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Who is the lead federal agency for wind farms? Read Al Tonetti's research into this topic on Page 13.

In This Issue...

President's Corner *pg 3*
by Mike Polk

A Message from the Executive Director *pg 6*
by C. J. Summers

Shaune Skinner Named 2009 Visionary Award Honoree *pg 7*

2009 ACRA Conference Update *pg 8*
by Shannon Jones & Cinder Miller

A Big Thank You to Our Conference Sponsors *pg 9*

Be Careful About Flushing History *pg 10*
with introduction by Al Tonetti

TAG Wins Mayor's Award for Excellence *pg 11*

Wyoming SHPO Announcement *pg 12*

Windmill Farms and CRM *pg 13*
by Al Tonetti

Legislative Update *pg 16*
by Nellie Longworth

Government Relations Committee *pg 17*
by Jeanne Ward

ACRA's Mission

Our mission is to promote the professional, ethical, and business practices of the cultural resources industry, including all of its affiliated disciplines, for the benefit of the resources, the public, and the members of the association by:

- promoting and supporting the business needs of cultural resources practitioners;
- promoting professionalism in the cultural resources industry;
- promoting and providing educational and training opportunities for the cultural resources industry; and
- promoting public awareness of cultural resources and its diverse fields.

A basic tenet of ACRA's philosophy is the cost efficiency of private-sector firms in meeting the need for expertise in cultural resource management. ACRA is strongly opposed to unfair competition from tax-supported contracting programs. We believe that a greater benefit to society, and to the resources, derives from the existence of a healthy community of tax-paying, job-generating, private-sector CRM businesses.

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PRESIDENT'S CORNER

By Michael R. Polk



August is the month of vacations. It is a time when many of us recharge, taking a rest from the battles and finding time to reflect and renew our strength for moving back to the front lines. This year, it is also the last full month of my presidency in ACRA. As I wind down my work in this

office, I want to thank you, the membership for allowing me the opportunity to represent you to many people and organizations throughout the world for the last 4 years (as President-Elect, as Acting President and as President) and to help ACRA move through a giant transition as many of our operations are now being taken care of by the organization management company, Clemons and Associates.

We are, indeed, fortunate to have chosen such a capable company to help us, one with a very good track record of serving trade associations. With our original Executive Director, Crista LeGrand, and now CJ Summers, we have overcome many difficult obstacles which were a drag on our growth and on our ability to operate as efficiently as we need to. Over the last two years, we have revamped and upgraded our website to provide a more modern and user friendly site for both members and for

those seeking the services of our member companies. We have also been able to turn over most of our day-to-day operations, which has provided us a more consistent and professional organization as well as relieved the officers and board of duties for which we are not well suited on a long term basis.

Over the last several years, we have also seen improvements and changes in other areas of ACRA which have allowed you, the membership, to be better served, as is the goal of a trade association. Communications, the foundation of any organization, have been enhanced so that you are better informed of decisions being made on your behalf and so that you have more of a chance to respond to the direction that the Board of Directors has taken the organization. This communication includes the regular bi-monthly newsletter, and a new monthly member's update. With HQ's help, we have also begun more communication blasts with "Magnet Mailings," those full color emails that you have received on a variety of topics. They get people's attention and allow us to add photographs, forms and text with more appealing graphics to enhance messages from the Board, the President and HQ. In recent months, I have also wanted to interact more with the ACRA membership as a whole. One of the ways that we have done this has been with an "Economic Survey" to take the pulse of how economic conditions have affected the CRM

..continued on Page 4

industry in this country. Our first, carried out in March, at what seems to have been the bottom of the economic slump, will be followed up in late August with a second one. This will allow us, as an organization, to understand how CRM business operations have changed since March, and what the status of the CRM economy is in this dicey economy. If the response is as good as it was in March, we may find that this survey will be something important to continue into the future.

Our conferences have been enlarged and enhanced with, both the assistance of HQ, but more importantly, the financial support and involvement of more member companies. The Education Committee has provided us with continuing cutting edge workshops at every meeting, and topics and speakers have continued to be timely and the kind of subjects that will enhance your business and provide you with the ideas and tools that you need to increase your bottom line. Increasingly, people realize that the most important aspect of the conferences is the opportunities that you have to meet, connect and interact with other CRM professionals from the US and, at times, even other countries. This advantage has always been, and remains the ultimate focus of our conferences.

As an organization we have continued to gain respect and influence in the CRM workplace, in the eyes of existing and potential clients, and in government agencies. I have been in ACRA since its inception, on the board for 12 of its 15 years of existence, and its president twice. Over this time I have seen ACRA's influence in all aspects of cultural resource management in this country grow exponentially. ACRA is regularly asked to comment on proposed governmental regulatory changes, and

it has been regularly invited to meetings and conferences devoted to agency CRM protocol. It is also regularly asked to participate in symposia and other discussions with organizations such as the SAA, SHA and RPA concerning the topic of CRM. We continue to reach out to the historical and architectural history organizations, as well.

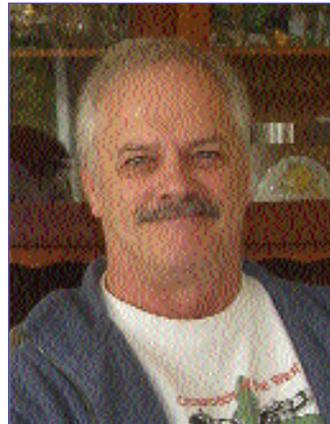
ACRA has been vigilant to identify opportunities for our membership as well as dangers which may lurk in new legislation and initiatives by governmental entities. Part of the reason that ACRA was formed was to watch for these situations and evaluate their value, or lack thereof, for our members. We continue to provide the bi-annual Salary Survey, the only survey in the nation focusing on wage and benefit information in our industry, and providing other company comparisons as well. In part we do this to provide comparative information for our members, but most importantly to provide a baseline for future US Labor Department statistics. Wage determinations for federal archaeological projects subject to the Service Contract Act are still based upon wage rates unrelated to our field. ACRA has asked the Commerce Department to assign an NAICS code to the cultural resource management field. Currently, projects that we work on are assigned to more than five different codes, which makes tracking of CRM business in this country virtually impossible. ACRA has also been tracking the progress of the "Employees Free Choice Act," which has been working its way through Congress. The Board believes that passage of this Act could have significantly deleterious effects upon CRM businesses in this country and so are closely monitoring its status. Many other governmental initiatives have been and continue to be regularly

monitored by our Government Relations Committee and Nellie Longworth, our Government Relations Consultant.

What may seem to be a laundry list of relatively recent accomplishments only touches on the work carried out by HQ, committees and task forces within the organization. From time to time you see mention of Newsletter, Safety, Marketing, the CRM Expo, the Liaison Committee, Strategic Planning, Competitive Practices, the Bylaws Task Force, the Membership Committee and many others which, together, provide tremendous value to our members.

What is missing in all of this is the participation of even more of our members in the board duties and committee work which makes this organization tick. Not enough of our members participate. That is what makes ACRA work. If you didn't know that yet, you have been given notice. Some of us wish to take a rest and be able to cheer on those who step forward to take on new responsibilities and provide creative and innovative ideas which we, the current leadership, may not even have thought of before. Please, please consider your abilities, your ideas and what value you may be able to offer the ACRA organization. Whether you believe it or not, its likely that you have unique and untested abilities which we can use to better this field of CRM and take all of us to the next level of business.

Thank you all for a most enjoyable and productive ride. For me, ACRA is far more than just a trade association. While it was not created for more than helping businesses operate better and providing a level playing field for them to work within, I have found far more. Yes, I found these things. I also found more information, more help and more encouragement than I could have expected. Even more importantly though, for me, I found lifelong friends who went through similar struggles and who I may never have even met were we not together in this organization. I have had better times at conferences and, yes, even board meetings, than I could have imagined having at any other business



meetings. I will miss those board meetings, but I will be at the conferences and I will maintain the friendships that I value so deeply. Thank you ACRA. I look forward to seeing you grow and make even more positive changes on the CRM landscape of the United States and the world in the years ahead.

A MESSAGE FROM THE EXECUTIVE DIRECTOR

By CJ Summers, Executive Director

ACRA Headquarters has been very busy the last few months with Annual Meeting preparations, registrations, sponsorships, and new memberships. We are really looking forward to what looks to be the best ACRA Annual Meeting yet. In this issue, we have written updates on everything to do with the meeting. So, if you haven't registered yet, make sure to visit your ACRA website and do it today!

Even with all the excitement at Headquarters about the meeting, ACRA Staff is still working on many other projects. Here is a quick update on each of those:

Bi-Annual Salary Survey

By now, you should have received a link and a password for this year's salary survey. Nurit Finn and Vernon Research hope to have this survey completed by the end of August to distribute the results prior to the Annual Meeting. As a special incentive, one member firm that completes the survey in its entirety is eligible to receive a 50% discount on their 2010 Membership Dues. Please email Nurit Finn if you did not receive the survey.

Follow Up Economic Survey

Keep an eye out for the follow up to the "Effects of the Economy" Survey. If you recall, you took part in this survey back in March. ACRA wants to compare the effects of the economy on the CRM industry to see how much has changed in the last few months and if the stimulus package has made any impact. You should see this survey toward the beginning of September.

ACRA 2009 Elections

This year's slate includes President-Elect, Secretary, Treasurer and candidates for small, medium and large firms. After a successful use of electronic mail in the 2008 election, ACRA decided to take the next step by creating an online ballot to simplify the system even more. With this election

process, the service does most of the work for us including tabulating the votes electronically, leaving no room for error, as well as following up with all members who may not have completed the ballot. This proves to be an efficient and cost effective way to conduct elections.

ACRA Board of Directors Meeting - September 17th

The next full ACRA board meeting is scheduled for Thursday, September 17th at the Renaissance Providence Hotel in Providence, Rhode Island. If there are any issues, concerns, or agenda items that you have for the board, please let Headquarters or a representative on the board know prior to the meeting so it can be placed on the agenda and discussed. Remember, the ACRA Board works for ACRA and its members.

ACRA Monthly Member Update

We continue to send out monthly updates on the 15th of each month. This forum provides you with an overview of ACRA's previous month's activities, plans for upcoming events and other information of value to share with fellow cultural resource companies. Please look for this "Monthly Update" in your Inbox on the 15th of every month. If there is anything specific you would like to see in this update, please email Shannon at ACRA Headquarters. This update is for you, the ACRA member.

ACRA Headquarters

We are your ACRA Headquarters. If we can be of any assistance to you throughout the year, please contact Shannon Jones, Association Coordinator, at 410-933-3483, or shannonj@clemonsmgmt.com. Or you can contact me directly, CJ Summers, Executive Director at 410-933-3459, or cjsummers@clemonsmgmt.com.

Shaune Skinner Named 2009 Visionary Award Honoree



[On July 9, 2009, ASC Group, Inc.'s President, Shaune Skinner, was awarded the National Association of Women Business Owners (NAWBO), Columbus, Ohio Chapter, Visionary Award <http://www.nawbocolumbusohio.com/Resources/Visionary.aspx>. Visionary Awards are designed to recognize and honor women who have achieved success in their respective fields, and made notable contributions to their communities, their industries, and professional women's objectives. ACRA congratulates Shaune on this impressive award.]

Columbus, Ohio, July 9, 2009 - The Columbus, Ohio Chapter of the National Association for Women Business Owners (NAWBO-Columbus) has named Shaune Skinner, President of ASC Group, Inc., as the 2009 Visionary Award honoree.

"Among our outstanding group of nominees, Shaune stood out in her exemplary vision," said Gail Froelicher, NAWBO-Columbus President.

"Her continuous initiative and commitment to her core competencies has resulted in catapulting her business to the next level on several occasions. Even when she was met with disappointing challenges, she turned them around and literally set a new industry standard."

In 1986, Shaune saw the need for privately-provided archaeological surveys to comply with state and federal laws and she recognized the opportunity for a woman-owned business in this male-dominated field. Archaeological Services Consultants, which later became ASC Group, was the first private company in the State of Ohio conducting archaeological surveys for compliance with Section 106 of the National Historic Preservation Act.

"I have been lucky when attempting to implement my vision," said Shaune. "From the beginning, I have turned to both friends and colleagues for the advice and support I needed. I could not have been as successful without their mentoring, their feedback, and their partnerships."

Today, Shaune continues to lead ASC's growth into new, targeted markets, establishing strategic teaming agreements to improve their competitive advantage. While based in Columbus, ASC currently has seven offices in five states. Recently, Governor Ted Strickland appointed Shaune to the Ohio Historic Site Preservation Advisory Board which advises the Ohio Historical Society Board of Trustees on historic preservation issues.

Visionary honorees are all women who are majority owners in their businesses, are registered in the state of Ohio, and have their businesses located within a 100-mile radius of Columbus. Over 80 percent of the past Visionary Award honorees are still in business today and the remaining 20 percent have sold their businesses and moved on to other endeavors.

NAWBO-Columbus helps women business owners clear their paths to business success through strategic connections that include strong peer advisory opportunities and powerful corporate partnerships.

2009 ACRA CONFERENCE UPDATE

By Shannon Jones, ACRA HQ & Cinder Miller, Gray & Pape

Final preparations are underway for ACRA's 15th Annual Meeting. Headquarters is working diligently with the Program Committee to make sure that this year's meeting is the best yet! Be sure to visit the 15th Annual Meeting webpage on ACRA's website, www.acra-crm.org. A link can be found on ACRA's website. The meeting webpage is updated daily with all of the latest information. If you have any questions about the meeting, please contact ACRA Headquarters and we will be happy to assist you. We look forward to meeting each and every one of you in Providence!

Program

Conference Programming this year focuses on subjects topical to all ACRA members: The Recession and the Stimulus Package. Our Keynote Speaker, Reid Nelson of the ACHP, will speak about Stimulus Package funded projects and their impact on the CRM community. The Keynote address will be followed by a panel discussion featuring representatives of a number of federal agencies. The panelists will specifically address how their agencies are contracting and managing CRM work funded through the ARRA. Friday afternoon programming will feature a panel discussion focused on techniques for helping your business survive and thrive in a recession economy. This session will be followed by a new event for ACRA meetings, a speednetworking session provided to help student attendees learn more about careers in CRM and the preservation community. Simultaneously, a hands-on demonstration of remote sensing, GPS, and other technologies relevant to the CRM community will occur in a separate venue. Saturday programming is packed with sessions focused on topics suggested by ACRA member firms. These sessions include: Alternative Mitigation Approaches in the 106 Process,



Gray & Pape hosts your Saturday night cruise - - bring your money and jewels.

Communicating with Clients More Effectively, Issues Associated with Viewshed Analysis and Permitting, Getting the Best Return on your GIS investment, and Women-Owned Businesses in CRM.

Other exciting tidbits include: An update on the ACHP Archaeology Task Force, a presentation focused on the aligned interests of ACRA and RPA, vendor tables, and a series of FUN events including a dinner cruise, tours, and lots of time to network with fellow ACRA members!

..continued on Page 9

Registration

Registration for the Annual Meeting is still open! There are already over 100 members attending. Don't be left out! Go to ACRA's website to register online today. Also, don't forget to reserve your room at the Renaissance Providence Hotel. Mention that you will be attending the ACRA Meeting to receive the discounted room rate. The special ACRA room rate is only guaranteed through August 26th.

Sponsorship

There are still lots of great sponsorship opportunities available for the Annual Meeting. Don't forget that ACRA can customize a sponsorship opportunity to maximize your company's support. If you have a special idea for something you would like to sponsor, call Shannon at 410-933-3451 and we will put together a package designed specifically for your needs. Also, remember that larger donations can be split between 2 companies, so call your in-state rivals and challenge them to split one with you!

Workshop

ACRA is pleased to kick off the Annual Meeting with a workshop, "Engaging a Changing Workforce: New Game, New Rules," on Thursday, September 17th from 8:45 am to 5:00 pm. This workshop, hosted by The Learning Café, will examine how the workforce has changed and how your company can utilize this change to reach your maximum potential. It promises to be a great start to an educational and fun meeting weekend! If you are interested in the workshop, contact Headquarters immediately as the deadline is approaching.

Tours

The program committee has organized two tours for your enjoyment. The first is a trip to the Historic Arnold House on Thursday, September 17th from 1:00 pm to 5:00 pm. The second tour is on the morning of Sunday, September 20th and is a visit to Small Wonders: Shannock and Kenyon Villages in South County, RI. You won't want to miss either of these amazing sites, so be sure to sign up for one or both of the tours!

A BIG THANK YOU TO OUR CONFERENCE SPONSORS

ACRA Headquarters and Gray & Pape, Inc. would like to thank our generous sponsors for their contributions to the 15th Annual Meeting. As of press time for this edition of the newsletter, the sponsors are:

Awards Luncheon Sponsors

- Alpine Archaeological Consultants, Inc.
- Richard Grubb & Associates

Coffee Break Sponsors

- Archaeological Consultants, Inc.
- ASC Group, Inc.
- Independent Archaeological Consulting, LLC
- Natural Resource Group
- Sagebrush Consultants, LLC
- Vanasse Hangen Brustlin, Inc.

Conference Sponsors

- Commonwealth Cultural Resource Group, Inc.
- Geo-Marine, Inc.
- Hartgen
- PAL
- Statistical Research, Inc.
- William Self Associates, Inc.

Continental Breakfast Sponsor

- New South Associates

Friday Night Reception

- PAL

Lanyards

- aci consulting

Past President's Luncheon - \$500

- Sagebrush Consultants, LLC

Additional Contributions by:

- SouthArc, Inc.
- Vanasse Hangen Brustlin, Inc.

A big thank you to ALL of these firms for their generous support of ACRA! Sponsorship opportunities are still available. Email Shannon, shannonj@clemonsmgmt.com for more information!

BE CAREFUL ABOUT FLUSHING HISTORY

With Introduction by Al Tonetti, Cultural Resource Specialist, ASC Group, Inc.

Recently (August 3, 2009), the Des Moines Register published a rather enlightened editorial (reprinted with permission below) concerning Section 106 and its application to sewers and publicly owned infrastructure in Iowa. The editorial was the result of a series of Register articles pertaining to some public officials in Iowa who found it incredulous that they would have their "shovel ready" sewer projects subjected to Section 106 and its National Register criteria evaluation process, how that might jeopardize federal stimulus funding, and the role of the SHPO. The articles reveal a fundamental misunderstanding of the Section 106 process and how local, state, and federal legislators from Iowa and its Governor got involved in the matter, some vowing to work to change federal law to expedite such projects, and perhaps change the Section 106 process itself. This matter once again demonstrates that educating public officials at all levels of government about the purpose and process of Section 106 must be one of ACRA's highest priorities.

As part of their effort to comply with Section 106, the city of Des Moines recently but reluctantly hired Tallgrass Historians, L.L.C. to develop a historic context for their sewer system infrastructure. According to Leah Rogers of Tallgrass, the historic context will be useful to National Register criteria evaluations in other Iowa cities. This matter also demonstrates the need for more historic preservation planning at all levels of government, particularly at the federal and state level, and the prioritization of resources to do so. The development of historic contexts for common property types such as sewer systems is a good tool. Further development of Programmatic Agreements pertaining to federal actions on common types of historic properties also would help.

[Reprinted with permission from the Des Moines Register, August 3, 2009]

News last week that Des Moines and other Iowa cities might have to declare their sewers historic landmarks caused consternation for exasperated public officials and eye rolling by taxpayers. It is fair to say that sewers aren't exactly popular candidates for historic sites, but that does not mean that every trace of their presence should be destroyed without first taking stock of their historic value.

Des Moines, Keokuk and perhaps other cities learned recently that federal historic-preservation rules apply even to lowly sewer projects that use federal money. This conjured up images of underground sewer tours, or perhaps sewage-system visitor centers. Instead, cities likely at most will be required to document historic sewers before making permanent changes.

It's easy to poke fun at the notion of a historic sewer, but it would be unfortunate if the guffaws led to the conclusion that public infrastructure has no historic value.

Some of the world's greatest examples of human activity include vestiges of the Roman Empire, such as

bridges and aqueducts, some of which predate the birth of Christ. In one sense they are just ordinary pieces of stone put in place for a utilitarian purpose. In another sense, they help tell the story of an ancient civilization.

Closer to home, early means of transportation are considered landmarks worthy of preserving, including canals and even wheel ruts along wagon trails and old stage-coach roads. Before Greensburg, Kansas, became widely known for the 2007 tornado, it was a minor tourist stop for having the world's largest hand-dug well.

On the subject of sewage, Abe Lincoln's privy pit turned out to be a (ahem) gold mine for historians. Indeed, much of history can be discovered only underground. In Des Moines, for example, recent downtown construction projects prompted excavation to examine remains of old Fort Des Moines, the birthplace of the city. Those digs turned up pieces of pottery, medicine bottles, buttons and coins that helped fill in blanks about what is known about the area's earliest inhabitants.

Those archaeological investigations happened only because they were required by federal rules. The idea is that tax dollars should not be used to recklessly destroy history. Local governments are free to do that at their own expense, of course, but if they accept federal largesse they should at the very least be required to investigate the historic significance of sites and structures before firing up the bulldozers.

In the case of storm or sanitary sewers, that could be something as simple as documenting the construction materials and design of old sewers, some of which were hand-built of wood and brick. They are every bit as important as bridges or buildings as examples of

engineering and craftsmanship, and they help tell the story of a civilization as well. Also, excavating to replace them can disturb other important underground history.

If anything is troubling in this case, it is that the governor's office stepped in to get the state historic-preservation office to back off. That office is charged with advising the feds on enforcing the rules in these situations, and it should have the freedom to dispense that advice without political interference. Sometimes that advice might infuriate local officials, but the goal is to think about the impact on the story of man before we pave over it. That process itself is worth preserving.



Tag Historical Research & Consulting Wins Mayor's Award For Excellence

ACRA member firm TAG Historical Research & Consulting (based in Boise, Idaho) has been named as a recipient of the Mayor's Award for Excellence in Art & History/Business Support for History. Presented every two years, the Mayor's Awards for Excellence in Art & History celebrate people, organizations, and businesses that have contributed to Boise's cultural scene.

Award recipients must have demonstrated distinguished service, creative accomplishment, a record of publication, presentation or research that enhances the artistic, historic and broader cultural life of Boise. The awards began in 1986 to honor the arts, and over 70 people and organizations have been recognized since its inception. 2009 marks the first year the field of history has been included in the awards.

TAG Historical Research & Consulting (TAG), was established in 1993 as The Arrowrock Group, incorporated in 1994, and assumed TAG as a business name in 2006. Owners Barbara Perry Bauer (MA, Public History) and Elizabeth Jacox (BA, History) are historians specializing in community and local history, historic preservation and environmental history. TAG provides quality historical research and documentation for clients throughout the Pacific Northwest.

Awards will be presented to all eleven recipients at a special event on September 25 hosted by the Boise City Department of Arts & History.

Visit TAG online at www.taghistory.com and the Boise City Department of Arts & History at <http://www.cityofboise.org/CityGovernment/ArtsAndHistory/>

WYOMING SHPO ANNOUNCEMENT

FCC (Federal Communications Commission) has recently implemented an electronic e-filing system. The Wyoming SHPO's office is participating in this program. The following are brief instructions if you are working on a project where the FCC is the lead federal agency. This information will also be posted on the SHPO's website. We hope this clarifies what is submitted to our office; please feel free to contact me if you have questions.

Regards,

Mary Hopkins
Interim SHPO

FCC Compliance

All proposed tower locations are required to be e-filed with the FCC.

At the same time of the e-filing, SHPO requests an archival copy (paper copy of the report and all associated forms) of the report be submitted to:

Wyoming SHPO
2301 Central Ave.
Cheyenne, Wy. 82002

1. Reports must meet the "[Wyoming Class II and Class III report standards](#)".
2. Photos must be submitted on photographic paper ([see photographic standards](#)).
3. The FCC 620 is submitted on-line only. Resumes are an FCC requirement and are submitted on-line only.
4. If you are e-filing and have already submitted a report for review, please include the SHPO review number somewhere on the document or in a cover letter.
5. SHPO will not review the report until we have received electronic notification from the FCC requesting our comment.
6. Please submit all FCC projects through CRMtracker and include the report cover sheet with the DBI with the documentation. This will help to speed the SHPO review process.

WINDMILL FARMS AND CRM

By Al Tonetti, Cultural Resource Specialist, ASC Group, Inc.

[NOTE from Newsletter Coordinator: At the request of an ACRA member firm, board member Kim Redman asked for some guidance on the CRM requirements for wind farms. Al Tonetti researched the subject and provided the following report.]

A recent thread on ACRA-L broached the topics of assessing the effects of wind farms on cultural resources and how wind farms are regulated with respect to cultural resources. Regarding the latter, in an exchange between Chuck Niquette and Laura Dean, FPO for the Rural Utilities Service, Chuck commented, "can you tell me who is the lead federal agency for wind farms, particularly in the East but also in the West if they are constructed on private land. From what I've seen there is almost no federal involvement with these types of projects and instead the process is being driven by state level public service commissions or some other state agency. In Indiana, for example, wind farms are being built with absolutely no regard to historic properties." Laura replied "Rural Development is composed of 3 agencies - Rural Utilities Service, Rural Housing Service and Rural Business-Cooperative Service. RUS is considering applications for wind turbine farms out West, especially in the Dakotas. Sometimes, RUS is the only federal agency; in other instances another agency, such as WAPA [Western Area Power Administration], might be involved. In the Northeast, I believe that applications typically are made to Rural Business Cooperative Service for one or two small wind turbines to support commercial operations. But I work with RUS not the other 2 agencies so I cannot relate any geographic or other patterns in the applications. RD becomes involved when the project proponent applies to an RD agency for financial



North Kohala Windmill Farm, Hikapoloa, Hawaii

assistance to construct the wind turbine project." Laura side-stepped Chuck's question. David Hughes replied, "as I understand it, from Kansas the only federal involvement comes if there is a network interconnect to an interstate grid, in which case various federal agencies can comment. As long as the project is within this state, and its production is kept within this state, then 106 and other federal compliances do not enter." Thus, it appears that there is no single federal agency, comparable to the FCC re cell towers, which must be individually licensed by the FCC, overseeing development of commercial wind farms.

Based on what I've read, it appears that CRM compliance for wind farms on non-federal land, which is where compliance with CRM regulations appears problematic, is primarily based on how the wind farms are funded, permitted, or otherwise approved. When federal funds, permits, or approvals are needed (e.g., permits issued by the US Army Corps of Engineers regulating activities in navigable waterways under the Rivers & Harbors Act of 1899, and dredging and filling in the waters of the US, including many wetlands, under the Clean Water Act of 1972), Section 106 is invoked. Without a federal nexus, Section 106 is not applicable.

State regulations may, however, require some level of CRM compliance.

ASC Group's only experience with a commercial wind farm in Ohio is as Chuck observed: the CRM process is driven by a state level public utility service commission (Ohio Power Siting Board). OPSB regulations give them minimal control over the impacts of wind farms on cultural resources. The extent to which the OPSB will require CRM field surveys is uncertain. OPSB is currently considering this matter. The applicant for the wind farm we are working on wants to do as little as required/needed, and they are trying, so far successfully, to avoid the need for federal approvals. The project we are working on will likely set a precedent for commercial wind farm CRM in Ohio.

Let's use the impact of coal mining as an example of how a federal law was enacted to deal with environmental impacts caused by that industry. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) regulates environmental effects of coal mining. SMCRA grew out of a local, then state, then national concern about the environmental effects of strip mining. The concern was established by citizens and their legislators, and the concern was perceived as important enough for federal legislators to enact a federal law regulating the industry's practice.

Before World War II, a few states, e.g., West Virginia, Indiana, Illinois, and Pennsylvania, regulated coal mining, but federal regulation was absent. During and after the war, coal mining increased dramatically, as did its adverse effects on the environment, and coal mining states continued to enact and expand regulatory programs, some of which required mining permits or the posting of bonds to ensure that the land would be reclaimed after mining was complete. These state laws were largely unsuccessful in mitigating coal mining's adverse effects (i.e., citizens and state legislators were unsatisfied with the way coal mining firms addressed the environmental impacts of surface mining). A significant problem was that laws regulating coal mining varied from state to state, enabling mining operations to

relocate to states where regulations were less strict. Meanwhile, surface mining became increasingly common: in 1963 just 33 percent of American coal came from surface mines; by 1973 that figure reached 60 percent.

SMCRA requires that coal mining companies obtain permits before conducting surface mining. Permit applications must describe what the pre-mining environmental conditions and land use are, what the proposed mining and reclamation will be, how the mine will meet SMCRA performance standards (SMCRA and its implementing regulations set environmental standards that mines must follow while operating, and achieve when reclaiming mined land), and how the land will be used after reclamation is complete. This information is intended to help government determine whether to allow the mine and set requirements in the permit that will protect the environment. Like most environmental statutes passed in the 1960s and 1970s, SMCRA uses a cooperative federalism approach under which states are expected to take the lead in regulation while the federal government oversees their efforts (somewhat similar to NHPA Section 106, with the ACHP's reliance on SHPO's consultative role). Under SMCRA, the federal government can approve a program, which gives the state the authority to regulate mining operations (unlike Section 106, which does not give SHPOs permit approval authority), if the state demonstrates that it has a law that is at least as strict as SMCRA, and that they have a regulatory agency with the wherewithal to operate the program. Currently, most coal-mining states have approved programs. Those states issue their own permits, inspect their mines, and take enforcement action themselves when necessary. In those states that do not have an approved program, the Office of Surface Mining reviews permit applications.

Comparing the regulatory history of coal mining to wind farming, I'd say we are in the pre-World War II stage, with some states regulating the environmental impacts of wind farms, and little federal oversight. Do we need a federal law governing or overseeing the

environmental impacts of wind farms similar to SMCRA? I don't know, but if it occurs it will be years from now. What we do need to know is how current federal policy and law, and at the state and local level, applies to them, and how they are currently regulated. Does ACRA need a working group to examine this issue further? Perhaps.

The American Wind Energy Association's (AWEA) Wind Energy Siting Handbook (2008) <http://www.awea.org/sitinghandbook/> does a good job of presenting general information about regulatory and environmental issues associated with the development and siting of land-based, commercial-scale, wind energy projects in the US. These wind energy projects are generally owned and operated by independent power producers who sell their power to electric utilities. Commercial-scale projects generate from five to several hundred megawatts and consist of a few to hundreds of wind turbines.

The regulatory framework chapter of the handbook succinctly explains the Section 106 process and other federal and state regulations that may apply. The handbook recognizes that wind energy developers may need to comply with federal, state, and/or local government regulations for siting wind farms. Compliance depends on the size and scope of the wind energy project, what state it is in, the nature of land ownership (private and/or public), etc. It urges that studies required in the permitting process be science-based and site specific.

The current federal regulatory framework for siting wind projects on non-federal land is based on several policies and laws. If federal funds, licenses, permits, loan guarantees, or approvals are needed, Section 106 would be applicable. Potential impacts of the project to resources such as wildlife, water, and aviation may trigger federal approval or permits. Besides the aforementioned Rivers & Harbors and Clean Water acts, there's NEPA, ESA, and a few others. NEPA would come into play if a federal permit or approval was required (same for NHPA/Section 106).

Under NEPA, environmental review for wind projects most often occurs as part of a state or local permitting process rather than as part of a federal agency NEPA review. State and local processes vary. The lack of uniformity among regulatory programs means that compliance could be simple in one state but complex in another. ESA applies if wind project activities may result in a taking or harm to species and their habitat, such as site clearing and wind turbine operation. Private entities and state or local governments or other non-Federal landowners who wish to conduct activities on their land that might incidentally harm (or "take") a species listed as endangered or threatened must first obtain an ESA Section 10(a)(1)(B) incidental take permit (ITP) from the U.S. Fish and Wildlife Service (FWS). To obtain a permit, the applicant must develop a Habitat Conservation Plan (HCP) designed to offset any harmful effects the proposed activity might have on the species. If the developer of a wind project determines that a "taking" of endangered or threatened fish or wildlife is likely to occur, and the project is not subject to ESA Section 7 consultation (see below), the developer can apply for an ITP from FWS. These actions would invoke Section 106, and require NEPA compliance through an EA or EIS, unless FWS determines that the HCP submitted with the ITP is of "low-effect," in which case the ITP approval would be considered a categorical exclusion and not require additional NEPA review. ESA Section 7 is invoked when the developer requires federal approval as part of a permit from another federal agency, e.g., Corps of Engineers. Regarding aviation, the FAA requires the filing of Notice to Proposed Construction for any structure greater than 200 feet above the ground. The FAA's review determines whether the proposed action will create a hazard to navigable airspace, and results in either a Determination of No Hazard or a Notice of Presumed Hazard, the latter of which requires further consultation and affixing appropriate marking and lighting to the turbines and towers.

LEGISLATIVE UPDATE

By Nellie Longworth, Government Affairs Consultant

FY10 Historic Preservation Appropriations Process To Date:

	FY 2008 <u>Enacted</u>	Obama <u>FY2010</u>	House Vote: <u>254-173</u>	Senate Full <u>Committee</u>
State Preservation Officers	\$42.185 mil	\$46.5 mil	\$46.5 mil	\$46.5 mil
Tribal Preservation Officers	\$6.948 mil	\$8 mil	\$8 mil	\$8 mil
Save America's Treasures	\$19.851 mil	\$20 mil	\$30 mil	\$20 mil
Preserve America	<u>\$0</u>	<u>\$3.175 mil</u>	<u>\$6 mil</u>	<u>\$3.175 mil</u>
Total	\$68.984 mil	\$77,675mil	\$90.5 mil	\$77.675 mil

The Senate Appropriations Committee has completed action and the measure will now go to the floor for a vote. If the numbers are unchanged in the Senate, a House/Senate Conference Committee will finalize the FY10 Historic Preservation Appropriations. The good news is that total funding will be an increase over FY09 for the SHPOs, Tribes, and Preserve America.

Surface Transportation Reauthorization Introduced In House - Good News!

Rep. James Oberstar, Chair on the House Transportation and Infrastructure Committee, introduced a six-year, \$450 billion reauthorization of the surface transportation bill. The area of greatest interest in the measure includes the reauthorization of the Transportation Enhancement Program which has put more money into historic preservation than any other legislation. The reauthorization includes a new Office of Livability, which supports the advancement of livable communities. There is further a new Office of Expedited Project Delivery that enhances the speed of product delivery and encourages practices that result in the coordination and collaboration between the relevant parties.

There is some serious concern about an initiative that would provide \$50 million over six years to develop 11 high-speed rails linking major metropolitan regions in the US. This could drastically impact Main Street communities that would be in close proximity to the rail. It will create 110mph vibrations that would have a negative impact on historic buildings and traffic. In the current law, only highways were eligible for 80% federal funding while transit received 50% federal match. The Oberstar measure would allow transit to have 80% federal funding.

It is the hope of the Chairman that the measure will become final before September 30, 2009, the date when the Highway Trust Fund expires. There is pressure from the White House to delay the bill for 18 months but the Chair is adamant about completing the measure, which includes refunding for the Highway Trust Fund, by September 30, 2009.

More information about the National Trust Section 106 study has been sent to all ACRA members. If you have any questions, please contact Nellie Longworth - nellbabe@aol.com.

GOVERNMENT RELATIONS COMMITTEE

By Jeanne Ward, Vice President for Government Affairs

The Government Relations Committee has been involved in a number of issues over the last several months. Of note, we are monitoring the Corrections of Long-Standing Errors in Agencies' Unsustainable Procurements Act of 2009 - Clean-Up Act (S.924, HR.2736). Sponsored by Senator Barbara Mikulski (MD) and Congressman John Sarbanes (MD), the identical bills are intended to bring many positions currently contracted out back into the government. The bills are ostensibly aimed at domestic, technical-type positions, not oversees, military-type positions. Our concern may be the unintended consequences of the term "mission-essential function" which refers to functions that, although neither necessarily inherently governmental nor necessarily closely related to an inherently governmental function, are nevertheless considered by executive agency officials to be more appropriate for performance by Federal employees. This seems to be a term which is defined within each agency and which could affect our industry if broadly defined. Staffers think the bills have a good chance of passing but will not proceed quickly. The Government Affairs Committee is monitoring the process and welcomes comments.

In addition, the committee is preparing comments to the Natural Resources Conservation Service's (NCRS) revised NEPA categorical exclusions published at <http://www.gpo.gov/fdsys/pkg/FR-2009-07-13/html/E9-16400.htm>. Again, comments are welcome.

Finally, a number of issues have been brought to the attention of Government Affairs Committee through various channels. Upon examination it became apparent that action by ACRA would be either ineffective or

inappropriate. These tended to be issues of local concern where no existing legislation, federal, state, or local, was available upon which to base action. The destruction of a prehistoric mound in Oxford, Alabama is an example (<http://www.alabamaarchaeology.org/>). Alabama-based board member Elizabeth Sheldon has followed the situation, finding that there was no Section 106 obligation, no state legislation, and no local jurisdiction to require preservation. The site had been the object of two archaeological investigations and was recommended as not eligible for listing on the National Register of Historic Places under Criterion D, but an argument has been made that the mound itself is a feature and that it may be eligible under Criterion A, an example of an historic traditional practices or events in the Native American community, and Criterion C as "community design and planning" associated with "a pattern of features common to a particular class of resources." In any case, the argument appears irrelevant as the mound has been - legally - used as fill for a retail development.

This and the other issues highlight the need for legislation to protect resources which may be endangered but not subject to protection under Section 106. Here in Maryland we have a number of counties which have enacted local ordinances associated with the development process which require cultural resources review and compliance, and a number of counties are in the process of developing such laws. A number of inquiries about such legislation have circulated on acra-I, and it is encouraging to see protection beginning to be extended to vulnerable resources which exist outside Federal purview.



EDITION

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ACRA's Members-Only Listserver

MembersOnly is a private email forum intended to promote dialogue between ACRA members, and to provide a venue for the membership and the board of directors to share information, and to post queries and comments for discussion. To participate in MembersOnly, visit www.acra-crm.org and click on the link under ACRA forums.

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This publication's purpose is to provide members with the latest information on the association's activities and to provide up-to-date information on federal and state legislative activities. All comments are welcome.

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