, seventh largest grown in the world this year, and largest ever grown in Southern California. As it was judged alongside the giant pumpkins at the Great Pumpkin Weigh-Off, it received Fifth Place overall.

Growing and transporting such a large squash is no easy feat! For the second year in a row, Kevin has had to hire a crane to get the squash out of his backyard! Check out the photos.

Congratulations on the giant squash Kevin! We can't wait to see what you grow next year.





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