

# LOS ANGELES



June  
2008

IRWA  
CHAPTER 1

## Upcoming Events

[June 22-25, 2008](#)

Annual International Education  
Conference, Austin, TX

[July 22, 2008](#)

Past President's Luncheon

[August Dark](#)

[September 4& 5, 2008](#)

Course 502

[September 22, 2008](#)

Course 600



## President's Message

By: Andrew Thompson,  
SR/WA

As the month of June begins, I can honestly say that Chapter 1 has had a very successful 1<sup>st</sup> half of 2008. Four courses and two seminars are already under

our belts. For the year, our Chapter is on schedule to hold ten Courses, three Seminars and host the Annual Tri-Chapter Installation Luncheon. I cannot let a month pass without thanking all the volunteers that make these programs possible. Hopefully the 2<sup>nd</sup> half of the year will be just as successful.

## Membership Luncheon

[June Dark](#)

[July 22, 2008](#)

Past President's Luncheon

[August Dark](#)

## **2008 Los Angeles Infrastructure Seminar**

The joint venture between IRWA Chapter 1 and the Southern California Chapter of the Appraisal Institute, the 2008 LA Infrastructure Seminar: PLANES, TRAINS, AUTOMOBILES and the FUTURE FOR SOUTHERN CALIFORNIA, was a great success. I want to personally thank all the speakers who appeared and Kelly Kitasato who was our Seminar Chair. A job well done!

## **Nominations and Awards Committee**

Bryan Riggs is the Chairperson for this year's Nominations and Awards Committee. This committee recommends individuals for nomination to the elected positions of the Chapter 1 Board (I.e. Secretary, Treasurer and President Elect). These recommendations are an important step to insure the future success of our Chapter and the continuing commitment to provide the best educational opportunities within the international organization. Along with Bryan, Duncan Robb, Gary Valentine, Holly Rockwell and Tom Hanley serve as members on the committee.

## **Job Postings**

At Chapter 1 we strive to provide as much information as possible to our members. This includes the disseminating of local job opportunities. In order to be as fair as possible, future job postings will be placed in our monthly newsletter, which is typically emailed the second week of the month. In order for the postings to be included, they should be received no later than the 2<sup>nd</sup> Monday of the month. A short description of the job responsibilities and a URL which directs applicants to a website to obtain detailed information is highly recommended. Please note that we are also making an effort to update our website with a Job Postings page. For all those employers out there, please note that IRWA Headquarters also has a Career Center on their website at [www.irwaonline.org](http://www.irwaonline.org).

I wish everyone a great month of June! I hope to see some of you at the Annual Education Conference in Austin, TX.

## New Members

Name	Company Name	Referred By
Craig Chong	Property Appraisal	Konstantin Akhrem
Terry Huguet	Huguet & Associates	Daniel Kazden

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

<i>President and International Director</i>	<b>Andrew Thompson, SR/WA</b> Southern California Gas Company	213-244-5032	<a href="mailto:athompson@semprautilities.com">athompson@semprautilities.com</a>
<i>President-Elect and International Director and Tri-Chapter Chair</i>	<b>Vivian Howell, SR/WA, R/W-RAC, R/W-NAC</b> LAWA	310-417-0450	<a href="mailto:vhowell@lawa.org">vhowell@lawa.org</a>
<i>Treasurer</i>	<b>Bill Larsen</b> Integra Realty Resources	818-593-7200	<a href="mailto:wlarsen@irr.com">wlarsen@irr.com</a>
<i>Secretary</i>	<b>Konstantin Akhrem</b> Paragon Partners, Ltd.	714-379-3376	<a href="mailto:kakhrem@paragon-partners.com">kakhrem@paragon-partners.com</a>
<i>Professional Development</i>	<b>Michael Popwell, SR/WA</b> LA Community Dev. Com.	323-890-7195	<a href="mailto:michael.popwell@lacdc.org">michael.popwell@lacdc.org</a>
<i>Nominations and Awards</i>	<b>Bryan Riggs, MAI, SR/WA</b> Riggs & Riggs, Inc.	805-578-2400 ext 101	<a href="mailto:riggsinc@sbcglobal.net">riggsinc@sbcglobal.net</a>
<i>Education</i>	<b>Keith Dang, MAI, SR/WA</b> AFI Valuation Group, Inc.	310-378-0309	<a href="mailto:afivaluation@aol.com">afivaluation@aol.com</a>
<i>Membership</i>	<b>Dan Kazden</b> Riggs & Riggs, Inc.	805-578-2400 ext 104	<a href="mailto:dankazden@sbcglobal.net">dankazden@sbcglobal.net</a>
<i>Luncheon</i>	<b>Cheryl DeMucci</b> Epic Land Solutions, Inc.	310-378-2061	<a href="mailto:cheryldemucci@epicland.com">cheryldemucci@epicland.com</a>
<i>Webmaster</i>	<b>Mark Brusca</b> Riggs & Riggs, Inc.	805-578-2400 ext 105	<a href="mailto:markbrusca@sbcglobal.net">markbrusca@sbcglobal.net</a>
<i>Newsletter</i>	<b>Natalie Michelson</b> JPI Studios, Inc.	818-634-6932	<a href="mailto:aunttaliee@aol.com">aunttaliee@aol.com</a>
<i>Law</i>	<b>Michael Yoshiba, Esq.</b> Richards, Watson & Gershon	213-626-8484	<a href="mailto:myoshiba@rwglaw.com">myoshiba@rwglaw.com</a>
<i>Valuation Seminar</i>	<b>Artemis Manos</b> Southern California Gas Company	714-634-3141	<a href="mailto:agmanos@semprautilities.com">agmanos@semprautilities.com</a>
<i>LA Infrastructure Seminar</i>	<b>Kelly Kitasato</b> City of Pasadena		<a href="mailto:kkitasato@cityofpasadena.net">kkitasato@cityofpasadena.net</a>
<i>Fall Seminar</i>	<b>David Graeler, Esq.</b> Nossaman, Guthner, Knox & Elliott LLP	213-612-7800	<a href="mailto:dgraeler@nossaman.com">dgraeler@nossaman.com</a>
<i>Historian</i>	<b>Heather Riggs</b> Riggs & Riggs, Inc.	805-578-2400	<a href="mailto:hnriggs@sbcglobal.net">hnriggs@sbcglobal.net</a>
<i>Engineering/Survey</i>	<b>Art Cordero, PLS, SR/WA</b> City of Los Angeles	213-482-7192	<a href="mailto:apcor75a@yahoo.com">apcor75a@yahoo.com</a>
<i>Environmental</i>	<b>Mohammed Estiri, PhD</b> Eco & Associates, Inc.	714-832-5427	<a href="mailto:mestiri@panenv.com">mestiri@panenv.com</a>
<i>Pipeline/Utility</i>	<b>Gary Valentine, MAI, SR/WA</b> Valentine Appraisal & Assoc.	661-288-0198	<a href="mailto:gsv@valentineappraisal.com">gsv@valentineappraisal.com</a>
<i>Property Management</i>	<b>Duncan Robb, SR/WA, R/W - AMC</b>	909-627-2590	<a href="mailto:duncary@msn.com">duncary@msn.com</a>
<i>Liaison</i>	<b>Tom Hanley, P.E.</b> Paragon Partners	714-379-3376 ext 222	<a href="mailto:thanley@paragon-partners.com">thanley@paragon-partners.com</a>
<i>Title</i>	<b>Teri Kortens</b> Land America Commercial Services	213-330-3084 310-210-6741 cell	<a href="mailto:tkortens@landam.com">tkortens@landam.com</a>

**Membership Drawing**

At each chapter luncheon we draw a name from the Chapter 1 roster and if that person is in attendance, they win a cash prize. The drawing starts at \$100 and increases \$10 for each month that there isn't a winner. We haven't had a winner in a while. July's drawing will be for \$150 so be sure to be there in case your name is drawn!

**Case of the Month**  
**Public Agency Leases Are Freed From Inverse Condemnation Liability**

By: Jeffrey Z. B. Springer<sup>1</sup>

Both private entities and public agencies must be constantly on the lookout to protect themselves from potential liabilities. Some commentators complain that courts are so vigilant in protecting the rights of the injured that the consequences to commercial and future development opportunities have been ignored.

This concern is especially magnified when a property owner can assert that there has been a “taking” for public use. Perhaps because of past excesses by some government agencies, courts have wrapped these rights in particularly florid language, lending support for claims that sometimes seem surprising.

The recently published decision in County of Ventura vs. Channel Islands Marina, Inc. (2008) 159 Cal. App. 4th 615, addressed some of this historic language and determined that ordinary contract law principles provide adequate remedies to private party lessees. The decision will therefore serve to end the potential for inverse condemnation claims associated with government leases and contracts. As a result, this decision is an important one for public agencies involved in leasing their properties whether for development purposes or for interim use. In addition, the decision contains even further protection for public agencies by limiting the circumstances in which eminent domain valuation standards are employed.

Facts

At issue in this case was a long term lease of public land for development purposes. The County of Ventura leased a portion of its Channel Islands Harbor for the development of recreational boat slips and associated landside improvements such as restrooms and a yacht club facility.

In exchange for the tenant’s agreement to build out these improvements, the County granted a lease for a long term, 40 years, in order to provide an adequate term to amortize these improvements.

Prior to the expiration of the 40 year lease, the tenant and the County commenced negotiations for an extension. The lessee’s goal was to remain in occupancy and to continue to operate the marina improvements for profit.

However, the County believed that the old boat slips were fast becoming decrepit, and were already an eye sore. They were not consistent with the County’s vision for substantial renewal and upgrades within the harbor. Accordingly, the County’s goal was to obtain a commitment for redevelopment of the slips.

Perhaps as a result of these conflicting goals, no agreement was reached between the County and the tenant for a substantial lease extension.

In an effort to convince the County to relent, the tenant threatened to terminate the tenancies of the recreational boat owners and to remove the boat slips. The large number of boats, over 500, could not be accommodated at other facilities within the harbor. The County therefore worried that there might be disputes, even altercations, as displaced boat owners attempted to tie-up at other locations. Also, the County anticipated potential navigational hazards if some owners were to attempt to anchor within the navigation channels.

Needless to say, the County desired a more orderly transition.

To the consternation of the County, removal of the boat slips at the end of the lease was one of the alternatives expressly provided under the lease. Fortunately for the County, after the lease was executed, the California legislature enacted the Coastal Act. This enactment provided significant protection for recreational boating resources. Most significantly, the removal of recreational boating facilities was not permitted.

The County, of course, was aware of this, and took this factor into account in its negotiations with the tenant.

The parties also made an attempt to negotiate a purchase of the improvements. Under the lease, the County had the right to negotiate to purchase the improvements. However, the parties quickly settled upon highly disparate values. The tenant insisted that the improvements had a substantial remaining life, and should be valued at over \$3,000,000. The County, however, felt that the improvements were at the end of their economic life, and, in any event, were worth no more than the salvage value. The County therefore offered only \$50,000. Accordingly, no agreement could be reached for the purchase of the improvements.

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<sup>1</sup> Jeffrey (Jed) Z. B. Springer is a partner of the Los Angeles law firm, Demetriou, Del Guercio, Springer & Francis, LLP. Mr. Springer served as the Chapter 1 President in 1998.

With no agreement for the purchase of the improvements, the lease required the tenant to remove the improvements. Because of the Coastal Act, the County waived this obligation. However, the tenant did not desire any such waiver, because, if the improvements were not removed prior to the end of the lease, they would become the property of the County.

In order to demonstrate its seriousness, the tenant obtained a demolition permit for the landside improvements from the City of Oxnard. This demolition permit was not issued in compliance with the Coastal Act, and the County so notified the city. The city, of course, immediately withdrew its demolition permit.

The tenant next applied for a demolition permit from the Coastal Commission. However, the tenant soon realized that the Coastal Commission was unlikely to issue any demolition permit. Accordingly, the tenant withdrew its application.

Thereafter, the lease expired and the county re-took possession of the improvements.

### The Trial Court Proceedings

The tenant brought an inverse condemnation action, contending that by taking possession of the improvements under these circumstances, there was both a physical taking and a damaging compensable under the California Constitution.

In advancing its arguments, the tenant was able to cite a variety of California decisions which seemed to provide a simulacrum of legal support. For example, “physical takings” cases require only that there be possession for a public use. Of course, the tenant had no trouble demonstrating that the County took possession of the improvements, that such possession was for a public use, namely recreational boating, and there were important public concerns over public safety and safe navigation.

The tenant also claimed compensation under a line of California authorities which provides for compensation where a public project has resulted in injury to real property. This line of authority comes from Albers v. County of Los Angeles (1965) 62 Cal.2d 250. In that case, the County was granted an easement by adjacent landowners to construct a road. During construction, the county’s contractors piled dirt on the roadway, triggering a major landslide. The Court held that, where actual physical injury to real property is proximately caused by a public improvement, such injury is compensable even if it was not reasonably foreseeable.

The trial court found in favor of the tenant on both its physical takings claim and its claim for injury.

Having found liability, the trial court ordered a jury trial on the amount of the damages. In this trial, the County contended that the improvements should be valued at their salvage value, since this was the lease right that the tenant had lost. The tenant argued that they should be valued, in place, over their remaining useful life, citing eminent domain authorities where there was a taking of an entire property that had improvements. In such cases, the “undivided fee” rule provides for an appraisal of the entire property, ignoring the lease.

Of course, in this case, there was no taking of an entire fee, and no good reason to ignore the lease. Nevertheless, the trial court did not limit the damages to the value of the improvements, if removed. Instead, the trial court ruled that the improvements should be valued, in place, over their remaining useful life. In other words, the jury was instructed to ignore the fact that the lease was at end, and the tenant no longer had any right to continue to utilize the improvements at the location where they had been constructed. The resulting jury award was for \$3.5 million, for improvements which the tenant admitted had no value if they had been removed!

### The Court of Appeal Decision on Inverse Condemnation

The County appealed from the judgment and from all preliminary rulings.

In both the trial and appellate courts, the County cited and relied upon federal cases that have rejected takings claims that arise from lease and contract disputes. In such cases, federal courts have concluded that it would be inappropriate to tack-on “inverse condemnation” remedies for what are essentially breach of lease or contract disputes. In such circumstances, it has been said that the sovereign submits itself to the liabilities that apply under the common laws, so there is no need to import “inverse condemnation” remedies.

The court of appeal agreed with the County that the federal cases are instructive authorities. The court of appeal also agreed that there is no good reason to graft inverse condemnation remedies onto a dispute which essentially springs from a lease simply because the breaching party is a governmental entity.

### Causation

Another issue that was litigated both in the trial court and in the court of appeal was the issue of causation. Under California law, before a party can be held responsible in damages, a plaintiff must first prove “causation.” That is, it must be first demonstrated that the damages were caused by the conduct of the defendant.

This issue came up because the County argued that, even if the tenant was somehow damaged, then the damage was caused not by the conduct of the County but by virtue of the Coastal Act.

To demonstrate this fact, in the trial court proceeding, the County submitted the testimony of a notable Coastal Act expert, Nancy Lucast. Ms. Lucast testified that under no circumstances would a coastal development permit be granted to the tenant for purposes of removal of the boat slips. She explained in detail both the regulations and the Coastal Act policies that mandated this result.

Ms. Lucast was credible, and her testimony was accepted by the trial court. The trial court concluded in its statement of decision that, even if the County had consented to the tenant's applications for removal, "the Coastal Commission would not have issued a coastal development permit" for the removal of the boat slips.

Notwithstanding the clear lack of causation evident in the trial court's own statement of decision, the trial court held for the tenant. The court of appeal, however, reversed this determination. It stated that, in the absence of causation, the County could not be held liable.

Accordingly, the trial court's determination on liability was reversed, and judgment was entered for the County.

### Valuation

The court of appeal also took issue with the trial court's application of an eminent domain valuation standard in this end of lease dispute. Under these circumstances, valuation of the improvements should have not resulted in a determination for more than the salvage value. The Court of Appeal held that an end of lease dispute is distinguishable from a public agency's acquisition of an entire property by eminent domain. This ruling may find frequent application to public leases where there are disputed end of lease provisions.

### Commentary

It is of interest to note that, as commonsensical as these propositions may sound, the issue was closer than may be expected. First, of course, the trial court held against the County. The court of appeal opinion, although strongly reversing the decision and logic of the trial court, was actually a two to one decision. That is, two justices of the court of appeal voted in favor of the reversal, and one voted to affirm.

The tenant also petitioned for review in the California Supreme Court. Although that petition was denied, three of the seven justices sitting on the Supreme Court voted to grant the petition for review. Frequently, it is viewed that a vote in favor of granting a petition for review is indicative that those justices would vote in favor of reversal.

Accordingly, the stark differences between the opinions of the trial court and the divided court of appeal reveal the high degree of uncertainty in the law that prevailed before this case was decided. These stark differences also graphically illustrate the high stakes that public agencies previously faced.

Because this opinion is a "published opinion," it is legal authority in the State of California. Accordingly, all public agencies can take advantage of this ruling, and breathe at least two sighs of relief.

### JOB OPPORTUNITY:

City of Pasadena – Job Title: Management Analyst III/IV – Real Property & Redevelopment Closing Date/Time: Thu. 6/12/08 11:59PM Pacific Time

Under supervision, assists the Real Property and Redevelopment functions with coordination and implementation of the City's leasing property management, acquisition, disposition, relocation and redevelopment activities. Appointment will be made at the Management Analyst III or Management Analyst IV level depending on experience. Management Analyst III salary: \$61,592.54 to \$76,990.99.

**MUST APPLY ON LINE -**

<http://agency.governmentjobs.com/pasadena/default.cfm?action=viewjob&job>

## Updating your IRWA Membership Information

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

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

### Chapter 1 2008 Education Schedule

Course/Seminar	Date	Location	Coordinator
400 – Principles of RE Appraisal	October 6-7, 2008	DPW	Colleen McKenna
502 – Business Relocation	September 4-5, 2008	MTA	Diane Dominguez
600 – Intro to Environmental Issues	September 22, 2008	MTA	Diane Dominguez
803 – Eminent Domain Law Basics	October 23-24, 2008	MWD	Lizeth Olague
701	November 5 & 6, 008		
703	November 21, 2008		



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- Preliminary budgeting for alternate project sites
- Acquisition appraisals
- Expert testimony
- Reuse market studies and appraisals
- Valuation of public real estate for financing or disposition

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INTERNATIONAL RIGHT OF WAY ASSOCIATION

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Phone: (310) 538-0233  
www.irwaonline.org

**Coming Soon!**

**Course 506:  
Advanced Business Relocation**

**Course 506:  
Advanced Business Relocation**

**Course Description:**

In "Advanced Business Relocation Assistance", a pre-assessment of the participants' knowledge is followed with case study analysis of complex business relocation issues that require a thorough understanding of the relocation process and the Uniform Act. A detailed analysis of each case study is provided so participants understand the lead agency's theory behind its interpretation of the situation. Facts are applied in order to simulate a relocation that is consistent with the intent of the Uniform Act.

**Prerequisites:**

It is highly recommended that participants successfully complete IRWA Course 502, "Business Relocation", and have a minimum of two (2) years actual field experience performing relocation assistance, prior to attending this class.

**Topics:**

- Loss of Tangible Personal Property
- Substitute Personal Property
- Re-Establishment Expenses
- Owner Related Expenses
- Advanced Business Relocation Theory
- Adapting Utilities to Machinery and Equipment
- Fixed Payments

**Course Tuition Includes:**

Participant's Manual; Federal Register

**Required Materials:**

Handheld Calculator

**Who Should Take This Course:**

This course is designed for experienced right of way professionals who are in the field of relocation assistance.

Last Name		First Name	
Title			
Company Name			
Address			
City, State, Zip			
( ) -		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Phone		Member	Member ID Number
Email Address			

If payment includes the fees registrants other than yourself check here   
 (Please submit names of other registrants on a separate paper along with this form)  
 Will you also be attending?  Yes  No

Registration Deadlines	Member Tuition	Non-Member Tuition	Total Tuition Amount Due
Before 9/4/2008 :	\$415.00	\$520.00	\$ _____
After 9/4/2008 :	\$440.00	\$545.00	\$ _____

Total Member Registrants: _____
Total Non-Member Registrants: _____

PRINT NAME AS IT APPEARS ON CARD: \_\_\_\_\_  
 Amex  MC  Visa  Card #: \_\_\_\_\_ Exp: \_\_\_\_\_ 3-Digit CVV: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Amount to be Charged: \_\_\_\_\_

### Course 506: Advanced Business Relocation

**Sponsor:** IRWA Chapter 57  
**Date:** October 2-3, 2008  
**Time:** 8:00 AM - 5:00 PM Daily  
**City:** Riverside, CA

**Class Location:**  
 Fairmount Park, Lakeside Room  
 2601 Fairmount Blvd.  
 Riverside, CA 92501

**Four Ways to Register:**  
**Online:** [www.irwaonline.org](http://www.irwaonline.org)  
**Fax:** 310-538-1471  
**Phone:** 310-538-0233 x134  
**Contact Coordinator**

**Registration Deadline/Late Fee Policy:**  
 Registration deadlines and subsequent late fees may be set at the chapter's discretion  
 Registration fee after 9/4/08 is inclusive of \$25.00 late fee.

**Cancellation Policy:**  
 Written notification must be received by the course coordinator prior to class start date to be eligible for tuition refund:  
 - 100% if notice received 15 days or more prior to class start date  
 - 75% if notice received less than 15 days  
 - no refund issued for notice received on or after class start date

**Accommodations:**  
 Marriott Hotel  
 3400 Market Street  
 Riverside, CA 92501  
 (951) 784-8000 / Toll Free (888) 236-2427

**Rates: (starting at)**  
 Single: \$149 + 16.39% Tax  
 Double: \$159 + 16.39% Tax

Please contact the hotel directly for rates and reservations.

**Course Coordinator:**  
 Jeff Wellcome  
 2280 Market Street, Ste. 340  
 Riverside, CA 92501  
 Phone: (951) 683-2353  
 Fax: (951) 683-3901  
 Email: [jwellcome@opcservices.com](mailto:jwellcome@opcservices.com)

**About the Facilitator:**  
**William A. Von Klug, SR/WA and R/W-RAC**, is currently a Senior Project Manager with Paragon Partners Ltd. In his present capacity, Mr. Von Klug trains staff for Paragon Partners and oversees acquisition and relocation projects for the Company. Prior to joining Paragon Partners he was Acquisition/relocation Coordinator for Los Angeles County Community Development Commission. He has worked in acquisition/relocation since 1970. He has worked on projects throughout the US. His projects have been governed by are Federal relocation regulations and numerous different state laws. Most recently he has worked on project governed by various Federal regulations and by State of California relocation regulations. He has over 35 years of relocation experience, has testified to Congress on relocation issues and has taught over 375 classes or seminars. Mr. Von Klug is a member of the International Right of Way Association's Relocation Committee and is a Past President of one of its chapters and was voted professional of the year by Chapter 1.



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FAX: 310/571-3420

Los Angeles  
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Sacramento

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# Epic Land Solutions, Inc.

Epic Land Solutions, Inc. is a full-service Right of Way/ Real Property consulting firm whose purpose is to acquire and manage real property interests for clients who need to construct and maintain infrastructure facilities.

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- ◆ Relocation Assistance
- ◆ Property Management
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- ◆ GIS Support Services
- ◆ Franchising/Permitting
- ◆ Asset Management
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### Los Angeles

2601 Airport Drive  
Suite 115  
Torrance, CA 90505  
Phone: 310-626-4848  
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3850 Vine Street  
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Riverside, CA 92507  
Phone: 951-321-1800  
Fax: 951-321-1836

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2815 Camino Del Rio South  
Suite 245  
San Diego, CA 92108  
Phone: 619-822-2763  
Fax: 619-574-2667

### Portland

9600 SW Oak Street  
Suite 570  
Portland, OR 97223  
Phone: 503-244-0626  
Fax: 503-244-0627

[www.EpicLand.com](http://www.EpicLand.com)

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Karen McLaurin Dennis Devitt David Graeler  
Thomas Long James Powers Bill Pellman Kathlynn Smith  
James Vorhis Michael Thornton Rick Friess F. Gale Connor  
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