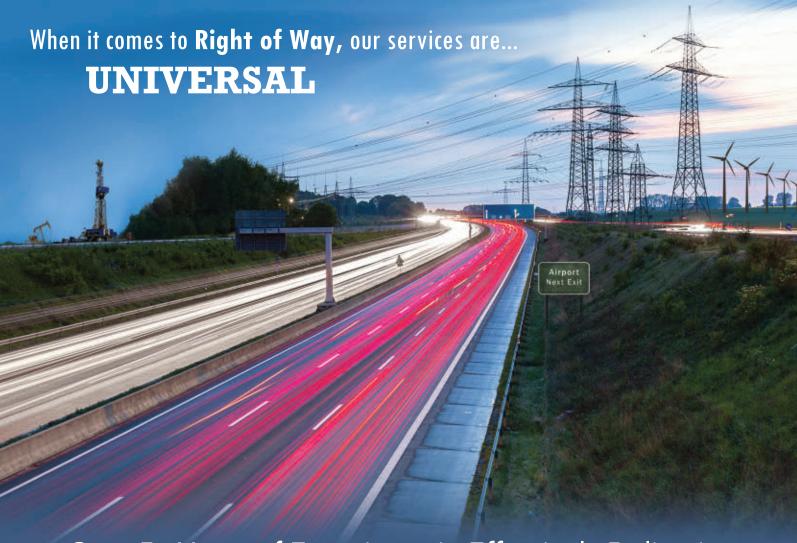
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RIGHT OF WAY

The Voice of the Right of Way Profession

NOVEMBER/DECEMBER 2016

Volume 63 Number 6

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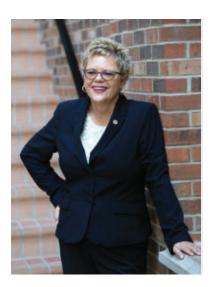




An Exciting Future Awaits

Unlimited possibilities for our future

MARY ANNE MARR, SR/WA



The Association is fortunate to have so many opportunities in front of us. Yet, because most of our initiatives span over multiple years, it's essential that we have consistency in our purpose and mission so that we are all moving in the same direction.

In August, the International Governing Council (IGC) met to align our internal priorities and put plans in motion to achieve our goals. The first step was to clearly define a relevant purpose and mission statement for the IRWA. Why? Because it brings a deeper meaning and level of significance to the work we do. Our newly adopted purpose states, "We improve people's quality of life through infrastructure development," while our mission statement is "We empower professionals by elevating ethics, learning and a standard of excellence within the global infrastructure real estate community."

In thinking about the impact we have on individual lives and communities, it's not always easy to put things into perspective. International Vice President, Jeff Jones, SR/WA shared something that really resonated with me. He said, "A new highway project might save someone 10 minutes each way on a daily commute. That's 20 minutes a day—or three weeks a year that they can allocate to something more satisfying than driving."

This is just one of the many benefits our work as professionals offers to

people everywhere. Do you have a similar way of describing what you do as an infrastructure professional to contribute to our higher purpose? I encourage you to share your stories. They are unique for each and every one of us, and they connect us to our higher purpose.

Achieving our overall mission relies on professional development, and education is a key component of what differentiates us in the marketplace.

IRWA's Partnership for Infrastructure Professional Education is doing a great job overseeing the curriculum, instruction and educational partnerships. As the team launches innovative educational offerings, they are also exploring new delivery methods. One example is the filming of country-specific modules for our VEIT 100i course. A segment on Mexican law was filmed earlier this year, and plans are in place for South African and Australian segments. And to make education even more accessible, they are pursuing online streaming so that we can connect students across the globe to a live classroom environment.

I'm continually amazed by the commitment and dedication our volunteer leaders have for the Association and the profession. As we look to the future, we recognize the importance of investing in the next generation of leaders—our young professionals. We are ready and willing to consider new ideas and develop

content and programming that attracts and engages our younger members. So we invited several young professionals to attend the recent IGC meeting and share their perspective. And they have some great ideas! In the coming year, we plan to delve deeper into their recommendations and implement new initiatives that deliver value.

An Emerging Leaders program is also in the works for members ages 46 to 55, many of whom have expressed a desire to advance IRWA's initiatives. As they build their leadership skills, this program will not only support their professional growth, it will also work to garner increased employer support.

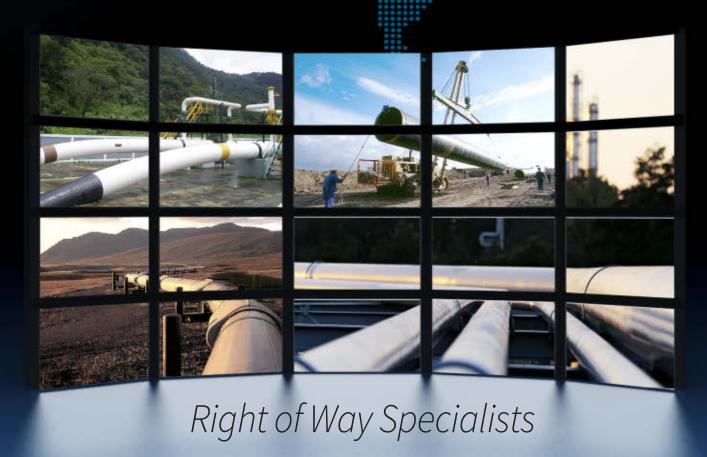
Of course, we will continue to offer seminars, forums and meetings that bring value to members across all levels of the organization. Sharing the educational content from Chapter and Committee events is a vital goal for the coming year, and I encourage members to attend the regional symposiums and the Congress for Global Infrastructure Real Estate scheduled in 2017.

This is a just small sampling of the many programs we're working on—all designed to bring tangible value to our members. And as a truly global community of infrastructure real estate professionals, we have a unique opportunity to share our higher purpose with the rest of the world, as we improve people's quality of life everywhere.



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Who Needs to Know?

New communication model keeps everyone in the loop



MARK RIECK, IRWA CHIEF EXECUTIVE OFFICER

As we continue to grow as an Association, the need to be "in the know" has become crucial to our continued success. The traditional Region and Chapter boundaries, which originally worked to bring us all together, has kept information confined within rather than shared among all interested parties.

With that in mind, IRWA has launched a "Lateral Leadership" Program designed to link leaders together not just to inform—but to engage a wider range of members and communicate across the Association.

The first line of communication will be led by IRWA President-Elect Jerry Colburn, SR/WA along with Region Chairs to Chapter Officers. This will be in conjunction with the ongoing communication in place with International President Mary Anne Marr, SR/WA and the International Governing Council. The next line of communication comes from International Vice President, Jeff Jones, SR/WA, and Region Vice Chairs to Chapter Chairs.

Three Key Questions

Our new model hinges on three questions: Who needs to be involved? Who needs to know? And who needs to find out?

Examining who needs to be involved is the first thing we ask ourselves *before something happens*. This ensures we have considered our members and any potential issues that may impact an organizational decision. Who needs to know is a question we address while things are happening to make sure no one is surprised. And identifying who needs to find out takes place after a decision has been made to make sure no one is left out of the information loop.

Although using this communication matrix will take some practice, over time it will become a model for relaying important information across all levels of the Association.

So next time your Chapter is planning an all-day seminar, your Region is conducting a symposium or your Committee or CoP is planning a webinar, ask yourself these questions and watch participation and collaboration grow! Onward. 3



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Right of Way Magazine (ISSN 0035-5275; PM No.40696009) is published bimonthly by the International Right of Way Association, 19210 S. Vermont Ave., Building A, Suite 100; Gardena, CA 90248.

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The Art of Savoring

A conscious reminder to appreciate

DEIDRE ALVES M.ED.

Recently, I opened a box of pristine gourmet chocolates from Maxim's in Paris. They were actually a year old and I never wanted to open them for fear of them one day being gone! I didn't want them to ever be gone. I loved this box of chocolate because it held such special meaning for me—it was my Paris all wrapped up right there on my kitchen countertop. Paris was right there and I wanted to sayor that...forever.

my heart. It reminded me to stop, look, taste and feel the art of this delicacy. It was a palpable prompting that could only come from something created from goodness and inspiration. The goodness and inspiration gently flowed from this chocolate piece of heaven to my heart. It not only reminded me—but *beckoned* me—to savor and deeply enjoy its magnificence and the magnificent talent of all those involved in this beautiful creation.

Imagine if we savored the significance of our infrastructure work and the talents of all those involved."

But it was not long before an intense chocolate craving made me open the box. I decided to open it quickly as I was in the middle of working on multiple high-stakes projects and didn't have time. What? I didn't have time to open this special memory, one that meant so much to me? What was I thinking? It wasn't until I quickly unwrapped a precious morsel of gourmet chocolate did I immediately stop in my tracks. I literally stopped. Paris—through this special chocolate morsel— was speaking to

I began to think how we don't savor enough in the hustle and bustle of daily life. Imagine if we savored our infrastructure work and the talents of all those involved—if we savored the beauty of our calling to improve the quality of people's lives through infrastructure development. If we savored the knowledge we gain from IRWA education and the camaraderie we gain from networking with our peers. If we savored the infrastructure projects we work on, and marvel at

their brilliance in building a better world.

What I learned is that without savoring you miss the magnificence. You miss the inspiration that smiles back. You miss the chance for the heart to connect, to communicate and harmonize with creation, and to know its special contribution to the world.

As right of way professionals, your work ultimately affects so many people. By taking a moment to savor the magnificence of your collective knowledge, experience and project successes, I hope you can truly grasp the significant role you play in making people's lives better... every day.



Deidre Alves is IRWA's Vice President of Professional Development.



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An Attitude of Gratitude

The centerpiece of ethics

BY BRAD YARBROUGH

When you think of being grateful, you might wonder what it has to do with ethics. Yet the subject is especially relevant as we enter the holiday season and look back on a year marked by worldwide threats of terrorism, economic concerns and deep political divisions. And most importantly, we reflect on what we have (or have not) accomplished in our personal and professional lives.

Over the years, great ethical thinkers have provided insight on this topic. In 1738, the philosopher David Hume wrote, "Of all crimes that human creatures are capable of committing, the most horrid and unnatural is ingratitude..." Similarly, philosopher Immanuel Kant believed that ingratitude, along with envy and malice, was "the essence of vileness and wickedness."

It's easy to see how the concept of gratitude can become elusive. We are only a click away from disturbing stories and countless opinions about events around the globe. With unprecedented access to dreadful images of death and destruction, a

sense of futility can easily take hold. There's a tendency to become cynical, critical and even depressed.

The Evolution of Thanks

In the early years of our country, many state Governors set apart days dedicated to public thanksgiving. In 1863, President Abraham Lincoln decreed a national holiday to express gratefulness. This was in the midst of a terrible Civil War in a deeply divided nation during the darkest chapter of its short history. Yet, amidst the carnage and suffering, he called the people to give thanks.

Today, we should take note of a 1998 publication of *Ethics* wherein Patrick Fitzgerald wrote, "Gratitude is not a side issue in the sense that the consequences of gratitude can be significant. Gratitude offers a way to avoid many sources of suffering in ourselves and in others. It offers a way to avoid psychological patterns that can harm us physically and psychologically, destroy our most important relationships and lead to actions that harm others. In all of these ways, gratitude is at the center of ethics, not at its fringe."

There's an important lesson we can take away: We are better individuals, communities and organizations when, in spite of our differences and difficulties, we protect and nurture the trait of gratefulness.

A Contagious Attitude

Chick-fil-A has become synonymous with exceptional customer service. Just look at their website and you'll see why. One of their top executives is quoted saying, "Nearly every moment of every day we have the opportunity to give something to someone else—our time, our love, our resources. I have always found more joy in giving when I did not expect anything in return."

Over the years, I have travelled overseas with executives of the company to conduct business symposiums. These are individuals with tremendous responsibilities and—like all of us—have experienced business setbacks, personal loss and deep disappointments. Yet they are engagingly optimistic and possess genuinely positive dispositions. Their attitude is contagious.



Brad Yarbrough is the Owner and CEO of Pilgrim Land Services, a right of way services company in Oklahoma City. With over 35 years experience in oil and gas, he has clients nationwide and an extensive network of landmen and agents.

A columnist with The Week in Ethics and Business Ethics Magazine wrote, "A culture that sees and celebrates its employees would also have the ability to see and show appreciation for its customers." Chick-fil-A aims at creating a culture that is thankful for its products, employees and customers. This is an essential key to its success. It's demonstrated in the exemplary efforts of a store manager when a drive thru customer got home and realized that her order was short a sandwich. She called the store and was unexpectedly asked for her address. Within minutes, a courteous

and apologetic team member was at her front door with the sandwich and extra nuggets. Gratitude was more than good etiquette...it was good business ethics.

As we witness the downturns in other industries, showing gratitude for the opportunities we have as infrastructure real estate professionals is essential. I encourage you to contribute to a culture of gratefulness this holiday season. It begins with each of us simply focusing on all the people and blessings in our lives for which we are thankful. ②



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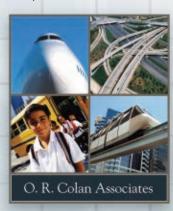
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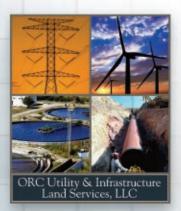
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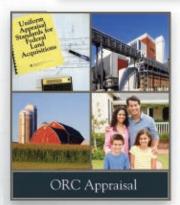
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The Role of Intuition

Blending knowledge, experience and creativity in complex appraisals

BY ORELL ANDERSON, MAI

Though I've been a forensic appraiser for over 25 years, venturing out on my own in 2014 has given me a greater appreciation for the appraisal business. Sitting in the president's seat, I get to participate in every level of the business—from performing appraisal analyses, writing reports and consulting with clients to managing my team, marketing the company and even buying ink for our office printer.

Forensic appraisal—and real estate appraisal in general—is a multifaceted business by nature. We are not just appraisers, but salespeople, marketers, consultants and managers. In other words, we wear many hats. Many of us straddle the fence between industry and

research, acting as both practitioners and scholars. We work in a business bound by strict ethics and standards in the larger context of an evolving court system and technological landscape. We abide by convention while engaging in creative problem solving. We apply a consistent framework and thinking to a wide variety of property types and cases. It's a constant balancing act between the old and the new, between the conventional and the unconventional.

Just as the three traditional appraisal methods give some sense and order to the vast array of property valuation problems we face, I use three basic approaches in my work as an appraiser.

Knowledge: How it *should* be done

Knowledge is indispensable in our business. Appraisers work within a heavily scrutinized industry replete with specialized terms, methods, standards and ethics. The appraiser must be familiar with a variety of property types and markets, with a multitude of conditions that could affect value and a complex legal environment.

Once a subject property has been inspected and researched, the appropriate methodologies must be applied. Given these accepted methodologies, the appraiser must be familiar with each



method and when to apply it. This is also a heavily regulated industry. That means no matter how intelligent or clever you are, you must know what you are doing and why you are doing it so that you stand firmly within USPAP and the larger body of appraisal knowledge. And if you are an expert witness, you must be able to defend whatever position you find the data directing you to take.

Experience: How it *has* been done

You can't major in real property valuation at an Ivy League university and go straight into appraising a complex property and opining on value in a jury trial. Textbooks and accolades will only take you so far, and knowing how a property should be appraised isn't enough. The appraiser must know how it has been done before. As forensic appraisers, we are working within the larger context of the legal system, and the accepted methods and definitions change over time as property valuation problems continue to pass through the courts.

The appraisal business as a whole is still largely based on an apprenticeship model. That's because experience matters, and the only way to get that kind of experience is by working with those who have experience doing it. More than 25 years after I started as an appraiser, I still cherish and use what was passed on to me by my mentors. Today, I mentor younger members of my team, teaching them what was taught to me, as well as a few things I learned along the way. Finally, it is through experience and years of work that we establish those relationships that are at the core of this business.

Creativity: How it *could* be done

Appraisers are problem solvers. And problem solving requires not only knowledge and experience, but also creativity and intuition. It's easy to get bogged down in the methodology and minutiae and fail to see the bigger picture. The current framework will only take you so far.

Yes, it's essential to know how it should be done and how it has been done. However, knowledge and experience will only help you solve problems that have already been solved before. For the forensic appraiser, complex litigation problems always have one or more inflection points where the thinking must pivot from the known to the unknown. It is in these moments that the body of appraisal knowledge expands, as appraisers solve more and more complex problems that do not fit into the current framework and conventional thinking.

Intuition Comes Into Play

Past International President Pat Petitto, SR/WA told me once that whatever I did, I needed to "own it." She was referring to my position as the Chair of the International Valuation Committee at the time. At first, I didn't understand. What could we possibly own?

Her words sat in the back of my mind for the next few months as I went about my day-to-day work. At the time, as is usually the case, several of my jobs included different types of right of way corridor projects, including pipelines, transportation corridors and high-voltage transmission lines.

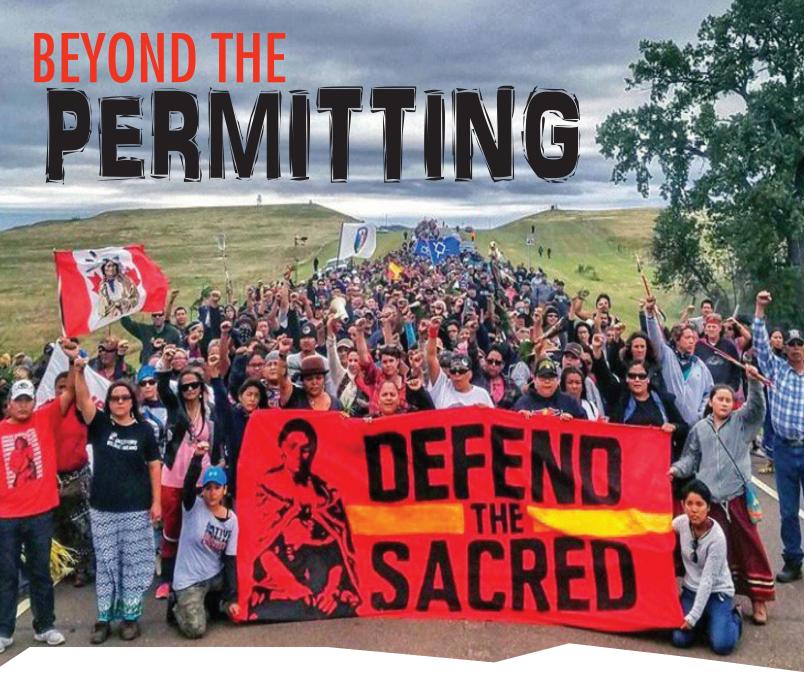
The meaning of her words struck me when I realized that nobody seemed to own "corridor valuation" as such. There were no textbooks on the subject. It occurred to me that to truly wrap our heads around this type of work, we needed to expand our understanding of corridor valuation. I suggested to the Valuation Community of Practice that we consider writing a book—and by doing so, we would own the idea by becoming the authoritative source on the topic.

It was roughly three and a half years ago when Pat Petitto left her presidential post. Since then, the corridor valuation idea has taken on a life of its own, as a joint publication with the IRWA and Appraisal Institute moves forward. With only knowledge and experience, Pat's words would have come and gone, and I would have kept looking at corridor valuation assignments with the same eyes. It is through intuition that we break out of our old ways of thinking.

As appraisers, we must always be grounded in our standards and ethics. However, there are moments where we must rely on intuition to best solve our client's problem. •



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BY JAMES KENT AND KEVIN PREISTER

The Standing Rock Sioux bring community engagement to the forefront

recent protest event involving the Standing Rock Sioux Reservation will impact how the right of way and infrastructure profession deals with community engagement. The \$3.8 billion Dakota Access Pipe Line (DAPL), which is proposed to stretch for 1,170 miles across four states and is already underway, was ordered to halt construction on September 9, 2016 pending further federal review. This action was unprecedented since the permitting agency, the U.S. Army Corps of Engineers, had already issued a permit for the project to proceed.

The Story Unfolds

A federal judge rejected an appeal by the Standing Rock Sioux to halt the project after tribal researchers found burial and cultural sites eventually destroyed by construction crews on private land near the Missouri River. A few hours later, however, the Departments of Justice, Army and Interior temporarily blocked construction of portions of the project, calling for reform of the government's approach to tribes around large-scale infrastructure projects.

A series of actions by the DAPL set the stage for one of the largest mobilizations ever of indigenous people in support of the Standing Rock Sioux's protest of the project. As the sixth largest reservation in land area in the United States, it's estimated to have a population that exceeds 6,000.

A Mounting Series of Events

There were at least four unfortunate missteps by regulators and the pipeline company that set this confrontation in motion. The first was the use of a flawed permitting process that was designed by the federal government to fast-track smaller projects. In this instance, the Army Corps of Engineers used what is known as the Nation Wide Permits process designed for fast tracking smaller projects. That meant that a full Environmental Impact Statement (EIS) was never done and therefore, the issues that would have surfaced such as the importance of ancestral lands, were never discussed or mitigated. Using this process proved to be a disservice to all involved and launched a movement that is destined to change corridor project approvals in significant ways.

The second misstep was to move the pipeline route from private land north of Bismarck, North Dakota to skirt the Standing Rock reservation. This move began the protest, much of whose justification rests on the perceived risk of a pipeline rupture polluting the tribe's drinking water. The proposed construction route is within a halfmile of the tribe's reservation border, sparking concerns for protection of cultural resources that remain with the land. Religious and cultural sites are situated along the route of the pipeline, including burial sites of ancestors.

The third misstep was not identifying tribal lands or the people of the tribe—including the Standing Rock Sioux Reservation—on the original project maps. All the counties that the pipeline goes through appear on the map except the reservation. To the

Sioux, the map reflects what they consider a major issue, specifically that their existence is invisible to the formal powers. Of course, that has since changed with this massive mobilization of Native American Tribes. They are now visible and on the move.

The Final Straw

All of these missteps might have been resolved through negotiations, keeping the issue local, had DAPL not made the fourth misstep. For reasons that remain unclear, DAPL elected to undertake earthmoving in precisely the location that the Standing Rock Sioux had identified in court documents as a particularly sensitive cultural area. And this was done on a weekend in the presence of many protestors and the international media.

Moreover, the company deployed security personnel and guard dogs to try to prevent the protesters from their efforts to stop the work. The vision of dogs being used to attack the Sioux demonstrators and supporters brought back memories of the Selma demonstrations of the

1960s. This single act nationalized the issue—and literally overnight brought in over 200 tribes in support from North America and beyond. In addition to local landowners and environmentalists joining the protest, it is estimated that 2,000 indigenous groups worldwide have spoken in solidarity with the Sioux people.

In concert with the Departments of Justice and Interior, the Army Corps of Engineers ordered a halt to the construction of certain portions of the pipeline, promising a timely review of the National Environmental Policy Act (NEPA) and its decisionmaking process to evaluate whether the tribal interests were properly accounted for. The agencies also called for a government-togovernment summit with tribal officials in the fall of 2016 to review the existing statutory framework and examine what the federal government could do to better ensure meaningful tribal input into infrastructurerelated reviews and decisions. If deficiencies are noted, the goal is to propose new legislation to Congress that will promote the protection of tribal lands, resources and treaty rights.



Chief David Archambault II of the Standing Rock Sioux tribe said, "We want peaceful demonstrations. I need everyone to understand that what we are doing, in the manner we are doing it, is working."



As construction began, the company deployed security personnel and guard dogs to confront the protestors, elevating the issue to a national level.

The Impact of Cultural Significance

It is significant that, while the proposed pipeline does not actually cross Indian reservation land, it comes very close. Throughout the U.S., treaty rights require tribes to be consulted about projects that cross their ancestral lands, even when these projects exist outside of the reservation boundaries. It is the cultural significance of the Missouri River and the tribe's attachment to it, as well as to specific sacred sites, burial grounds and other special places, that gave rise to the gamechanging intervention.

Two concepts—both with legal standing—have given tribes the kind of influence today that extends far beyond their reservation boundaries. These are known as Traditional Cultural Properties (TCPs) and Cultural Attachment. Project effects on TCPs eligible for the National Register of Historic Places must be considered under Section 106 of the National Historic Preservation Act of 1966. Section 106 requires federal agencies to take into account the effects of their actions on historic places, including TCPs.

The U.S. National Park Service defines TCPs as properties that are important because of their association with the cultural practices, traditions, beliefs,

lifestyle, arts, crafts, or social institutions of living communities. TCPs are rooted in a community's history and are important in maintaining its continuing cultural identity. By regulation, interpretation and case law, Section 106 requires a review of impacts on historic places, a Memorandum of Agreement as appropriate between traditional groups and the federal agencies, and mitigation of negative effects.

Tom King, a former director of the office of cultural-resource protection for the national Advisory Council on Historic Preservation, is now a consultant who has worked with tribes and others for over five decades. He points out that Section 106 allows a tribe to have more influence in federal decision-making than would otherwise be the case. Memorandums of Agreement require agencies to be accountable for mitigation measures. The Standing Rock Sioux used the National Historic Preservation Act in its lawsuit against DAPL.

Relationship to the Land

A related concept, Cultural Attachment, has also gained legal status over the last few decades via the National Environmental Policy Act (NEPA), the law that requires environmental impact statements. Cultural Attachment is defined as the cumulative effect over time of a collection of traditions, attitudes, practices and stories that ties a person to the land, to the physical place and to kinship patterns. Our firm, the JKA Group, originally fashioned the cultural attachment term in 1995, and it was first used by the U.S. Forest Service in undertaking an EIS that rejected a power line proposal by American Energy Power. That particular power line would have traversed private land through the heart of the Scotch Irish settlements in West Virginia and Virginia, which dated back to the 1780s. Research showed high cultural attachment in the very area that the power company had drawn their straight and convenient route.

Six years later, through a Supplementary EIS, the power line finally received approval for an alternate route that avoided high cultural attachment areas. Now in 2016, area residents with cultural roots are using the concept to evaluate the impacts of the proposed Mountain Valley Pipeline through an EIS process that must be approved by the U.S. Forest Service and Federal Energy Regulatory Commission. Companies working within the Appalachian cultural region, as formally defined by the Appalachian Regional Commission, should be aware that high levels of cultural attachment can be anticipated in various areas of this geographic region.

Since the American Energy Power project decision, which set a precedent within NEPA, cultural attachment has been used elsewhere in the country and around the globe. The U.S. Geological Survey cited the importance of cultural attachment to address beach erosion in Hawaii. The Office of Hawaii Affairs, considered the fourth arm of the government in Hawaii and responsible for the welfare of its native people, has used the cultural attachment concept to evaluate development proposals on

Oahu and the Big Island of Hawaii. France and Australia have also made use of the concept.

The New Norm

When you consider the loss of the Keystone XL Project, along with protests and cultural attachment issues, there are two current trends that have led us to a new norm. First, it appears that the timeline from project startup to the mobilization of formal protest movements is rapidly compressing. While Keystone XL took about four years to reach a highly disruptive stage, the mobilization associated with the Standing Rock Sioux protests happened almost immediately after the Army Corps of Engineers issued the fast-tracked approvals. The movement arose within months, not years. This same compressed timeline for project opposition has been noted with a host of other projects and is a subject of active discussion within our industry.

Second, Keystone XL and the DAPL represent a higher scale of protest, leading to a nationalization of infrastructure issues that spawns debate and action across a wide social and political spectrum. The Keystone XL generated organized groups that now oppose all pipelines and power corridors on a national basis. Some groups are training protesters to relocate and oppose projects throughout the country, leading to higher levels of emotional intensity and greater media coverage.

The reality is, when an issue nationalizes, the companies who are developing the project suffer a huge loss of opportunity. And because the discussions often shift to become hot political issues, the opportunity to resolve the situation locally—where the company can have the most influence—quickly and irreversibly vanishes. Moreover, because the project receives public

attention, the players begin to jockey for power positions that they get locked into, making the situation more difficult to resolve.

A Movement is Born

A widespread power shift is occurring in which citizens are becoming more aware of how a project impacts their immediate surroundings, and they want more control over those potential impacts, with or without government or corporate allies. Yet, the corporate and government side continue to function in a state of denial as to how and why people mobilize and take action about what they believe to be unfair land practices. We introduced the concept of "geographic democracy" in the September/October issue of Right of Way Magazine, and plan to continue to keep this important issue at the forefront.

It's important to note that many of the Tribes have unresolved issues over past relationships with the government and various companies. So this movement had actually been building for years. When the DAPL decided to use confrontational tactics, this action became the impetus for 300

tribes to come together in one place to vent their historic frustrations. When this happened, a movement was born.

A Pan Indian Alliance movement has spread, promoting unity among different American Indian groups regardless of tribal or local affiliations. Beginning at an informal community level and emerging into a non-violent movement, tribes are now mobilizing to assist each other with issues created from corridor and natural resource development projects.

An Alternative Approach

One can only imagine what might have transpired if a different approach had been used. If a traditional EIS had been properly undertaken, tribal consultations would have occurred under the National Historic Preservation Act and the National Environmental Policy Act, which recognizes the sovereign status of the Standing Rock Sioux Nation. There would have likely been discussions about sacred sites, traditional cultural properties, ancestral lands and cultural attachment outside of the reservation boundaries. Those discussions may have also given



Standing Rock Sioux leaders say the pipeline will threaten the Missouri River, the tribe's main source of drinking and irrigation water, and forever destroy burial grounds and sacred sites.



A Pan Indian Alliance movement has spread, promoting unity among different American Indian groups regardless of tribal or local affiliations. A new village on ancestral lands has grown to over 4,000.

the Tribes an opportunity to work through any previous issues, including their unresolved issues from past projects. And while those discussions might not have led to an agreement on a course of action, at least there would have been the chance for meetings of the mind to develop, and the legal status of the Corps' permits would be less subject to debate.

Taking time for an EIS would have brought an awareness of what happened in other situations similar to the one facing DAPL. Just this year, federal officials cancelled an oil and gas lease in Northwest Montana because the Blackfeet tribes of the U.S. and Canada said the project would disturb an area they consider sacred, even though it was outside of the reservation boundaries. In another instance, the Corps rejected a \$700 million coal export terminal proposed for Washington State because regulators decided the project would violate the Lummi Tribe's treaty protecting fishing rights. Had DAPL consulted with the Tribes in advance, the company would have either worked out a solution or it would have known early on that the pipeline corridor had to be moved.

While the full extent and impact of the Standing Rock Sioux situation is not yet known, from all indications it has changed the relationship of companies, governments and the tribes in how projects will be carried out in the future. The government's intervention essentially serves as a formal notification that a nationwide reform on considering Tribal participation in infrastructure projects will take place moving forward. Understanding cultural attachment and its meaning will be a big part of this reform.

A New Indicator of Success

In its own way, the Standing Rock Sioux situation may become as significant as the actions of Martin Luther King when he delivered his "I Have a Dream" speech to over 250,000 supporters from the Lincoln Memorial in Washington DC during the 1963 civil rights movement.

The natural instinct of companies is to use what has worked before, such as organizing within the formal political system to bring clout to their positions. But that approach no longer works. Using power to confront, such as security forces using guard dogs and the governor of North Dakota ordering out the National Guard, is a lose-lose

proposition. People today will no longer tolerate such radical aggressive acts, especially with demonstrations that are consciously planned to be peaceful.

In the past, a company's success could be measured by its ability to get a project approved and completed. Today, there is a paradigm shift underway toward geographic democracy, where citizens are taking over what happens in their physical space. As a result, the new indicator of a company's success will be measured by the goodwill it builds and maintains within the communities it impacts. •



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THE UPSIDE OF SHARING SPACE

How office co-location can enhance productivity

BY JENNIFER BERRY, R/W-NAC

e've all seen sitcoms where characters divide their room or workspace down the middle to section off their "territory." Whether it's Marsha and Jan on *The Brady Bunch*, the Skipper and Gilligan on *Gilligan's Island*, or Stephanie and DJ on *Full House*, the division was always designed to defuse some conflict resulting from a real or perceived violation of personal space. Although lines were drawn and chaos often ensued, the characters typically ended up learning how to share the space, disagree effectively, and collaborate to find the best outcome.

At a basic level, these comic episodes illustrate the pros and cons of co-location—which is really just about sharing space. However, it is much the same when considering co-locating in a business relationship.

66

...the team was so well integrated that, from the outside, it was difficult to differentiate who was the client and who was the service provider."

TYPES OF CO-LOCATION

Co-location can be an effective way to bring a project team together if it's done strategically. There are two primary types of co-location:

1. OFF-SITE

This is an office that will be occupied by the client and/or the contractor only for the duration of the project. These are typically opened in a central location for a long, linear project such as a new electrical transmission line. A central location provides a convenient home base and enables right of way agents, public involvement specialists and other members of the team to easily meet with landowners when necessary. Although it's rare for the client to work out of this office, in some cases a project manager may be stationed there to oversee daily operations. Establishing a separate project office can provide a clear identity and sense of purpose for the project team.

2. ON-SITE

This is probably the most common scenario and is either utilized for teaming on a specific project, or when the client needs to augment their staff on one or more projects. This scenario offers the client the most control over staff and resources, which could be a pro or a con depending on the desired outcome.

REAPING THE BENEFITS

So why would it be beneficial to colocate teams? Let's face it. Technology has changed the way we interact with one another, particularly at work. It is increasingly rare for people to actually talk face-to-face. In many cases, we opt to text someone even when that person is sitting right down the hall. Even in face-to-face meetings, people are either looking at their laptop or phone screens. With that in mind, physical co-location can matter a great deal. Take this project for example:

Burns & McDonnell served as the Program Manager for Eversource Energy's Middletown-Norwalk transmission upgrade project in Connecticut. Our scope was to provide a range of engineering, construction management and related project management services on the bulk of a \$1.4 billion program. At the time, it was the largest transmission capital project in the country.

We had about 50 team members during peak project activity who shared a dedicated project office with seven Eversource leads in the areas of engineering, construction, real estate, environmental and other roles. The client's functional leads served as the primary contacts for each work group and were empowered to be wholly

responsible for their own group. Our team members were encouraged to interact directly with those leads, which helped reduce time spent getting answers and precipitated a more hands-on, collaborative approach to project execution.

The project manager said the team was so well integrated that, from the outside, it was difficult to differentiate who was the client and who was the service provider. Project staff saw the top benefits of co-location as:

- Increased efficiency due to direct communication with functional leads
- Access to all team members in one room when needed.
- · Better/faster problem-solving.
- · Reduced coordination time.
- Fewer requests for information due to more immediate information sharing.

In this Eversource example, functional groups were located together on the same floor. But there are several other co-location scenarios where teams are working in the same building:

Co-located on separate floors.

In this scenario, the client and contractor work in the same building but on different floors with different entrances. The teams are in a sense "colocated." There may be some informal communication, however, the teams are not regularly collaborating on project issues, presenting difficulties in getting a team to really gel.

Co-located but separated by company.

In this situation, both client and contractor teams are on the same floor, but are segregated into their company groups. They might have a common break room and entrance, which would encourage more casual conversations and reduce reliance on email, but

again, it doesn't really facilitate the best interaction or sense of unity.

Co-located by function.

This was the scenario on the Middletown-Norwalk project. With engineering, construction, real estate and other like-functions each sitting together, cohesive client/contractor teams were formed. But the benefits go far beyond having similar teams working together and reducing the need for email and texting. When folks work together and collaborate to resolve issues, they build trust and become a stronger team. They are no longer identified as "client" or "contractor." They are building unique relationships based on personal interactions in a way that is not possible when working on opposite sides of town or separate areas of the same building. The client sees the contractor working hard on their project, and the relationship evolves beyond just fulfilling a contract. Needless to say, building positive relationships with your client establishes trust that can give the contractor a greater likelihood of earning more future work. Ultimately, we all want to do business with people we know and trust.

CONSIDERATIONS FOR CO-LOCATION

Once you've decided to co-locate teams for an upcoming project, it's important to be aware of the crucial details. More importantly, begin planning discussions well before the contract is finalized. There are many things to think about to ensure a smooth transition for the project teams.

The first consideration is the corporate culture. If the contractor is working in the client's office, the client's rules and culture usually prevail. If there are fundamental culture differences, it's important that management from both groups have a discussion about what rules are the same, which are different, and what rules prevail.

Be wary of creating an environment where the client and contractor staff feel cut off from their parent organizations. Corporate loyalty and a sense of belonging is one of the primary contributors to work satisfaction. Feeling isolated can result in negative perceptions and poor performance. Working only part time at the client or project office can help avoid this potentially negative situation. Be sure to establish the office hours. Is there flex time? Do you both close the office on the same holidays? What is the dress code? Will there be regular team meetings?

Technology is another key consideration. Let's say you're the client and you're bringing in the contractor team to work with you. Do they need security badges to get in the door? Do they need access to your server for project-related information? Or is it necessary to set up "project only" equipment for this specific project team to use?

Protecting proprietary information is vital. If you're a contractor working in the client's office, it goes without saying that you should not work on unrelated projects while physically present in their space. If you are not working full-time for your client, it may be beneficial to arrange for part-time use of the office. Guard against intermingling projects. The last thing you want is for confidential information about one project to get overheard by staff working on another.

There are certainly times when private conversations are necessary even on the project everyone is working on. For example, when the contractor needs to brainstorm about solutions to a project issue, you don't necessarily want the client privy to all those iterations. Conversations about various solutions can get messy. You'll want to present the client with your best solutions, not the details of how you got there.

ENSURING A SUCCESSFUL OUTCOME

If you're still considering office colocation, here are some guidelines to ensure the experience is positive and successful:

- Determine the length of time that the client and contractor need to share space.
- Clearly define who is paying for the office and all equipment needed.
- Take steps to gel the team by holding regular team meetings.
- Measure progress and action items daily.
- Hold weekly lessons-learned sessions for all members of the team.
- Use technology that fits the needs of the entire team.
- Offer mentoring and training opportunities.

The best approach is to start thinking about all the considerations of co-location early. Having conversations with decision-makers about whether co-location (and what kind of co-location) is appropriate for your situation can go a long way in ensuring the success of your project. \bullet



Jennifer Berry, R/W-NAC is a Senior Right of Way Specialist for Burns & McDonnell at their Kansas City, MO headquarters. She has worked on complex projects for clients throughout the U.S. as both land acquisition and public involvement lead. She is currently serving as IRWA Chapter 5 President.

AVERTING

PROFESSIONAL LIABILITY CLAIMS

Essential guidelines for appraisers serving as expert witnesses

BY PETER T. CHRISTENSEN



Imagine this: You are hired by the state as its appraisal expert to value Benson's Wild Animal Farm. The state needs the property for a proposed highway project. You appraise the land to be taken for approximately \$1 million. The property owner declines a pre-litigation offer based on that appraisal, and the state commences an eminent domain proceeding. At trial, you testify to the same value, while the property owner's appraiser testifies to a \$7 million value. The jury just "splits the baby," and the award to the property owner is approximately \$4 million. But the property owner is still not satisfied, and it's not over yet. The property owner now sues you, contending that your valuation was erroneously low and alleging various claims of negligence. The owner contends that the condemnation award would have been higher but for your low value and demands damages from you for the difference.



This was a real scenario for the defendant appraisers in a case ultimately heard by the New Hampshire Supreme Court (Provencher, 142 N.H. 848 (1998)). How did it turn out for the appraisal experts hired by the state? The trial court dismissed the property owner's claims against them, and New Hampshire's highest court upheld that dismissal. The basis for the appraiser's successful defense was something called "witness immunity," also referred to as the "litigation privilege" in other states.

Immunization from Lawsuits

Witness immunity generally protects witnesses from claims by unhappy parties in litigation. It immunizes them from civil lawsuits about their testimony, regardless of whether their testimony is right or wrong. As the New Hampshire Supreme Court wrote in its opinion: "The purpose of this privilege is to encourage witnesses to testify and to ensure that their testimony is not altered or distorted by the fear of potential liability." In most states, the doctrine protects a witness from claims not only based on actual testimony on the witness stand or in deposition but also based on communications or statements that are reasonably related to the litigation or potential litigation. The appropriate remedy for a litigant who attributes a negative outcome to what they consider improper testimony by a witness is to appeal, not sue the witness.

Given the same facts, courts in almost all states would reach the same result as New Hampshire's Supreme Court. Many courts would find an additional reason to dismiss such claims by an opposing party—namely that the expert hired by one side in a case does not owe a professional duty to the opposing party. Without the existence of such a duty, a professional negligence claim cannot be maintained.

Does this mean that appraisers who serve as experts in condemnation cases are free from the worry of professional liability claims? Unfortunately, no. According to our professional liability claims records, on a per-assignment basis, expert witness appraisal work is actually far more risky than lending work. Legally tenuous claims by opposing parties still get filed anyway. Beyond that, in most states, while an expert witness is fairly well protected from claims by an opposing party, an expert's potential liability to their own client is a different matter.

An Unhappy Client

An appraisal expert's liability to their client was a central issue in a California Court of Appeal's decision in Lambert, 158 Cal.App.4th 1120 (2008). In this case, an appraiser was hired as an expert by homeowners involved in arbitration with their fire insurance company. Their home had been destroyed by fire, and they were arbitrating the amount of the loss. The homeowners were not satisfied with the outcome of that arbitration and sued their appraiser expert for negligence for allegedly failing to render persuasive assistance. They also sued another appraiser who was serving as the arbitrator.

The California appellate court decided that the "litigation privilege does not apply to prevent a party from suing his own expert witness, even if that suit is based upon the expert's testimony." Thus, the appellate court held that the homeowner's case could go forward against their expert appraiser—but held it could not go forward against the arbitrator appraiser based on another similar doctrine referred to as arbitral immunity. Courts in many other states have reached similar conclusions. As an insurance provider to appraisers, it is not unusual to see unhappy clients pursue claims beyond motions to dismiss because they feel that their expert witness appraiser caused them harm in a condemnation case.

Avoiding the Courtroom

As seasoned appraisers are aware, the best way to avoid a claim is to produce carefully supported, error-checked and proofread appraisals. This is doubly true in the context of expert witness work where unsupported positions or errors are usually exposed by the adversarial process. However, even when the appraisal is well supported and justified, we have witnessed cases where an unhappy client proceeded to sue the appraiser.

How can you avoid becoming a defendant for expert witness work? In other words, how can you stay out of the courtroom unless you're being paid to be there? Based on actual claims handled in our program, we have established some important tips that can help appraisers avoid this situation.

Trust your instincts about clients and assignments. When considering a client in a condemnation case, trust your instincts about their propensity to be difficult. If the client is the property owner and they are counting on an unrealistic valuation or litigation result, then that's probably an assignment to back away from. You know already that the client probably won't be happy with the outcome. If the prospective client has used other appraisers or a series of lawyers and is bad-mouthing them, those are strong clues that the client may be impossible to satisfy. Besides making the work harder, these kinds of clients pose a higher risk of suing you. When reporting claims about litigation assignments, many appraisers start the call by telling us something like "I knew this guy was going to be a problem. I wish I hadn't taken the assignment." Don't be of one those appraisers who suffer with that regret.



It is not unusual for an unhappy client to take their appraiser to court when they believe they were harmed in a condemnation case.

Be upfront with disclosure when being hired. A common scenario for a client suing his own expert is when the appraiser fails to disclose something relevant to the client's decision to hire them. Perhaps, the appraiser did not disclose a pending disciplinary investigation and its existence came out in a very negative light during the appraiser's testimony, causing the client to settle the case for much less than anticipated. It would have been better for the appraiser to bring up the issue and explain it beforehand.

Let's say the litigation concerns a mobile home park but the appraiser fails to tell the client that they have never appraised such a property and is discredited on the stand because of that. Full disclosure of all information relevant to an expert engagement is a key to avoiding liability. You don't want the client or the client's attorney who hires you to be surprised by something you didn't mention.

Develop a good engagement agreement for expert work and get it signed. A well-tailored engagement agreement is an effective tool for preventing and minimizing legal claims by clients. For liability prevention purposes, here are the key points to nail down in a good agreement for expert witness services in condemnation:

- ➤ Clarify that your opinions and testimony are based on your independent, professional judgment and are in no way predetermined.
- State in the agreement that the client and their legal counsel (as opposed to the appraiser) are responsible for determining and providing the appropriate valuation date(s). The reason for this is that the date of value is usually a purely legal question.

It may vary by state or depend on the facts of a case, and the appraiser should not be responsible for making the legal determination. We have actually seen appraisers get sued because the dates of value used in their appraisals were incorrect.

- Spell out the timing and terms of payment clearly. Ideally, have the attorney retaining you, as well as the party they represent, obligated to pay you (but attorneys do resist this).
- State that you have the right to withdraw from the assignment as an expert immediately for nonpayment and also in the event of an ethical or professional standards issue or disagreement.
- Consider including limitations of your potential liability—a subject covered in the March/April 2016 issue of Right of Way Magazine.

Be careful with identifying your client and intended users in your reports.

When working for the government on a condemnation matter, there is a risk that the property owner or court hearing a negligence claim filed against you will construe your appraisal work as being on the owner's behalf and for their use and reliance. This opens the door for the court to find that you owed the property owner a legal duty for purposes of a professional negligence claim. As compared to other types of work, such as appraisal work performed for lenders, the line of responsibility is somewhat fuzzier in eminent domain because acquisition offers are based on—and often accompanied by—the appraisals. In reports for government entities, appraisers can lower this risk by specifying exactly who the client is as well as the intended user. You are safer from a professional liability claim by an unhappy property owner if you can identify that the government agency

The appropriate remedy...to what they consider improper testimony by a witness is to appeal, not sue the witness."

was the only intended user of your report. When the property owner is identified as an intended user, the door is more easily opened for their potential claim.

Be prudent in collecting your fees. You deserve to be paid for your time and service as an expert regardless of the outcome of a case. After all, your compensation can't ethically or legally be based on the outcome. The trouble is that when a case doesn't go the way a client hoped, they might be less inclined to pay. Because of this tendency, it is important to invoice litigation clients throughout a case, rather than allowing a large receivable to accumulate for collection at the end. This is important not only for financial management purposes, but also because when appraisers are forced into having to threaten to file a collection action or actually suing a client to collect a fee, such a client is more likely to sue or file a counterclaim contending the reason for non-payment is alleged negligence by the appraiser. We have seen this happen frequently. In one case, the appraisers sued to collect a sizable fee at the end of a long, complex case that did not end the way the client wanted, and the appraisers were sued back for several million dollars in alleged damages.

The Ultimate Decision

When circumstances have put you in a position where you begin thinking about suing a client, there are some important factors to weigh before heading down to the courthouse. We recommend that you realistically assess the following:

- **Q:** Will the time, effort and cost of suing be worth the recovery?
- **Q:** Were there any genuine problems with your work in the case that the client can hold against you?
- **Q:** Did a judge reject your appraisal work as not credible and have negative comments about its quality?
- **Q:** Are the unpaid fees worth the risk of having the client sue you back for professional negligence?

The unfortunate reality is that in today's world, tenuous claims are filed against appraisers who serve as expert witnesses. And while they may be protected from claims by an opposing party, the appraiser's potential liability for negligence to their own client may be a different matter. Taking a few preventative steps can go a long way in avoiding such expert witness-related claims. •



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QUANTIFYING SOCIAL LICENSE

In search of society's approval for energy development projects

BY ROWLAND HARRISON

The concept of a social license to operate has been embraced on the energy regulatory scene with swiftness and pervasive impact. Today, obtaining such a license for major energy development projects is widely considered to be just as necessary—and maybe even more so—than any legal authorizations required.

In the case of Enbridge's Northern Gateway Project in Canada, the certificates to construct and operate the project were issued following a comprehensive regulatory review process, yet the project remains stalled, in part awaiting a social license. The concept has even been extended to challenge the regulatory process itself and to require that regulators earn a social license. It is often assumed that a failure to obtain such a license is a barrier to proceeding.



What is this idea that employs the language of the law while also rejecting the legitimacy of traditional legal processes and authority? The meaning of and requirements for obtaining such a license are, to say the least, obscure. The widespread adoption of social license has somehow broadened to imply a right to veto an approved project, a result that potentially undermines the rule of law.

WIDE ACCEPTANCE ACROSS THE BOARD

With resource development projects, social license has been widely adopted by project opponents, governments, politicians and even project proponents. It is not surprising that project opponents would perpetuate social license as something that must be obtained in addition to formal approvals issued through conventional regulatory

processes—thereby establishing another means of potentially preventing projects from proceeding. However, it is somewhat surprising that certain governments have also adopted it as necessary to the overall development process.

One example appears on the Alberta Energy website, where it defines the role of its recently established regulator as follows: "The single regulator is one part of the province's commitment to improve integration of its resource system. This integration sets and achieves the environmental, economic and social outcomes Albertans expect from resource development, while maintaining the social license to develop resources." The statement acknowledges and implicitly endorses the need to maintain social license as a fundamental value that is supported by, but exists independently of, the formal regulatory process.

It is interesting to note that even those that support resource development are endorsing social license as a requirement that could impede it. In addition to government agencies, there are many companies acknowledging that the absence of a social license presents a barrier to development, notwithstanding that formal regulatory approvals are obtained. According to the President and CEO of Enbridge, "It's the need to achieve what some call social license that's proving to be our greatest test." The President and CEO of TransCanada seems to concur, stating that, "If we don't regain public confidence, we won't be able to retain our social license to continue to operate."

In a random sampling of energy project proponent websites, the use of social license in their corporate policies and publications is widespread. The concept is endorsed in Suncor's 2013 Report on Sustainability, in TransCanada's website and in Encana's 2013 Sustainability Report. In addition, collective acceptance of the concept is found in the two leading energy

industry associations. The Canadian Association of Petroleum Producers reported in its 2013 President's message that it focuses on delivering results for its members under two broad themes: "Competitiveness and Social License." The Canadian Energy Pipeline Association website contains an extensive discussion of whether pipeline companies need social license and states, "Companies have realized that in order to build new pipeline infrastructure, they must obtain a social license from the communities where they operate."

There is an implicit belief that social license is necessary, and that in its absence, projects cannot legitimately proceed, even when formal regulatory approvals have been issued. A manager for Anadarko Petroleum commented on the challenge of getting community acceptance of proposed drilling programs in northern Colorado, saying, "Those minerals go undeveloped, not for lack of the legal license, but for lack of earning and maintaining that social license."

The issue is not whether a certain level of public and community support is needed before major infrastructure projects should proceed. Rather, the concern is determining the basis for measuring an acceptable level of support. Earning a social license remains an undefined process that exists independently of established regulatory review processes and without the sanction of any duly enacted law.

ACTING ON BEHALF OF SOCIETY

What exactly is a social license? There is no accepted definition. Rather, there are vague descriptions of what it is about, such as trust in the company to do the right thing and to keep the public safe. It is generally considered to exist when the perceptions, opinions and beliefs held by a local community regarding a development

allow for the ongoing public approval of the related activity.

It must be emphasized that there is no right or wrong answer as to whether to develop a natural resource. In fact, the decision of whether or not to proceed has always been made by society at large based on the public interest, which implies an overall balancing of various competing interests.

So how can we move forward? The first task is to identify who is to make the social license determination on behalf of society, and the second is to establish a process for doing so. There are various models, but typically they include a structured regulatory review process, such as the one found in the National Energy Board Act. With respect to proposed pipelines, the NEB's role under that Act is to recommend to the federal government whether a certificate of public convenience and necessity should be issued in a particular case. In forming its recommendation, the Board is required to consider "any public interest that may be affected by the issuance of the certificate or the dismissal of the application."

The Act requires applicants to file information on the public consultations that the applicant has undertaken. The application must demonstrate that those potentially affected have been adequately consulted and that any concerns raised are considered and addressed as appropriate. The Board then considers this information when deciding whether a proposed project would be in the public interest. In doing so, the Board must consider and balance *all* relevant interests.

CASE IN POINT

In 2004, a decision was made on an application for an international power line that was proposed to pass through the City of Abbotsford in British Columbia. Originally filed in 1999, the application attracted the largest public response of any NEB application ever filed. More than 400 parties registered as intervenors and more than 22,000 letters of comment were received. A local Member of Parliament, who was registered as an intervenor in the proceeding, filed a motion requesting that the Board dismiss the application on the ground that "it is

the unanimous opinion of all Canadians so involved in the process, that [the application] not be approved..."

Not surprisingly, the motion was dismissed. The Board emphasized that it was committed to ensuring that

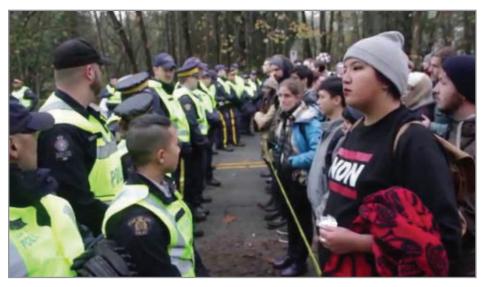
dismissed. The Board emphasized that it was committed to ensuring that stakeholders are engaged effectively in its public processes and that one aspect of that commitment was "to have effective public participation in oral hearings before the Board." However, the Board also stated that it must focus on the overall national public interest. It concluded that decisions by regulatory tribunals such as the NEB are not made by merely conducting a poll or on the basis of a demonstration of public opposition or support. Rather, such decisions are made within a legal framework enacted by the legislature and applied by the courts. This is, of course, the essence of the rule of law.

Having weighed all of the relevant factors, the Board ultimately concluded that the project was not in the public interest and dismissed the application, a decision that was upheld by the Federal Court of Appeal.

SOCIETY'S EXPANDING EXPECTATIONS

It is unlikely that any major resource development project will ever be universally accepted and supported. Unlike a mine which is localized, pipelines extend over hundreds or even thousands of miles and thus impact numerous and diverse local and community interests. Competing interests must be balanced.

The point is that society has chosen—through its duly elected representatives—to have decisions about resource development made on its behalf. In making such decisions, is not the overall regulatory process granting social license? As one commentator asked, "Isn't social license something granted by elected officials in a democracy?"



Despite an injunction granted by the B.C. Supreme Court, protesters banded together at Burnaby Mountain in Vancouver for a long drawn out battle.

The concept rejects the legitimacy of the formal regulatory review process by adding a requirement that must be obtained independently through an unidentified process that exists outside the established legal system. However, given that the phrase is widely applied by both project opponents and proponents alike, it would be unrealistic to suggest that it be rejected outright.

Social license encompasses the increasing expectations by society at large—enabled by the internet and social media—to participate directly in decision-making processes. It serves as a reminder that the integrity of project review processes will depend in large measure on the extent to which those processes include a consideration of all affected interests, including local and community interests.

As noted earlier, there is no clear understanding of exactly what social license is. Who determines whether it has been earned? What are the criteria? Recognizing that it is nearly impossible to obtain unanimous support for any major project, what level of support should suffice? A structured regulatory framework would explicitly address who is to decide on behalf of society and specify the criteria and process to be applied.

THE ROLE OF THE COURTS

When used as justification for rejecting formal regulatory approvals, social license to operate is fundamentally antithetical to the rule of law. And even though it is not governed by formal law, it is often invoked by proponents as if it were.

Empirical evidence shows a growing willingness by project opponents to reject regulatory processes and their outcomes and even refuse to comply with court orders. In Canada, we witnessed an effort to physically remove protesters against Trans Mountain's TMX project from Burnaby Mountain.

The protesters were defying an injunction granted by the B.C. Supreme Court, which would enable the company to undertake survey work to support its application for the TMX project, as directed by the NEB. In another incident, a group identified as "Burnaby Mountain Caretakers" locked themselves to the Supreme Court entrance in Vancouver to draw attention to the role of the courts in ongoing colonial occupation of indigenous territory on Burnaby Mountain and across the country.

between Toronto and Montreal, bringing freight and passenger traffic to a halt. Justice D. M. Brown minced no words in addressing the matter by saying, "We seem to be drifting into dangerous waters in the life of the public affairs of this province when courts cannot predict, with any practical degree of certainty, whether police agencies will assist in enforcing court injunctions against demonstrators who will not voluntarily cease unlawful activities, such as those carried on by the protesters in this case."

...the concern is determining the basis for measuring an acceptable level of support."

It is interesting to note that the B.C. Court, in granting the injunction in favor of Trans Mountain, was sensitive to the potential effects on the right to freedom of expression. The courts must be careful not to act in ways that dissuade concerned and engaged citizens from expressing their opposition to activities that they view as destructive to the social or political good. However, the Court concluded, that "as much as the right of public dissent must be carefully protected, what is at issue in the present case goes beyond that and engages a strong prima facie case of liability for tortious behavior."

The Superior Court of Ontario addressed the threat to the rule of law by issuing an injunction ordering the removal of a blockade of the Canadian National Railways line In 2012, Justice Brown had issued an injunction requiring the First Nation protesters blocking a CN Spur Line in Sarnia to remove their obstructions. To his astonishment, the local police failed to assist in enforcing that order for almost two weeks, and then only under pressure from another judge. Justice Brown responded saying, "As a judge, I make an order expecting it will be obeyed or enforced. If it will not be enforced, why should I make the order? An order which will not be enforced is simply a piece of paper with meaningless words typed on it, and making a meaningless order only undermines the authority and concomitant legitimacy of the courts." The threat to the rule of law is troublingly obvious.

SHIFT IN INDUSTRY THINKING

Looking forward, what can be said about the social license to operate? Since the concept has become widely accepted as something that can function independently of the legal system to thwart formal regulatory approvals, I have two observations.

The first is with respect to the use of the word "license," which implies authority to do something that would otherwise be unlawful or impermissible. Using the term "social license" feeds the view that, in the absence of such a license, a project is not authorized to proceed. More appropriate terms might be "acceptance" or "support." Both encompass the legitimate expectation that all affected interests be considered, while not implying any substantive consequence in the absence of such acceptance or support. I also suggest that the determination of the public interest be done using a structured regulatory process that considers the degree and nature of acceptance or support for a project. Most regulatory review processes do so.

Another observation is that its acceptance by industry and governments has tended to validate the view that the absence of such a license can serve as a barrier to proceeding with a development that has otherwise been lawfully approved. While acknowledging the legitimate expectations of a wide range of interests to be considered in the decision-making process, both should push back against the concept of social license as an independent threshold for proceeding with resource developments. Opponents are unlikely to abandon the concept, but industry and governments could hope to change the dynamics of the development debate by shifting the focus away from "license" onto the concepts of "acceptance" and "support," neither of which carries the same connotation of permission or license.

Perhaps a shift in industry thinking is beginning. As noted, TransCanada's report on Corporate Social Responsibility speaks of "earning our social license to...operate..." Comments made by the company's CEO suggest some reservation. "What is the bar by which we get approval? And they keep using terms like social license, but we can't enter into a process by which we don't have a defined way of determining what that social license looks like," he said

Governments in particular should recognize the ominous implications of the popular concept of social license to operate and show leadership in supporting the legitimacy and enforceability of the outcomes of structured regulatory processes. Governments should resist using social license as a justification for rejecting lawful authorizations. There are some signs that this might be beginning to happen. The Minister of Finance, Joe Oliver, was quoted as saying that social license "is too often used by a small minority of activists to block projects that have been approved by regulatory agencies, endorsed by elected governments and supported by a majority of Canadians." However, B. C. Premier Christy Clark followed by saying "project proponents do need social license."

GRANTING THE LICENSE TO OPERATE

No doubt it will be argued that the regulatory process for major development projects has failed to adequately consider society's concerns, and it is this failure that has become a driver behind the widespread use of social license. The argument has merit. Regulatory processes have not kept pace with public expectations in a world where the decisions to be made are seen by many as fundamental to the future of society. I would argue that the answer must be found in addressing the source of the problem by broadening the regulatory process to address society's legitimate concerns. That, no doubt, is a tall order.

In considering the concept of social license to operate, I have no objection to recognizing and considering the role of community and public support for—or opposition to—a project. Rather, my

objection is using it as justification for holding projects hostage, by outright rejecting the outcomes of formal regulatory processes and thereby undermining the rule of law.

I believe this ominous result has been fostered by the "license" terminology and the failure by government and industry to insist that the regulatory arena be used to determine the public interest and deliver outcomes that are understood as granting the social license to operate. •

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in pursuit of Lilling

The age of "do it yourself" career advancement

BY GENINE WILSON

or many, the old paradigm of long-term employment with one or just a few companies has evolved into a new norm of career paths made up of many jobs and often, freelance consulting work. Today's workers are re-evaluating their skill sets and technical abilities and seeking out ways to upgrade their expertise. For many, this process of up-skilling is now a near-constant pursuit and often on a do-it-yourself (DIY) basis.



This movement is practiced by all generations—those just starting out in their careers to workers old enough to be their grandparents. It also presents new challenges and opportunities for employers who want to attract and retain the best available talent. Companies that want a competitive advantage must create an innovative, collaborative work environment and provide workers with opportunities to showcase their skills while strengthening their employer brand.

Career Building in an Age of Uncertainty

In the same way the Great Depression led people to change their behaviors in ways that lasted a lifetime, the Great Recession and its ensuing "soft" recovery has left many workers with the feeling that they live in an age of uncertainty. According to our research, 51 percent of U.S. workers say they are more concerned about their knowledge and skills becoming obsolete or outdated than they are about a possible layoff.

Interestingly, these concerns about skill obsolescence are greatest at opposite ends of the generational spectrum. In fact, 67 percent of the silent generation in the U.S. is concerned about keeping skills current. This likely reflects the prevalence of free agents among this group, since they have to continually

sell their skills to new clients. This may also reflect concerns regarding age discrimination as well as the need to fight stereotypes that they are not as tech-savvy as younger generations.

U.S. millennials come in second with 54 percent concerned with learning new skills. This reflects not just the uncertain economic times in which they grew up, but also their fascination with technology and complex business models, and their relatively high degree of comfort with change. They are comfortable piecing together income from various sources and want to be able to thrive in any company, while seeking alternatives if necessary. Nearly half of the millennials polled agreed that organizations need to value entrepreneurial mindsets and experience. Progressive organizations will want to focus their attention on this group because they are setting current workplace trends that will likely last for years to come.

Looking Back, Looking Forward

In the old career development paradigm, productive employment was built on a number of things that almost seem quaint to recall. A relatively stable economy supported a paternalistic employer approach and fostered a sense of security and loyalty among employees. This meant that while always mindful of economic cycles, employers

would invest in expanding their permanent workforce whenever market conditions made this feasible.

Employees would typically work together in teams at one physical location, and work environments and schedules were both highly structured. The silent generation was able to place a high value on security and continuity in their careers while enjoying lengthy tenures with one employer, and often one skill set.

As a result, employees were typically loyal to one or just a few employers. Meanwhile employers were able to identify high-potential employees, guide career-development plans and directly provide and/or sponsor training in skills required to keep their company successful and innovative.

The new career development paradigm presents a different picture, one built around potential employability. Today's dynamic global economy and its accelerated technological change mean employer's time horizons are shortened, and this can increase employee unease. Volatile market conditions in recent years have made many employers wary of adding to their permanent payrolls and more receptive to the concept of a scalable, variable workforce. Plus, technology now enables work teams to be geographically dispersed, and skilled talent increasingly considers flexibility in work arrangements as a key factor in their employment decisions.

Careers are now developed across multiple employers and, talent is willing to shift employers and/or their status because they want to take the lead in managing their own career and developing skills that enable them to thrive in any company.

Generational Breakdown:

Silent Generation:Over 70Baby Boomers:52 to 70Generation X:40 to 51Millennials:21 to 39

Generation Z: 20 and younger

...U.S. workers say they are more concerned about their knowledge and skills becoming obsolete or outdated than they are about a possible layoff."

A New Work Covenant Takes Shape

It is increasingly apparent that the talent marketplace is replacing the tradition of employment with employability. This suggests that companies that want to successfully attract and retain the most desirable talent should focus attention on several key areas:

- Give employees a place and opportunity to showcase their skills.
 This allows them to build a portfolio and increase employability.
- Study your organization's talent needs. This is the best way to build resilient teams in a multi-sourced globalized environment.
- Be mindful of employer branding. As workers place more attention on their personal brands, it has become increasingly more important for employers to convey a clear and compelling brand message, thereby attracting the talent with the best fit possible.
- Create innovative engagement programs beyond retention.
 Employers need to offer ways for potential, current and past employees to engage with the company, from training and development opportunities to participating in online communities.

Employees recognize that their career success depends on staying fresh with skills. This is especially true with free-agent workers. Highly engaged, committed workers have always been passionate and driven. But now, along with their contributions comes an increasing knowledge of their own value and a desire to succeed on their own terms.

Development Opportunities Are Key Drivers

According to a 2015 Pew Research study, more than one out of three American workers are millennials, surpassing Generation X as the largest group in the workforce. Given their rising influence on workforce trends, it is important for employers to understand the millennial DIY career development mindset. When choosing one position and employer over another, there are three key drivers. These include opportunities for advancement, training programs and leadership development. Additionally, these workers are seeking an opportunity to work with colleagues who are recognized as knowledgeable and from whom they can learn. And of course, the opportunity to innovate and work on innovative projects and initiatives is highly desirable.

Attracting and retaining talent today requires accepting the new career development paradigm and actively adapting to it. Employers that understand the importance of these key drivers will be best positioned to attract and retain top professional and technical talent.

It is also important for organizations to understand the implications of this career development shift as valuable employees—those proven to have higher loyalty, show greater effort and added value—may be increasingly harder to engage and retain. As organizations seek to bring top talent into their projects, they must recognize the importance of investing in their most valuable assets.

Regardless of your age, up-skilling should be at the top of your to-do list. It is an incredibly important way to build up your personal and professional brand in an age of uncertainty and will help you sell your talent and skills to employers who see the value in them and want to bring you on board. That is a strategy that will reward you throughout your career. •



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SERVICE PROVIDER

When it comes to project oversight, following some basic guidelines and best practices can make all the difference

BY KERRY MALONE

To ensure successful project implementation, following some basic guidelines and best practices can help ensure a positive and effective relationship between the client and the right of way service provider.

The first of a two-part article, "Picking the Right Service Provider," was released in the July/August 2016 issue of Right of Way Magazine and served as a practical guide to reducing costs and minimizing project risks. In this second part, we will address the kind of project oversight—before commencing work and throughout the project—that can facilitate success.



WHAT TO DO BEFORE COMMENCING WORK

Once you have selected the right service provider for your project, there are several preparatory steps that can facilitate successful implementation. While every project and client will bring unique challenges, identifying expectations and defining the processes up front will play a significant role in achieving project success. The following provides some important areas to consider before the work begins.

Identify Expectations

While the client has every right to expect a certain level of performance, the service provider can only succeed if they know exactly what is expected. A formalized document is recommended so that the service provider can review it and provide their agreement in advance. Obviously, expectations are subject to change during the course of the project, but making sure both parties are clear about them is the first key to successful project implementation. Everyone must be moving in the same direction for the relationship between provider and client to work.

Define Reporting Structure

To alleviate confusion throughout the lifecycle of the project, the service provider needs to clearly understand the reporting structure. If project management is part of the contract, to whom will the project manager report to? And what are the roles of the other members of the project team? It is suggested that there be only one client liaison authorized to give direction to the provider. Confusion can arise when the service provider is expected to take instruction or report to several different client representatives. Conflicting directions or decisions will likely lead to delays, duplication of effort and cost overruns.

Ensure Right of Way is on the Project Team

The unique level of expertise provided by right of way professionals will always benefit the project—but only if such expertise can be heard and considered before decisions are set in stone. In many instances, right of way is brought into the discussion much too late in the process—when decisions have already been made on matters that directly impact the right of way effort. Weekly team meetings with key personnel from each project area should be conducted to discuss project progress, budgets and any issues that might arise. Mutual respect and open communications are essential.

Define Relationship With Legal Counsel

Whether the project's legal representative is internal or external, decisions regarding right of way often require a very timely response. Legal counsel may be needed for evaluating landowner requests, developing documents and alternative language, and serving as a liaison with the landowner's legal counsel. Depending

on the client company's protocols, direct communications between the right of way group and the legal counsel may not be acceptable. However, a responsive conduit is essential for ensuring the legal issues are reviewed in a timely manner. This is especially critical where eminent domain is a potential option. The process must be defined at the very beginning of the project to ensure seamless communications.

Establish a Change Order Process

Ensuring that the client's change order process is followed is crucial to project success. If the client does not have a system in place, ask the provider for their change order protocols, and consider using them. Under no circumstance should vou allow verbal instruction to take the place of a formal process. With all the changes that typically arise during the course of the project, the process used to convey specific instructions should not be left to chance. This will only cause confusion, especially if the client expects certain changes that are not addressed.

Draft Project Documents Early

Any delay in providing the service company with all applicable project documents will inevitably lead to project interruptions. For example, the survey permission and data gathering forms need to be ready beforehand so they can be incorporated into project procedures as soon as the schedule calls for survey permitting to commence. Even more important is the early adoption of acquisition documents and any pre-approved alternative clauses. Schedules depend on the timely completion of acquisition. Therefore, if the team is awaiting documents on the front end, there will ultimately be schedule challenges throughout the project.

Outline Check Writing Procedures

The ability for agents to write checks in the field while meeting with landowners can be very helpful to avoid delays caused by a check request process. Before the project commences, it's important to identify who will manage the acquisition account. Will the client use an established internal system or will the provider handle that function? Will agents be writing and issuing the payment checks in the field or will a check request process be necessary? What reporting procedures are needed? Rather than wait until it is time to begin issuing payment checks, formalize and communicate the process up front.

Define Reporting Expectations

The service provider needs to know exactly what reports are needed and when. What does the client require to satisfy the data needs of management? Is reporting needed in real time via an online system or by hard copy distribution? Who needs to be included in report distribution? Consider the proprietary systems of the provider, as they are sometimes more efficient than what the client has in place. Nearly all systems are compatible with Excel. See what the project team is accustomed to using before finalizing the format, content and frequency of the reports.

Standardize Procedures

If there are standardized processes or procedures used by the client, make these available to the service provider so they can be incorporated into the procedures manual for the project. This can be in an electronic format or hard copy, depending on what's agreed to up front. Often times, full procedures are developed during the course of the project because all details are not available at the outset. For example, details about the acquisition process may not be known in the beginning, but they can be clarified prior to commencing acquisition. If there is a code of conduct in place with the client, these should be made available and added to the procedures manual.

Describe Scope of Public Outreach Involvement

From mass mailings to open houses, public outreach is a vitally important aspect of every project. Most service providers have expertise in these areas and the client should determine early on what role, if any, the right of way team will provide. Since the right of way agents deal most directly with the landowners, it is highly recommended that they be involved in open houses and community meetings. It can be beneficial to have the service provider's GIS staff present to explain routes on maps or computer monitors.



MANAGEMENT PRACTICES THOUGHOUT THE PROJECT

As referenced earlier, it's crucial that everyone is very clear on the client's expectations and understands the levels of accountability required. Oversight of the service provider during the course of the project should involve several considerations including the following:

Do not allow sub-par performance to continue. The client's project manager must quickly address any performance issues observed. The sooner the problem is identified and discussed with the service provider, the sooner corrective measures can be put in place. Although this is a simple principle, it is often ignored, which allows small problems to develop into major ones.

Provide guidance without micromanaging. When the service provider is serving in a managerial or supervisory role, it's important to respect the established lines of communication. Direct interaction between a client representative and the right of way personnel can damage relationships and cause serious communication conflicts. If an issue arises, it's best to advise the service company management and allow them to communicate directly with their employees.

Solicit and consider input from leadership personnel. In many cases, the service company management has dealt with unusual or complex problems that can arise on projects and may be able to offer valuable counsel. Obviously, the decisions and ultimate responsibility rests with the client, however using the best resources available is in everyones' best interests.

Follow protocols and procedures.

Make sure the right of way team is following the procedures manual for the project. Monitor the reporting function and maintain a close and cooperative relationship with the service provider's management.

...the service provider can only succeed if they know exactly what is expected."

Document all instructions. When it comes to giving instructions to the right of way team, never rely on verbal instructions. This is not a "CYA" situation—it is just good business!

Acknowledge superior performance.

In managing right of way personnel, appreciation for a job well done goes a long way toward encouraging future accomplishment.

Hold regular meetings. In addition to any project team meetings, it is recommended that regular meetings be held with the service provider's leadership. Scheduling conference calls, webinar meetings or face-to-face weekly discussions will help alleviate surprises and prevent unexpected information from being disseminated among other disciplines.

Be responsive! When the service provider asks for direction or input, it is critical that the client representative responds in a timely manner. Given unforeseen circumstances that often arise and the need to make quick decisions, an unresponsive client will likely cause confusion and project delays.

Stay aware of staffing changes. Staffing will typically evolve as the project moves forward. Since this impacts the functionality of the team as well as the budget, keep updated with who is currently working on your project.

Monitor the budget status. Clients should require the service provider to furnish budget updates, accruals and forecasts according to a set schedule, such as monthly or bimonthly. Burn against budget should always be known and any deviation must be explained, and if necessary, addressed by a change order or corrective action plan. Both the schedule and budget need be considered when determining the health of a project. For example, if a project is ahead of schedule during the acquisition phase, the actual spend is often higher than the budget plan due to an increase in acquisition cost compared to plan. Budget accountability applies to the right of way services budget, acquisition budget and even petty cash outlays.

Conduct spot audits. Evaluate compliance with the expectations documented at the project's commencement. This takes performance evaluation a step further. Document the findings and direct the provider to take any steps needed to meet those expectations.

Establish project closeout requirements early in the project.Determine how the hard copy and electronic records will be tendered to the client. If applicable, identify how office equipment leases will be handled. Will additional services

like operational support be required

following construction and damage settlement? Outlining this information in advance will help the project team achieve the desired expectations.

BENEFITS TO BOTH PARTIES

The information provided is primarily designed to assist companies in managing right of way consultants and service companies. However, many of the ideas and protocols suggested can benefit the service provider as well. After all, the better the service company understands its client's needs, the more equipped they can be to meet those needs.

The right of way service provider that offers reporting capabilities, documentation expertise, training and an established approach for developing project procedures is best positioned to not only be awarded the work, but to successfully meet client expectations. •



Kerry Malone is Senior Vice President, Projects & Operations at Contract Land Staff. His 41 years in the industry has been equally split between working for an operating company and a service provider. A Founding Member of the Right of Way Consultants Council, he now serves as Vice Chair on the Board of Directors.

IRWA Call for Awards

EACH YEAR, IRWA recognizes members, chapters and companies for their valuable contributions toward advancing the Association and the right of way profession.

The International Nominations and Elections Committee is currently accepting nominations for the following categories:

- Frank C. Balfour Professional of the Year
- W. Howard Armstrong Instructor of the Year
- Young Professional of the Year
- Government Employer of the Year
- Employer of the Year
- Chapter of the Year
- Website of the Year
- Newsletter of the Year
- SARPA Scholarship Sponsored by RWIEF
- CRWEF Scholarship

SUBMISSION INFORMATION All forms are available on the IRWA website under the "About Us" tab and submissions will be accepted by email only.

CRWEF Scholarship application should be sent to Shannon Favaro, SR/WA shannon.favaro@fortisbc.com

Newsletter and Website of the Year should be submitted to INEC Vice Chair Randall Kopfer, SR/WA at randallkopfer@gmail.com

All other submissions should be sent to Arlene MacKenzie, SR/WA at arlene.mackenzie@gov.ab.ca

Award winners will be honored at IRWA's Annual Awards Luncheon on June 12, 2017 during the 63rd Annual International Education Conference.





Minimizing Conflicts of Interest

How to successfully work with general contractors during relocation

BY DARRYL ROOT, JD, R/W-RAC

"Trust me, I'm a general contractor."

Increasingly, relocation professionals are hearing these words from general contractors who work with owners of complex business operations being relocated by federally funded projects. However, experience has shown that although the use of general contractors in the relocation process can be beneficial if managed properly, it can also be detrimental to the relocation if not monitored closely.

A general contractor is "the primary person or firm solely accountable to perform a contract. This primary typically supervises activities and coordinates the use of subcontractors." On large, long lead business relocations, it may be best to have one entity responsible for coordinating the move and the activities of a number of specialized contractors. Complex relocations may involve a variety of these specialized contractors to handle electrical, plumbing, computer and communication tasks.

General contractors offer their services to displaced business owners as either move planners or to perform the actual construction. Regardless of the services offered, the relocation professional should first confirm the general contractor's qualifications and past performance on similar projects. If the general contractor has not worked with similar businesses in the past, they may not be qualified.

Other factors to consider are:

- Is the general contractor properly licensed?
- Are they properly bonded and insured?
- Does the complexity of the relocation justify the use of a general contractor or could it be easily handled by a few independent contractors?
- · Are the contractor's rates, fees and scopes of work reasonable?



If the contractor has had a poor working relationship with other displacing agencies, they may represent an unnecessary risk to both the displacing agency and the business owner. This is especially true if payment of the general contractor's invoices have generated audit exceptions on other federally funded projects.

As stated, general contractors commonly offer their services as move planners. If these services are for planning and coordinating the movement and placement of personal property, these expenses can be reimbursed under §24.301(g)(12).

Benefits of a General Contractor

A good general contractor can help coordinate the many moving parts that must be carefully timed to meet project schedules, especially in fast paced design-build projects. Their knowledge of construction and utilities can help both the displacee and the relocation professional understand how the replacement site will be set up to ensure successful operation. General

contractors can take on the daunting task of coordinating the activities of sub-contractors for the connection, disconnection and placement of equipment and personal property at the replacement site. These services can facilitate the relocation and reduce the hardship on the displacee.

Besides offering to plan the move and placement of the displacee's personal property, general contractors may also want to be involved in hiring and supervising sub-contractors and actually performing the reestablishment work to accommodate the business. This may include erecting new exterior signage, altering the replacement site to meet the business's needs, and other eligible, reasonable, actual and necessary tasks.

General contractors may assert that they offer the most expedient way to perform tasks of both move planner and builder. To determine whether this is the best approach, you will want to address some important questions. For example, can the general contractor separate their duty to plan the move most efficiently without

being influenced by their potential profits associated with construction activities? Will the possibility of doing the construction work lead to unnecessary activities added into the move plan? The viability of this dual role should be vigorously reviewed and discussed with the project's funding source prior to being approved.

Once the role of the general contractor is defined, it is not necessary that they have knowledge of relocation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). Instead, it is most important that the general contractor be willing to work with the relocation professional to plan and schedule the move. A free flow of communication between displacee, relocation professional and contractor is essential.

It is also vital that the general contractor understand which services are reimbursable. Therefore, it is essential that any bid from a general contractor be broken down into its individual parts and reviewed carefully. The individual bids that make up the expenses listed in a general contractor's estimate should each be carefully examined line by line. There should be at least two bids associated with each specific, reimbursable task and the lower of the two bids should be approved if reasonable.

Even if the general contractor's staff prepared one of the two bids in-house, the bid should be based upon reasonable criteria and specific information. If the general contractor does not provide this information, the relocation professional should seek other independent bids.

Avoiding Complications

Problems may arise if the general contractor interjects themselves into the role of the relocation professional by advising the displacee as to which expenses are reimburseable. When this interjection occurs, unrealistic promises can be made that only confuse and frustrate the displacee, no matter

how well-intentioned. It must be made clear to both the general contractor and displacee which expenses are eligible, why the expenses are eligible (or not) and the amount of the expenses determined to be reasonable. If the displacee does not agree with determinations made as to eligibility or the approved amounts, they can appeal. The URA does not allow the relocation professional and the displacing agency to give up their roles as the determiners of the application of the URA provisions to a general contractor or displacee.

A free flow of communication between displacee, relocation professional and contractor is essential."

Problems may also arise if a general contractor views their tasks through a private business lens. A private transaction between a general contractor and a business owner not affected by a federally-funded project can take on many different forms and be subject to a myriad of conditions. This is not so when the eligible tasks are being funded by federal dollars under the URA.

For example, difficulties often arise when a general contractor requests a large amount up front to perform all of the eligible relocation tasks. Contractors have argued that this upfront method of payment streamlines the relocation process by avoiding numerous smaller claims. However, this type of arrangement is fraught with potential problems, especially if important documentation is missing. Agreeing to a total upfront draw-

down figure that is not substantiated puts the displacing agency at risk, as the advanced funds may be used for ineligible items or for unreasonable amounts. If all or some of the funds are not used for eligible items, the displacee will have to reimburse the displacing agency. Obtaining reimbursement from the displacee only complicates and lengthens the relocation process. This draw-down scenario closely resembles a global settlement of relocation benefits, which would preclude the displacing agency from receiving federal reimbursement.

Actual, Reasonable and Necessary

The heart of any Relocation Assistance Program is based upon reimbursing eligible costs that are actual, reasonable and necessary. Relocation Assistance under the URA is not an entitlement program. However for the displacee who may not have the funds to complete necessary, eligible relocation tasks, the URA provides a potential solution to avoid hardships. This solution involves reasonably sized advance payments based on eligible, documented expenses. Use of the advance funds should be closely monitored to avoid excessive or ineligible expenditures.

While general contractors can help the relocation professional coordinate eligible move activities and provide necessary planning services, their role in the relocation process must be in compliance. By building constructive, long-term relationships with knowledgeable contractors, relocation professionals can minimize the hardships to displacees. \bullet



Darryl Root is Program Manager for Overland, Pacific and Cutler, Inc. and has been in the right of way industry for 25 years.





Licenses Versus Leases

Are swap meet vendors eligible for relocation benefits?

BY MICHAEL F. YOSHIBA, ESQ.

Successful owners of commercial property are always seeking new ways to maximize the return on their investment. These property owners typically lease their properties to tenants for either an agreed term or on a month-to-month basis. Relocation assistance regulations contemplate these situations in determining eligibility for lawful tenants occupying property.

A few years ago, an owner of a commercial parking lot near the Los Angeles downtown commercial business district sought to generate additional income over the weekends when his parking lot was unused. For a fee, he began allowing individuals to use the parking lot during this time to hold their garage sales. This use-concept became so successful that the parking lot became fully occupied every weekend and holiday. Yet, instead of individuals holding garage sales, the entire lot was utilized by small commercial businesses as a satellite swap meet location for their retail stores.

When the local school district ("Agency") came along and sought to acquire the parking lot for a new school project, the legal question arose: Are the weekend swap meet vendors entitled to relocation assistance benefits from the Agency?

Possession of Property

Documentation of the relationships between the property owner and the vendors was the key to answering the question. Swap meet vendors on the property may or may not be legally eligible for relocation assistance benefits as "displaced persons" under California Code of Regulations. Eligibility depended upon whether the vendor's presence on the property was lawful by a right to possession, by a permit or license, or through some other agreement with the property owner.

For the purposes of the Agency's Relocation Assistance Program, "displaced persons" is defined as any person, including a business, who was present on the property at the time of the initiation of negotiations and who moves from real property (or who moves his personal property from real property) as a result of a written notice of intent to acquire such real property. A causal connection between the property acquisition and the displacement doesn't necessarily warrant relocation benefits. Businesses who demonstrated that they were in lawful possession of the property—through a written agreement, a lease, or in some instances by evidence of an informal agreement—were entitled to receive relocation benefits. In this instance, lawful possession of property can be established by a written agreement between a landlord and tenant. The landlord-tenant relationship doesn't commence until the tenant has a present right to possession, which depends upon the intent of the parties through the terms of the contract.

The right to possession of the property is considered transferred between landlord and tenant if the agreement specifies that the tenant will assume a physical relationship to the specific property and where they have the power to exclude others from the identified property. If the tenant can prove the existence of a property right, a landlord must then use the unlawful detainer process to pursue an eviction of the tenant from the property.

If the swap meet vendors can produce a written instrument establishing a landlord-tenant relationship, they are eligible to receive relocation assistance benefits. In some instances, landlord-tenant relationships can be demonstrated without a formal written instrument. However, there must be supporting evidence substantiating a right to possession. At a minimum, the tenant must produce documents such as receipts and correspondence with the property owner.

Alternatively, vendors on the property might have a relationship with the property owner that amounts to less than a landlord-tenant relationship. The vendors may be using the property as guests, licensees, invitees or permittees of the owner. If the agreement between the vendor and the owner confers no property rights in the premises to the vendor, then the use of the specific property by the vendor is less than an exclusive use, and can be cancelled by the owner at any time.

A license or permit is much different than a lease because they do not require a property owner to use the unlawful detainer process to remove persons from the property. Guests, licensees, invitees, and permittees are not afforded the legal protections of the unlawful detainer process because there is no

right to possession of the property. Without the right to possession and occupancy of the property by the vendors, they are not displaced persons.

In this instance, the Agency discovered that the handwritten agreements between the vendors and the property owner didn't contain any language or terms that could be considered the equivalent of a lease or rental agreement. The vendors were licensees and not displaced persons eligible for relocation assistance benefits.

The same legal analyses should apply today whenever an agency seeks to acquire property that is occupied by other short-term or temporary occupants such as a farmer's market, pop-up restaurant or food catering truck. •

References:

42 U.S.C. 4601 et seq., "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended."

California Code of Regulations, Title 25, Chapter 6, Subchapter 1, Article 1, Sections 6003, 6008 and 6034.

Kong v. City of Hawaiian Gardens Redevelopment Agency (2002) 101 Cal. App. 4th 1317.



Michael Yoshiba is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.



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The American Public Transportation Association Honors HDR's Michael Schneider



HDR is proud to announce that their Senior Vice President, Michael I. Schneider has been named the American Public Transportation Association's Outstanding Public Transportation Business Member for 2016. This award acknowledges outstanding lifetime contributions to the industry. Michael has over

40 years of experience including his time with Parsons Brinckerhoff, where he served as Executive Vice President and a board member. He currently serves HDR as Global Director of Professional Services where he leads the firm's strategic advisory practice. His career has spanned urban and intercity transit and rail, highway and toll road development, innovative financing programs and public-private partnerships.

Burns & McDonnell Welcomes Jim Coll as Senior **Project Manager**

Jim Coll has joined Burns & McDonnell in St. Louis as the new Senior Project Manager for National Water Projects. In this role, he will develop and oversee programs and projects for a range of clients focused on public water/wastewater infrastructure upgrades. Jim has over 30 years of professional



experience in leading multi-discipline teams for large public capital improvement projects. Prior to joining Burns & McDonnell, he served as project manager over the massive Combined Sewer Overflow and Sanitary Sewer Overflow Control Plan projects for the Metropolitan Sewer District in St. Louis. Both these multi-year programs were the result of consent decrees with the U.S. Justice Department designed to address federal clean water requirements.

Cardno Welcomes Sarabjit Singh as Government & Infrastructure President

Cardno is pleased to announce the appointment of Sarabjit Singh as President of the company's Government & Infrastructure Division in



its Americas region. Sarabjit has over 25 years of professional experience including his time as president of a global company and as general manager for a billion dollar infrastructure and environment division. In his role with Cardno, Sarabjit will be a key member of the company's Americas Region Leadership Team. He is a registered professional engineer in California and will be based in Arlington, Virginia.

Leonard Strickland Joins Cardno as Business Unit Manager

Subsurface utility engineering expert, Leonard Strickland, joins Cardno as a Business Unit Manager in the company's Northern Region. He will manage and oversee the company's subsurface utility engineering (SUE) and survey operations in more than 20 states. Leonard brings over 25 years of experience in land surveying, civil engineering, quality assurance, and construction management. During the last eight years, he served as survey, quality assurance,

and SUE manager at a major U.S. competitor. He is a registered professional land surveyor in New Jersey, where he is currently based.



Cardno Welcomes Land **Development Expert, Jeff** Vanderdasson

Cardno is pleased to announce that Jeff Vanderdasson has joined the firm as a Civil Engineer Practice Leader in the company's



Portland office. He will manage and oversee the civil engineering team's involvement in land development projects in the Portland area. Jeff is a registered professional engineer in Oregon and has over 30 years of professional experience managing commercial, industrial, single family residential, multi-family residential and public street projects. Prior to joining Cardno, Jeff served as director of engineering at a consulting firm.

Duke Energy Names Bill Webster as New Board Member



Duke Energy's board of directors is pleased to announce that William E. Webster Jr. has been named a new board member. Bill was the former Institute of Nuclear Power Operations executive vice president for industry strategy, where he has served in leadership roles in industry evaluations, plant support, engineering support and plant analysis and emergency preparedness divisions. Lynn Good, Duke Energy's Chairman, President and CEO, is confident that Bill's vast nuclear industry experience will be a tremendous asset for the company.

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100, 100C 100i* 103* 104* 105*	Principles of Land Acquisition Principles of Land Acquisition-International Ethics and the Right of Way Profession Standards of Practice for the Right of Way Professional The Uniform Act Executive Summary	4 days 2 days 1 day 1 day 1 day
	CATION/NEGOTIATIONS	2 day
200*	Principles of Real Estate Negotiation	2 days
201 203* 205* 207	Communication in Real Estate Acquisition Alternative Dispute Resolution Bargaining Negotiations Practical Negotiations for U.S. Federal & Federally Assisted Projects	3 days 2 days 2 days 2 days
209 213* 215 219	Negotiating Effectively with a Diverse Clientele Conflict Management Right of Way Acquisition for Pipeline Projects Introduction to Presentation, Instruction and Facilitation	2 days 1 day 2 days 2 days
225	Social Ecology: Listening to Community	1 day
MANAGEMI	ENT	
303* 304*	Managing the Consultant Process When Public Agencies Collide	2 days 1 day
APPRAISAL		
400*, 400C 402* 403* 406A*	Principles of Real Estate Appraisal Introduction to the Income Capitalization Approach Easement Valuation 15-Hour National USPAP Course Uniform Standards of Professional Appraisal Practice 7-Hour National USPAP Course Uniform Standards	2 days 1 day 1 day 2 days 1 day
409 410 411*	of Professional Appraisal Practice Integrating Appraisal Standards Reviewing Appraisals in Eminent Domain Appraisal Concepts for the Negotiatior (online only)	1 day 1 day
417	The Valuation of Environmentally Contaminated Real Estate	2 days
421, 421C 431	The Valuation of Partial Acquisitions Problems in the Valuation of Partial Acquisitions	4 days 1 day
RELOCATION	N ASSISTANCE	
501 502 503*	Residential Relocation Assistance Non-Residential Relocation Assistance Mobile Home Relocation	2 days 2 days 1 day
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520	Special Topics in Replacement Housing	1 day
ENVIRONME		4 -1
600* 603,603C 604 606*, 606C*	Environmental Awareness Understanding Environmental Contamination in Real Estate Environmental Due Diligence and Liability Project Development and the Environmental Process	1 day 1 day 1 day 1 day
PROPERTY//	ASSET MANAGEMENT	
700* 701 703	Introduction to Property Management Property/Asset Management: Leasing Real Property/Asset Management	2 days 2 days 1 day
REAL ESTATI		
800*, 800C 801* 801C 802*, 802C	Principles of Real Estate Law United States Land Titles Canadian Land Titles Legal Aspects of Easements	2 days 2 days 2 days 1 day
803 803C	Eminent Domain Law Basics for Right of Way Professionals Expropriation Law Basics for Right of Way	2 days 2 days
804	Professionals Skills of Expert Testimony	1 day
ENGINEERIN	•	
	Principles of Real Estate Engineering	2 days
900*, 9000		
900*, 900C 901 902	Engineering Plan Development and Application Property Descriptions	1 day 1 day

*	Asterisked	courses	are	available	online.

SR/WA Review Study Session

SR/WA Review Study Session (Canadian)

3 days

3 days

SR/WA

SR/WAC

IRWA to Release Course on Social Ecology: Listening to Community

After a successful pilot program, IRWA Course 225 Social Ecology: Listening to Community, will soon be available at the Chapter level.



Social Ecology is an innovative approach to infrastructure project planning that is based on cooperation and collaboration with parties affected by a new project. Developed by subject matter experts James Kent and Kevin Preister in partnership with IRWA, the course offers

methodologies and strategies for introducing a project into the community before a project's final route is finalized or approved. The course developers have decades of experience, and through their instruction and case studies, course participants will learn how to introduce projects into the community at the front end of a project, thereby minimizing costly litigation, rerouting and schedule delays.

The course offers 8 education credits, and it is part of IRWA's Industry-Centric Credentialing Pathways. It can also be used for Re-certification and Continuing Education credit. The course is offered through IRWA and will be contracted by Chapters with JKA Group.





LEGISLATION

New Commercial Drone Rules



As drones continue to increase in popularity, more companies are looking to integrate them into their businesses. Fortunately, new rules were set into place in August, which no longer require companies to request permission from the federal government for commercial drone use—a process which often

took months. Additionally, companies no longer need a pilot's license to fly a commercial drone. Now, employees over the age of 16 can take an aeronautical knowledge test and pass a background check to qualify for a remote pilot certificate.

The Federal Aviation Administration predicts that these new guidelines will lead to a significant increase in commercial use of drones. In fact, they predict that nearly 600,000 commercial drones will be in operation next year as industries such as real estate and construction turn to drones for basic functions.

Of course, these new rules also include restrictions. Drones must be kept within visual line of sight, can only be flown during the day and can not fly higher than 400 feet above the ground. If the drone is carrying a load, the combined weight must be less than 55 pounds. As such, industries such as oil and gas firms who want to use drones for pipeline investigation will be limited by these restrictions and must wait for guidelines for more complex drone operations.





PIPELINES

New PIPES Act Drives Demand for Underground Technology



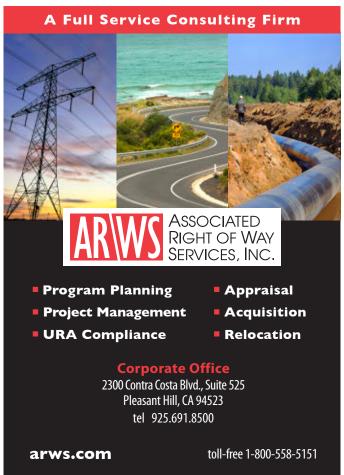
In an effort to improve public safety and secure pipeline infrastructure, the PIPES Act of 2016 was signed into law on June 22, 2016. The act requires certification, data management, testing and mapping of over 2.6 million miles of buried pipelines across the country. As such, professionals are turning to new technology to try and meet these new demands.

"The expected changes will impact data management, sharing and demand," says Troy Taggart, President of Geospatial Corporation, which provides 3-D cloud-based solutions to locate and digitally map underground pipelines and other infrastructure in the U.S. "Energy companies across the country have been expecting this and have been exploring solutions that include more accurate data collection that will blend with their existing data sets that reside in legacy systems."

And it's not just energy companies. Surveyors, builders and even inspectors have begun to look toward cloud-based applications for easy access to real time information and better internal platforms for infrastructure mapping. Current mapping techniques include inertial navigation sensors, electromagnetic mapping, electromagnetic pipeline mapping technology, infrared and microwave technologies, ground penetrating radar and vacuum excavation.

"Companies should consult experts in 3D mapping to put in place the right strategy and plan for their organizations," Taggart suggests. "They should also delve deeply into the existing data they have, and assess the accuracy of that data by analyzing how the original survey or locates were performed and what technologies were used."







TRANSPORTATION

Amtrak Invests in Infrastructure Upgrades

As part of a \$2.45 billion contract to upgrade the Northeast Corridor in the eastern U.S., Amtrak is teaming up with Alstom, a world leader in integrated rail systems. To replace Amtrak's aging equipment, Alstrom will design 28 next-generation high-speed trains for the Acela Express service, which provides hourly service during peak traffic between New York, Washington DC, Baltimore and Philadelphia. These new train will have more



passenger seats, improved Wi-fi access, personal outlets, USB ports, reading lights in every seat and improved food service. Most importantly, the new trains will provide a smoother, safer and more reliable form of transportation, and will meet the latest Federal Railroad Administration guidelines including a Crash Energy Management system.

"As more people rely on Amtrak, we need modernized equipment and infrastructure to keep the region moving," said Chairman of the Amtrak Board of Directors Anthony Coscia. "These trains will build on the popularity and demand of the current Acela Express and move this company into the future as a leader in providing world-class transportation."

These upgrades will generate an additional 1,000 jobs across the country. The first prototype is expected to be ready by 2019, with the first one up and running in 2021. All the trains will be in full service by the end of 2022.



At the project site, in a Coates office, or down the hall from you at headquarters - Coates Field Service provides the right of way services you need, where you need them.

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Canada Pushes for Infrastructure Bank



Currently, Canada's infrastructure gap is nearing \$500 billion. In a necessary effort to minimize this gap, Prime Minister Justin Trudeau is pushing for major investments to

strengthen the country's growth and competitiveness. In March, the government's budget estimated that over \$11 will be needed for infrastructure over the next two years.

Furthermore, the Prime Minister's Liberal Party pledged to establish the Canada Infrastructure Bank, aiming to provide low-cost financing for the creation of new infrastructure projects.

The creation of this state-funded infrastructure bank is just one of many goals which prove that the Party has made deficit spending on infrastructure a highlight of its economic platform.

This year, a 14-member panel appointed by the Prime Minister was tasked with finding new engines of growth for Canada's economy. They have listed infrastructure spending as one of the core target areas, noting that improvements will greatly interest foreign investors.

"There should be a strategy around the infrastructure we want to build to close that gap, and we need to attract capital, not just domestic capital but foreign capital," said Dominic Barton, head of the 14-member growth council and an expert advisor of governments and business leaders around the world. "We think there's a lot of opportunity and we think it can jolt the system."



COMPANY NEWS

Roland Resources Merges with Contract Land Staff

Brent Leftwich, President and CEO of Contract Land Staff (CLS), a leading provider of right of way and land management services in North America, announced that Roland Resources, Inc. has merged with CLS. Faith Roland, CEO and Founder of Roland Resources, will take on a new role as a CLS Senior Vice President, providing leadership and oversight for the Northwest Regional Office.

According to Brent, "Roland Resources will be integrating its talented project team and valued clients into CLS's operations. The mutually shared focus on providing the highest quality services in an employee-focused culture, along with the fact that both of companies offer services to the private and public sectors, make this union a perfect fit."

Faith, who served as IRWA's International President from 2008 to 2009 and currently chairs the Right of Way Consultants Council, commented, "We are looking forward to this natural

growth step and all the opportunities it brings. Our team has been serving the Northwest for several years, and we have built meaningful relationships throughout the region. This is a good strategic move for both of us."





Enhance your resume with the UHD Right of Way Certificate Program



First in the nation, The University of Houston/ Downtown College of Business

Right of Way Certificate Program is a universitybased ROW Certificate Program focusing on the Private Sector of the ROW Industry.

(Pipeline, Electric, Utilities, Shale Plays, Alternative Energy)

Curriculum is developed and taught by seasoned, working ROW professionals who have worked in and are currently working in Right of Way for the private sector.

The Certificate Program is developed for:

- · Those desiring to pursue a career in Right of Way(ROW)
- Professionals seeking to enhance and expand their skills in the ROW Industry

For more information go to uhd.edu/row www.contractlandstaff.com.







TECHNOLOGY

New Tunneling Technology Previewed in Singapore

In November, the International Tunneling and Underground Space Association (ITA) is hosting the second annual ITA Tunneling Awards in Singapore. This international competition recognizes and awards the most groundbreaking achievements and innovations in underground infrastructure worldwide. Participation has been highly competitive this year, with 98 entries from 25 countries competing in nine categories.

There were 23 entries for the "Technical Innovation of the Year" award, which covers inventive processes, methods and technologies. Among the entries, five finalists were selected for presentation in Singapore. They include the following:

Created for the Singapore NSEW Cable Tunnel Project, the **Automatic Inspection Vehicle** deploys a robot that provides safety, operational surveillance and visuals to assist firefighters during emergencies. Hybrid Earth Pressure Balance Shield technology was used to excavate the shield-driven tunnel of Metro Line 4 in Rio de Janeiro, Brazil, resulting in reduction in lower power consumption and materials. GeoSURE is a high-precision measurement drilling system that analyzes the data and provides rock mass information in real-time during drilling. The Uphill Excavator allows users to carry out inclined excavations from the main site without disturbing the connecting shaft, thereby reducing the impact of construction on the local environment and community.

ASSOCIATION NEWS

Tennessee Chapter Sets New Participation Records



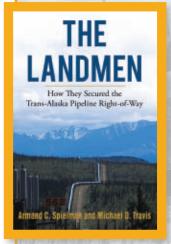
From left, Kenneth D. Williams with Tennessee Department of Transportation Workforce Development, TDOT Chief Engineer and Assistant Commissioner Paul Degges, Billy Medley, SR/WA.

For many years, Tennessee Chapter 32's Billy Medley, SR/WA has served as a role model when it comes to attendance at IRWA courses and educational events. And this year has been no different.

"This year, our Chapter had the best attendance in all my years as the Education Chair and Professional Development

Chair," said Billy. "After our next class in Memphis, we will have reached over 300 attendees in our 11 presentations. We also pinned three new SR/WA Designations and have received another 20 candidate applications for certification. I am so proud of our membership, the Chapter leadership and our local public agency partners for making this happen."

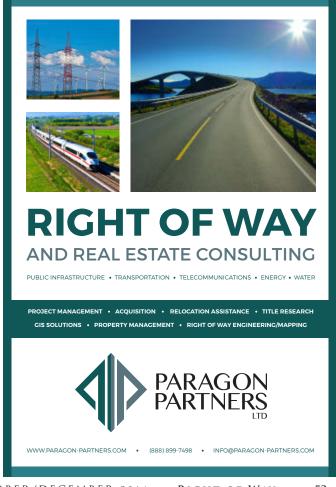
"An unlikely group of men who proved that ingenuity, perseverance, and a bit of naivety could get the job done."



Read the riveting tale of how Armand Spielman and Jay Sullivan acquired the right of way for one of the world's largest and greatest pipeline systems, the Trans-Alaska Pipeline.

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Acknowledging Excellence

The IRWA members listed below earned a certification or designation in the past two months. We applied them for their commitment to professional growth in the right of way field.

GENERALIST CERTIFICATION/DESIGNATION

Majed Abulleif, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

James P. Academia, RWP

Gwinnett County Board of Commissioners Chapter 22 Lawrenceville, GA

Khaled Al-Bahnasi, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

Fahad Al-Dossari, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

Rasha Al-Onaizi, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

Hamoud Al-Otaibi, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

Bader Al-Samari, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

Majid Aldossary, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

Ibrahim Alomair, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

David L. Arnold, ARWP

Pender & Coward, PC Chapter 52 Suffolk, VA

Paul Athanasiou, SR/WA

City of London Chapter 29 London, ON

Richard A. Baker, RWA

Anchor Engineering Chapter 50 Lafayette, CA

Jason Bloch, SR/WA

TELICS, Inc. Chapter 31 Statesville, NC

Meghan Bratvold, SR/WA

Enbridge Chapter 72 Minot, ND

Richard C. Campbell, RWA

Wake County Chapter 31 Raleigh, NC

Cesar Servando Cantu Martinez, RWA

Promotora Agropek, S.A. de C.V. Chapter 85 Garza Garcia NL, Mexico

Kasy Chambers, SR/WA

Air Liquide Large Industries U.S. LP Chapter 8 Houston, TX

Carlos Alberto De La Fuente Herrera, RWA

Instituto de Administracion Y Avaluos De Bienes Nacionales Chapter 85 Ciudad de Mexico, Mexico

Jane Eggen, SR/WA

Dairyland Power Cooperative Chapter 17 La Crosse, WI

Molly Foster, SR/WA

Kitsap County Public Works Chapter 4 Port Orchard, WA

Vicki Green, SR/WA

Ministry of Highways & Infrastructure Chapter 79 Prince Albert, SK

D. Rossen S. Greene, ARWP

Pender & Coward, PC Chapter 52 Suffolk, VA

Phillice A. Gregory, RWA

Ameren Services Chapter 37 St. Louis, MO

Natalie Hess, RWA

Michiana Land Services, Inc. Chapter 10 Saint Joseph, MI

Danna G. Hobbs, SR/WA

Chapter 36 Weatherford, TX

David Scott Hughes, RWA

Kinder Morgan, Inc. Chapter 33 Tulsa, OK

Joseph Looney, RWA

HDR Engineering, Inc. Chapter 4 Bellevue, WA

Gracia Maria Martinelli Pincione, RWA

Equity Appraisal Specialists, S.A. de C.V. Chapter 85 Ciudad de Mexico, Mexico

Rico Landin Mauricio, RWA

Consultoria en Engenieria Legal S.A. de C.V. Chapter 85 Ciudad de Mexico, Mexico

Brent Maystrowich, SR/WA

SaskPower Chapter 79 Regina, SK

Fred McDonnell, SR/WA

Electrical Consultants, Inc. Chapter 38 Wood Cross, UT

Sarah A. Naqi, ARWP

Saudi Aramco Chapter 7A Dhahran, Saudi Arabia

Tina Phifer, RWA

City of Austin Chapter 74 Austin, TX

Joanne Rainville, RWA

The Regional Municipality of York Chapter 29 Newmarket, ON

Jennifer Rice, RWP

City of Fairlfield Chapter 27 Fairfield, CA

Cindy Romanyk, SR/WA

Enbridge Pipelines (Saskatchewan), Inc. Chapter 79 Estevan, SK

Carlos Alfonso Sandoval Miranda, RWA

Parametrix

Chapter 85 Mexico, Mexico

Carlos Eduardo Sandoval Posadas, RWA

Parametrix

Chapter 85 Mexico, Mexico

Jose Jesus Sandoval-Sevilla, RWA

Caltia Proyectos Integrales S.A. de C.V. Chapter 85 Ciudad de Mexico, Mexico

Carolyn Stegall, RWA

Lower Colorado River Authority Chapter 74 Austin, TX

Jessica Thompson, RWA

Matanuska Telephone Association Chapter 49 Palmer, AK

Cindy White, SR/WA

CORRE, Inc.

Chapter 17 Eau Claire, WI

GENERALIST RE-CERTIFICATION

Ronald Aberle, SR/WA

Chapter 72 Minot, ND

Allen A. Armstrong, SR/WA

Chapter 52 Chesapeake, VA

Rex Ball, SR/WA

Chapter 67 Los Angeles, CA

Glenda Briggs, SR/WA

Chapter 8 Houston, TX

Mark E. Brodt, SR/WA

Chapter 51 Conway, AR

Robin Lee Carlson, SR/WA Chapter 3 Salem, OR

Owen Chinnery, SR/WA Chapter 29 Brampton, ON

Robert W. Deal, SR/WA

Chapter 31 Newton, NC

Christopher Dietrich, SR/WA Chapter 29 Ayr, ON

Donald S. Dorsey, SR/WA Chapter 44 Las Vegas, NV

Weldon K. Gaston, SR/WA

Chapter 8 Houston, TX

Kristina L. Guzman, SR/WA Chapter 4 Kirkland, WA

Mona D. Hebert, SR/WA

Chapter 67 Long Beach, CA

Lida F. Jimenez, SR/WA Chapter 11 San Diego, CA

Scott A. Johnson, SR/WA

Chapter 64 Boise, ID

Doug R. Krysa, SR/WA

Chapter 62 Barrhead, AB

James M. Laramie, SR/WA

Chapter 9 Virginia Beach, VA

Gregory A. Mayo, SR/WA

Chapter 11 San Diego, CA

Elizabeth N. Musbach, SR/WA

Chapter 2 Oakland, CA

Robert Palandrani, SR/WA Chapter 56 Bear, DE

James B. Price, SR/WA

Chapter 4 Bellevue, WA

Jeffery N. Reece, SR/WA Chapter 10 Granger, IN

Eric Roman, SR/WA

Chapter 2 Pleasant Hill, CA

Jan D. Rybak-Matalon, SR/WA

Chapter 77 Tallahassee, FL

William S. Tannenbaum, SR/WA Chapter 2 Pleasant Hill, CA

Denise B. Thackerson, SR/WA

Chapter 24 Birmingham, AL



IRWA offers two career paths for right of way professionals: a generalist path and a specialist path.

Generalist Certification/Designation

RWA Right of Way Agent Certification

Associate Right of Way Professional Certification * **ARWP**

RWP Right of Way Professional Certification

SR/WA Senior Right of Way Professional Designation

Douglas C. Webb, SR/WA Chapter 15 Berlin, NJ

Kevin Winner, SR/WA Chapter 53 Corrales, NM

SPECIALTY CERTIFICATION

Micah Beck, R/W-AC Chapter 36 Fort Worth, TX

Marcus F. Boyd, R/W-URAC Chapter 36 Oklahoma City, OK

Joanna Cooley, R/W-RAC Chapter 33 Oklahoma City, OK

Danyelle Donnelly, R/W-RAC Chapter 36 Mansfield, TX

Gregory C. Fife, R/W-NAC Chapter 36 Katy, TX

Antonio S. Gumataotao, R/W-NAC Chapter at-large Manailao, GU

Lacie Jones, R/W-RAC Chapter 33 Tulsa, OK

Joseph Khammash, R/W-RAC Chapter 36 Bedford, TX

Midge A. Kline, R/W-NAC Chapter 64 Boise, ID

Virginia Moorhead, R/W-NAC Chapter 26 Tavares, FL

Jason Reece, R/W-AC Chapter 8 Katy, TX

Barton S. Waits, R/W-NAC Chapter 33 Tulsa, OK

SPECIALTY RE-CERTIFICATION

Allen A. Armstrong, R/W-URAC Chapter 52 Chesapeake, VA

Allen A. Armstrong, R/W-RAC Chapter 52 Chesapeake, VA

Allen A. Armstrong, R/W-NAC Chapter 52 Chesapeake, VA

Allen A. Armstrong, R/W-AC Chapter 52 Chesapeake, VA

Jennifer Ayers, R/W-AC Chapter 36 Dallas, TX

Joseph E. Batis, R/W-AC Chapter 12 Joliet, IL

Specialty Certifications

R/W-AC Appraisal Certified

R/W-AMC Asset/Property Management Certified

R/W-EC Environmental Certified *

R/W-NAC **Negotiation and Acquisition Certified** R/W-RAC Relocation Assistance Certified

R/W-URAC Uniform Act Certified

Paul D. Blees, R/W-AC Chapter 5 Springfield, MO

Glenda Briggs, R/W-NAC Chapter 8 Houston, TX

Glenda Briggs, R/W-AMC Chapter 8 Houston, TX

Huchani Dodd, R/W-NAC Chapter 26 Tampa, FL

Huchani Dodd, R/W-RAC Chapter 26 Tampa, FL

Vivian D. Howell, R/W-NAC Chapter 1 Los Angeles, CA

Vivian D. Howell, R/W-RAC Chapter 1 Los Angeles, CA

Sasha M. Jbarra, R/W-RAC Chapter 33 Tulsa, OK

Stacey A. Kroeger, R/W-RAC Chapter 78 Omaha, NE

John R. Navratil, R/W-NAC Chapter 36 Bedford, TX

Tom Paine, R/W-NAC Chapter 4 Seattle, WA

Tom Paine, R/W-AMC

Chapter 4 Seattle, WA Patricia A. Petitto, R/W-RAC

Chapter 7 Rochester Hills, MI

Jan Rybak-Matalon, R/W-RAC Chapter 77 Tallahassee, FL

David Sands, R/W-RAC Chapter 52 Charlotte, NC

Christopher S. Scodius, R/W-RAC Chapter 26 Tampa, FL

Brad K. Thomas, R/W-RAC Chapter 4 Edmonds, WA

Kimberly A. Wall, R/W-RAC Chapter 33 Tulsa, OK

*Retired as of September 1, 2014. Members who have earned this certification can retain it as long as they recertify every five years. Those who submitted a candidacy application prior to 9/1 are still eligible for this certification.



PAST INTERNATIONAL PRESIDENTS

* Frank C. Balfour, SR/WA	1956-1957
* Richard Taylor	1957-1958
* Sam Houston	1958-1959
* Fred A. Crane	1959-1960
* Dan W. Rosencrans	1960-1961
* Roger M. Lovell	1961-1962
* Roy A. Strobeck	1962-1963
* Dan H. Williamson	1963-1964
* Philip L. Rezos, SR/WA	1964-1965
* Adelbert W. Lee, SR/WA	1965-1966
* Victor H. Eichhorn, SR/WA	1966-1967
* William F. Howard, SR/WA	1967-1968
* Garth J. Linkey, SR/WA	1968-1969
* George R. Watson	1969-1970
* Karl E. Baetzner, SR/WA	1970-1971
* Gene L. Land, SR/WA	1971-1972
* Rexford M. Shaffer, Jr., SR/WA	1972-1973
* David E. Punches, SR/WA	1973-1974
* William P. Snyder, SR/WA	1974-1975
Richard L. Riemer, SR/WA	1975-1976
William L. Reid, SR/WA	1976-1977
Robert K. McCue, SR/WA	1977-1978
* Wade S. Manning, SR/WA	1978-1979
R. Tom Benson, SR/WA	1979-1980
George E. Midgett, SR/WA	1980-1981
* F. Larry Stover, SR/WA	1981-1982
Robert L. Art, SR/WA	1982-1983
W.A. Thomasson, SR/WA	1983-1984
Richard D. Ricketts, SR/WA	1984-1985
* John E. Day, SR/WA	1985-1985
Carroll W. Keck, SR/WA	1985-1986
Donald H. Ellis, SR/WA	1986-1987

	Ronald L. Williams, SR/WA	1987-1988
	George D. Wilkerson, SR/WA	1988-1989
*	Keith L. Densley, SR/WA	1989-1990
	Gene A. Land, SR/WA	1990-1991
	Robert H. Tarvin, SR/WA	1991-1992
*	Donald A. Henley, SR/WA	1992-1993
*	John W. Benson, SR/WA	1993-1994
	Donna B. Crosby, SR/WA	1994-1995
	Larry E. Griffin, SR/WA	1995-1996
	Susan M. Serdahl, SR/WA	1996-1997
*	Woodrow Pemberton, Jr., SR/WA	1997-1998
	Stephanie Rankin, SR/WA	1998-1999
	Dwight G. Pattison, SR/WA	1999-2000
*	Wayne F. Kennedy, SR/WA	2000-2001
*	Alan D. Wurtz, SR/WA	2001-2002
	Albert N. Allen, SR/WA	2002-2003
	Donald S. Marx, SR/WA	2003-2004
	Gordon E. MacNair, SR/WA	2004-2005
	Daniel W. Beardsley, SR/WA	2005-2006
	James H. Finnegan, SR/WA	2006-2007
	Jim L. Struble, SR/WA	2007-2008
	Faith A. Roland, SR/WA	2008-2009
	Sandy A. Grigg, SR/WA	2009-2010
	Kenneth L. Davis, SR/WA	2010-2011
	Randy A. Williams, SR/WA	2011-2012
	Patricia A. Petitto, SR/WA	2012-2013
	Lisa R. Harrison, SR/WA	2013-2014
	Lee S. Hamre, SR/WA	2014-2015
	Wayne L. Goss, SR/WA	2015-2016
4	Danasad	

* Deceased

Learn. LEAD. Advance.

Strong leadership is essential to IRWA's growth, and we need your vision to help shape the future of the Association. As a member of IRWA's International Executive Committee, you can play a vital role in advancing the goals of the Association.

Any IRWA chapter or active member may nominate a qualified candidate for any of these 2017-2018 IEC positions:

- President-Elect
- Vice President
- Treasurer

- Secretary

Minimum qualifications:

- 1. A member in good standing of an IRWA Chapter or Chapters for a period of not less than three years immediately preceding the annual election of such officers.
- 2. Must either (1) have served for a minimum of one year as an elected officer of an IRWA Chapter, or (2) have served a minimum of one year as Chair or Vice Chair of one of IRWA's International Committees.
- 3. Possess the SR/WA designation

Personal characteristics:

- · Dedication to the Association's vision, goals and IRWA Code of Ethics
- · Demonstrated professional leadership at the local, regional and international levels
- · Record of service leading to the advancement of IRWA and the right of way profession



To nominate a candidate, send the nomination form, recommendations, resume, candidate statement and color headshot to INEC Chair Arlene MacKenzie at arlene.mackenzie@gov.ab.ca. The form is available on the IRWA website at www.irwaonline.org.

Submission deadline is December 1, 2016





IRWA Member Farewell

Patrick Hood Annas



At the age of 70, Patrick passed away peacefully at home on March 6, 2016. Born December 6, 1945 in Suffolk, he was the youngest child of Vonoe and Lucille Hood Annas, who predeceased him. He was also predeceased by brothers Vonoe "Barney" Annas and James N. Annas Sr.

Patrick was a retired Chapter 52 member with over 42 years of service with the Virginia Department of Transportation and with the City of Virginia Beach as a Senior Right of Way Agent. He loved traveling, golfing, shooting pool, spending time with friends, and was a huge supporter of the American Red Cross Blood Donor Program. He donated over 19 ½ gallons of blood and met the love of his life while she was a Red Cross Blood Mobile nurse.

He is survived by his wife, Charlotte Lee Annas; daughter, Dawn A. Schenk (Brian) of Suffolk; brother, Jack E. Annas of Virginia Beach; sister, Linda A. James of Midlothian, VA; his devoted dog Sophie and numerous loving nieces and nephews.

Daniel Blanchard, SR/WA



Daniel "Danny" Blanchard passed away at the age of 59 on August 5, 2016. Born on August 20, 1956 in Oshawa, Ontario, he was the son of Gloria née Blanchard and the late Willie Blanchard. Having joined the IRWA in 1994, Daniel was a long serving and dedicated member of Chapter 65, Region 8.

He is survived by his mother and step-father, Gloria (Patrice Landry); his son, Mathieu (Erin); his spouse, Marguerite Bélanger; her sons: Nicolas (Nathalie) and Yves (Christina); a sister, Micheline Bujold (Gilles); two brothers: Yvon (Annette) and Robert (Idolla); many nieces and nephews.

John Bucker "Jack" Beirne, Sr.



Surrounded by loved ones, Jack passed away on July 23, 2016 at the age of 88. He was preceded in death by his parents, Milton J. and Katharine Bucker Beirne; his first wife, Catherine Ann Lange Beirne; his second wife, Carol Matt Beirne; and his daughter, Julia Ann.

For over 60 years, Jack worked in real estate in the Richmond, Virginia area. He spent 35 years as a real estate agent and broker, and over 25 years as a Real Property Agent for Henrico County, retiring in 2011. He was a long-time member of IRWA Chapter 52. For over 50 years, Jack and his wife Carol owned and operated The Beirne Corporation, which continues to supply sacramental altar wine to churches throughout Virginia.

He is survived by his children, John (Gene), Milton, Christy Heinen (Patrick), Ruppert (Danise), Ida B. O'Leary (Darren), all of Richmond, and Matt (Laura) of Saint Joseph, Minn. He is also survived by 11 grandchildren, seven great-grandchildren, and numerous nieces, nephews, cousins and friends.

Owen Helm, SR/WA



Major Owen R. Helm Jr. passed away on June 13, 2016. He was born on December 19, 1929 in Fresno, California. He retired from the California Army National Guard after 30 years of service. He also retired from Caltrans as a Senior Right of Way Agent, after 42 years of service. He held the SR/WA designation, and was a Senior Certified Engineering Technician.

Major Owen Helm was the officer in charge and coach of the All National Guard (National) Pistol Squad and was a Lifetime Pistol Master Shooter. He was awarded the Distinguished Marksmanship Badge and the President's Hundred award at the National Matches at Camp Perry, OH.

Owen is survived by his sons, Rick, Frank, John, and Scott; daughter Linda; and 13 grandchildren.

IRWA Member Farewell

Donald R. LaBelle

On August 5, 2016, Donald R. Labelle passed away at the age of 63. Donald was born in Rochester, New Hampshire on August 6, 1953 and was the son of the late Norman and Pauline (Lamontagne) LaBelle. He was a Right of Way Agent with the New Hampshire Department of Transportation and a dedicated member of Chapter 16. Don enjoyed music, reading, the beach, boating and his flowers.

He is survived by his wife, Marie Arcand LaBelle of Alton Bay; his children, Nicole LaBelle Hinchey and her husband Dan of Lawrence, MA, Liza LaBelle of Barrington, NH, Lauren LaBelle of MA, Molly LaBelle and Daniel LaBelle both of Alton Bay; one brother, Norman LaBelle Jr. and his wife Pat of Alton Bay; four sisters, Jean LaBelle of Seattle, WA, Janet LaBelle of Huntington, VT, Paula LaBelle and Sharon Barrett of Northwood, NH, and Michelle LaBelle Carter and Andrew of Alton; his grandchildren, Tucker, Sidonio, Drew, Kaitryn, Charlotte, Meredith, Hazel and Nico.

Terrence McCall



Terrence passed away on May 18, 2016. A dedicated member of Chapter 52, he joined Arlington County Virginia in 2013 and worked in their Facilities and Engineering Division as a Real Estate Specialist. As part of the Real Estate Bureau, he focused on acquiring right of way easements for

a large number of projects, including the Columbia Pike Multimodal Street Improvements, Lacey Lane Sidewalks and the Woodmont Swale Project. He was very successful in his work, particularly in acquiring difficult easements, given his personable and welcoming demeanor. Prior to working for the County, he was a licensed appraiser and Right of Way Specialist with the Virginia Department of Transportation.

Bernard W. Camins

Bernie passed away on December 26, 2015. He was a dedicated member of IRWA Chapter 9 and a member of the Philadelphia Chapter of the Appraisal Institute. He taught for the Appraisal Institute and Temple University, and he had his own real estate and appraisal company. He will be remembered by his beloved wife, Judith; daughter, Jennifer Camins Schwartz; granddaughter, Danica Sarah Schwartz; sister, Marian Bretts; and many more relatives and friends.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

Title of Publication: Right of Way Magazine. Publication number: 466-080. Date of filing: September 27, 2016. Frequency of issue: Bimonthly. Number of issues published annually: 6. Annual subscription price: \$30.00. Location of known office of publication: 19210 S. Vermont Ave., Building A, Suite 100, Gardena, CA, 90248. Location of the headquarters of the general business office of the publisher: Same. Publisher and Editor: Barbara Billitzer. Known bondholders, mortgages and other security holders owning or holding one percent or more of the total amount of bonds, mortgages or other securities: None. Tax status: The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes has not changed during the preceding 12 months. Total number of copies: Average net press run during preceding 12 months: 10,152; Single issue nearest filing date: 9,839. Paid circulation mailed outside county: Average during preceding 12 months: 9,467; Single issue nearest filing date: 9,300. Paid circulation mailed in county/other: Average during preceding

12 months: 240; Single issue nearest filing date: 184. Sales through dealers and carriers, street vendors and counter sales: Average during preceding 12 months: None; Single issue nearest filing date: None. Total paid distribution: Average during preceding 12 months: 9,707; Single issue nearest filing date: 9,484. Total free non-requested distribution (through Trade Shows/Events): Average during preceding 12 months: 220; Single issue nearest filing date: 170. Total distribution (Paid and Non-Paid): Average during preceding 12 months: 9,927; Single issue nearest filing date: 9,654. Copies not distributed: Average during preceding 12 months: 225; Single issue nearest filing date: 185. Total all copies: Average during preceding 12 months: 10,152; Single issue nearest filing date: 9,839. Percent paid and/or requested circulation: Average of preceding 12 months: 97.78%. Single issue nearest filing date: 98.23%.

I certify that the statements made by me above are correct and complete. Barbara Billitzer, Publisher & Editor-in-Chief



UPCOMING IRWA EVENTS

www.irwaonline.org

2017 Conference June 11 – June 14

Anchorage, Alaska

2018 Conference June 24 – June 27

Edmonton, Alberta

June 9 – June 12

2019 Conference Portland, Oregon



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IRWA's Affiliate Partners

We take our tagline—*Building a Better World. Together.*—seriously. IRWA is proud to partner with so many North American and International agencies and organizations in pursuit of strengthening infrastructure for all citizens of the world. These relationships provide our Association with an opportunity to exchange best practices, share industry research and collaborate on mutually-beneficial educational programs.

North American Partners





































International Partners













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- GIS Services
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