

Montana University System's Policy for Competition with the Private Sector

by Alan Newell, President, H R A, Inc., Missoula, Montana

In the summer of 1995 the University of Montana entered into an agreement with a private Wyoming-based CRM firm (Frontier Archaeology) to acquire the firm's assets and to bring it to the University campus in Missoula. The stated purpose of this arrangement was to "jump-start" a CRM contracting program at the university.

Historical Research Associates, Inc. (HRA), a Missoula-based consulting firm objected to both the purpose and means of the acquisition.

For more than 1½ years, HRA battled with the University over its stated goal to compete with the private sector using a publicly sponsored institution. The University continued to defend its actions, even in the face of the organization's consistent losses.

HRA eventually took its concerns to the Montana Legislature and sponsored a bill to restrict public entities, such as the university's CRM contracting program, from using public sponsorship to compete with private business. The bill passed the House and failed in the Senate on a close vote; however, as a result of HRA's efforts the Montana Commissioner of Higher Education convened a task force, in which HRA participated, to develop a policy governing University activities. The resulting policy, reprinted here, was unanimously passed by the Board of Regents in November 1998.

BOARD POLICY:

1. Units of the Montana University System should engage **only** in activities consistent with their published and approved missions.
2. **While** in some instances it may be inevitable or necessary for a unit of the university system to engage in activities and services that may be in competition with the private sector, those activities should clearly be a by-product of the unit's effort to pursue its educational, research, and public service mission, or should contribute to the unit's ability to achieve its mission. Activities or services offered primarily to members of the campus community are not precluded by this policy.
3. It is the responsibility of each President and Chancellor of the university system to review carefully activities that are marketed, appear to be focused on the generation of income, and that compete with the private sector. Because of the possibility of new businesses coming into the marketplace, this review will be conducted annually.
4. The review by the President and Chancellor will include the appropriateness of pricing of goods and services in order to prevent an unfair cost advantage coming to a unit of the university system because of state support.
5. The review by the President and Chancellor will ensure that the amount of resources invested in the activity is consistent with the relationship of the activity to the unit's mission and does not appear to have as its purpose growth or expansion beyond what is needed for achievement of that mission.
6. In all areas in which there may be competition with the private sector, the President or Chancellor will make proactive efforts to seek public/private partnerships, with a concern of ensuring fairness to all parties.

... continued on page 2

In This Issue...

ACRA Business 1998 Annual Conference	pg. 4
Committee Reports Government Relations Legislative Update	pg. 5 pg. 6
Contributed Articles New Mexico BLM	pg. 8

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Montana University cont.

PROCEDURES:

1. The Commissioner of Higher Education, the Presidents, and the Chancellors of the Montana University System will make consistent efforts to inform the campuses and the public of the existence of this policy.

2. Review of activities will take place in the manner suggested by the flow chart appended to this policy.

3. Informal resolution process. Each campus chief executive officer will make clear to the campus community and the public that the willingness to pursue informal resolution with any private sector organization that believes it has been the victim of unfair competition. The CEO should provide the campus rationale for engaging in the activity, including the documentation of the campus' internal review before the activity is initiated. During this phase, the development of public/private partnerships should be explored. The President and the Commissioner will be informed at the time this type of concern is brought before the CEO.

4. Formal complaint process. Any private-sector organization not satisfied with the outcome of the attempt at informal resolution may file a written complaint with the University President. The written complaint should include specific violations of this policy. The University President will respond to the written complaint within two weeks of receipt of the complaint. If the complainant is not satisfied with the response of the President, the President's decision may be appealed to the Commissioner. The Commissioner has two weeks to rule on the appeal. The Commissioner's

decision may be appealed to the Board of Regents in writing, and action on the appeal will be taken at the next regularly scheduled Board meeting. The Board of Regents is the final authority on what practices are in the best interests of the Montana University System and are allowed on the system's campuses. This policy conveys no right upon any party beyond seeking review by the Regents.

5. The Commissioner will provide the Board of Regents an annual report on the implementation of this policy.

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MESSAGE FROM THE PRESIDENT

Cory Dale Breternitz

"President's Message for the Membership"

As the newly elected President of ACRA, I want to take this opportunity in the ACRA Edition's Gala Christmas Issue to introduce myself to the membership and to outline what I see as ACRA's goals for the coming year. My wife, Adrian White, and I own Soil Systems, Inc. (SSI), which is based in Phoenix, Arizona. We bought the company from Professional Service Industries in November of 1985. (Despite having been in business for the past 15 years we still get comments and questions about "that SSI." Well, we are not "them"; we are "us." Apparently SSI had a somewhat dubious reputation predating our acquisition of the company in Phoenix.)

The Fourth Annual ACRA Conference in Denver, hosted by Tom Lennon and WCRM, Inc., was one of the highlights of ACRA's year. Tom and the WCRM, Inc. staff put on a great conference. The theme was "Planning for Change" and ACRA is now at a point where we, as an organization, need to be planning for change. ACRA was born out of the crisis facing the cultural resources industry that threatened to reduce or completely eliminate federal legislation relating to cultural resources, and potentially eliminate the Advisory Council. For the first year or two of its existence, ACRA was focused on mobilizing national support for cultural resources legislation. Chuck Niquette, ACRA's first President; Tom Wheaton, the Executive Director; and the first Board of Directors did an excellent job of getting ACRA off the ground and mobilizing the profession to fight real threats to our busi-

nesses. Mike Polk's and Patrick O'Bannon's administrations focused on strengthening the organization from within, writing policy statements, setting up committees, and increasing the size of the organization. Mike and Patrick saw to it that the internal framework of the organization was put in place so that ACRA could continue as a viable entity beyond the terms of the original Board of Directors. (This year was the first year that ACRA had open elections to fill positions on the Board of Directors. There will now be a regular and annual turn over of people representing you on ACRA's.)

My goal for this next year will be to continue to increase the size of the organization by adding new members. I also want to get members more involved in ACRA committees and running for open board seats in 1999. ACRA's annual budget, which has remained static for the past three years, has been barely enough money to do the things that we are currently doing. ACRA can and should be more involved in national issues, but in order to do more we need to have the financial resources to get things done and to provide additional services for our members.

ACRA can only increase its operating budget through increased membership, so I ask every current ACRA member to bring in one other company in 1999. ACRA's benefits are often intangible, but who is better qualified to explain the benefits of the organization than the existing members? In my experience there are a lot of misconceptions about ACRA among many nonmembers.

The mass mailing of brochures and flyers has resulted in acquiring all the members that we are going to get using this approach. It is time for the members themselves to act as ACRA's ambassadors and bring in new members. There are no emerging crises in 1999, at least not like there were in 1994 and 1995. Lets take this year to get organized, increase our membership, spread the word, and strengthen the organization from within and outside of our current ranks. By increasing ACRA's ranks, we increase ACRA's visibility, ACRA's clout, and our respectability as an organization. We will also increase the size of our operating budget and be better prepared to face the next crisis when it does emerge.

In Denver at the Sunday morning meeting, I promised to call each and every ACRA member this year. I am still committed to achieve this goal. When I call, I want to hear about what you think is good about ACRA, what you think is bad about ACRA, what you, as a member company, get out of ACRA, what more you want to get out of ACRA, and what else ACRA should be doing as an organization. Also in 1999, we hope to take up some issues with federal contracting and permitting, and expand some of the ACRA workshops and symposia such as the OSHA and contracting workshops, but these issues are for discussion in future newsletters.

So, have a happy holidays; all I want for Christmas are new members!

1998 Annual ACRA Conference

The 4th Annual Meeting of the American Cultural Resources Association was held October 9-11, 1998, at the Embassy Suites in Denver, Colorado. The host firm for the conference was Western Cultural Resource Management, Inc., (WCRM). The theme, "Planning for Change," was carried out quite successfully throughout the plenary session, luncheon presentations, and breakout sessions.

A total of 65 individuals registered for the conference. Pre-conference workshops attendance included: 31 at "Historic Archaeology/Historic Architecture"; 10 at "Saving the Past for the Future: Data Migration and Technological Advances"; and 36 at "Thinking Outside the Box." Fifty-seven people attended the luncheon lecture on Friday and 62 attended Saturday's luncheon.

The conference was honored by the attendance of several invited guests, including: Karen Hardy, the Colorado Historic Society, Office of Archaeology and Historic Preservation, who attended the reception at the Oxford Hotel; Alan Stanfill and Carol Gleichman, the Advisory Council on Historic Preservation, who attended the reception at the Oxford Hotel; Margie Nowick, the Advisory Council on Historic Preservation, who attended workshops on Friday, October 9, 1998; and Todd McMahon, the Colorado Historic Society, Office of Archaeology and Historic Preservation, who attended workshops on Friday, October 9, 1998.

STATE REPRESENTATION TO THE CONFERENCE WAS AS FOLLOWS:

Arizona	5	New Mexico	5
California	3	New Jersey	1
Colorado	16	New York	2
Delaware	2	North Carolina	1
Georgia	1	Ohio	6
Illinois	2	Oregon	2
Iowa	2	Pennsylvania	5
Kentucky	1	Texas	6
Maryland	3	Utah	2
Michigan	1	Virginia	1
Minnesota	4	Washington	2
Montana	1	West Virginia	2

1999 ACRA EDITION SCHEDULE

DEADLINE

February 1
 March 29
 May 31
 August 2
 October 4
 December 6

PRODUCTION

February 15
 April 12
 June 14
 August 16
 October 18
 December 20

COMMITTEE REPORTS

"ACRA and National Park Service Plan Meeting to Share Concerns About CRM Contracting"

At the Denver conference this October, ACRA members stated their frustrations with several aspects of conducting cultural resource projects under federal contract. Because the National Park Service (NPS) contracts with member firms across the country, members agreed that that agency might be a good place to start discussions. ACRA board members have made preliminary contacts with NPS Cultural Resource Program managers and have begun to develop an agenda that addresses both NPS and consultants' concerns. In the early part of 1999, ACRA's Government Relations Committee and other representatives plan to meet with NPS Regional Directors and/or Program Managers to share our concerns about CRM contracting. Our goal is to have a productive work session – not just a gripe session — focusing on all aspects of cultural

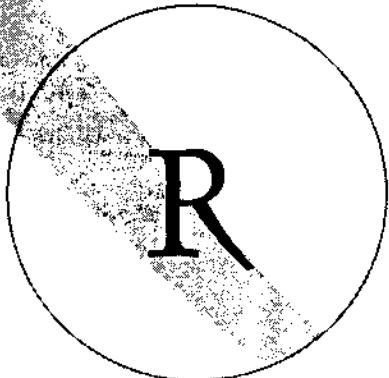
resource management contracts, including means of improving the quality of project deliverables. To date, members have identified problems such as "scope creep" (i.e., the scope of work increases but the contract amount does not), bid prices based a unit prices (i.e., cost per cubic meter of excavation, to include field costs, laboratory analysis and reporting, and curation), and payment schedules (e.g., being paid by milestone instead of monthly). Members who have ideas about agenda items for ACRA to discuss with the NPS are urged to contact Susan Chandler, Vicepresident for Government Relations (alparch@rmi.net or 970-249-6761) or Ann Hubber (ahubber@hrassoc.com).

ACRA Edition offers advertising space to our members. Does your company have a special product, service, or publication that would be of interest to some aspect of the CRM community?

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* Business cards can be scanned.



LEGISLATIVE UPDATE

CEHP Incorporated, Washington, D.C.

Land Protection Gets Support in 8 States

Nine states had open space initiatives on their ballots and 8 proved successful, pouring millions of dollars into improvements for parks and historic sites. The score card (thanks to Tom Hilaire from Americans for Our Heritage and Recreation and Russ Shay of the Land Trust Alliance):

Succeeded:

Alabama — Passed a \$110 million bond for improvements to state parks and public historic sites.

Arizona — Passed (52.7%) to authorize spending \$20 million a year for 11 years for open space protection.

Florida — Passed (72%) to permanently reauthorize the state's Preservation 2000 bonding program for land acquisition and require a 2/3 vote of the state Cabinet to authorize any sale of land bought with these funds.

Michigan — Passed (61%) to dedicate \$50 million of a much larger bond issue to local parks and recreation.

Minnesota — Passed (77%) to extend dedication of lottery proceeds to an Environment and Natural Resources Trust Fund through the year 2025.

New Jersey — Passed (65%) to dedicate sales tax revenues to generate \$1.8 billion for land protection.

Oregon — Passed to dedicate lottery funds for parks and salmon restoration.

Rhode Island — Passed (60%) a \$15 million bond issue for acquisition of greenways.

Failed:

Georgia - Lost with 46.8% of the vote to double the real estate transfer tax and dedicate it to land protection.

Millennium Trails Program Announced by The White House

A new wrinkle has surfaced as a part of the Millennium Program announced in the President's State of the Union Speech a year ago. It is a national program called the Millennium Trails Program which was created to celebrate, recognize, and be a catalyst for creating trails to "honor the past and imagine the future." From the earliest routes of our ancestors, to new urban green ways, to itineraries that tell the story of our nation, trails are part of our landscape and provide real connections between people, the land, our history and culture.

Over 2,000 trails will be recognized in the following categories:

Community Trails 2000:

local trail projects

Millennium Legacy Trails:

52 trails nominated by the 50 states, DC, and Puerto Rico

National Millennium Trails:

12 "flagship" projects to symbolize America's Heritage.

All kinds of trails will be considered for participation, including rail trails, urban parkways, neighborhood paths, scenic byways, historic trails, green ways, major hiking trails, and cultural tours. The program is a partnership between the White House Millennium Council, the Department of Transportation, the President's Committee on the Arts and Humanities, the National Park Service, the U.S. Forest Service, the Bureau of Land Management, and the Department of Commerce. It will be staffed by the Department of Transportation.

The program will create a database of trails which will be displayed on the Internet. Each of the selected 2,000 Millennium Trails will receive a marker which will be a grand cause for a community to celebrate America's history and culture over a 2 year period, 1999-2000. Each week during 2000, 1 of the 52 selected Millennium Legacy Trails will be featured on the project website and a National Millennium Trail will be featured for a month.

There are a number of programs that fund trails - including, of course, the transportation enhancements - and it is believed that the increased visibility given to designated trails will allow them to benefit financially from being a part of a national effort.

To get involved in the Millennium Trails Program - whether an individual, business, a public agency, or non-profit, contact: Millennium Trails Program, Office of the Secretary, S-3, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590 - or call Jeff Olson, Program Director/Consultant - phone 202-366-4045, fax 202-366-7660, or E-mail Trails2k@aol.com.



New Jersey Implements New Rehabilitation Subcode to its Uniform Construction Code

(Thanks to Preservation Action for this information)

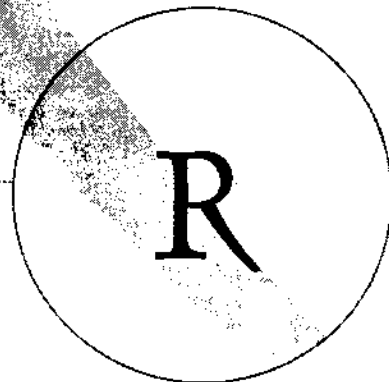
A new, preservation-friendly subcode in New Jersey's Uniform Construction Code was adopted in January 1998 and is the first in the country specifically designed to accommodate the rehabilitation of existing buildings. The long process of changing the construction code began with the passage of authorizing legislation in April 1995.

The subcode recognizes the differences between new construction and four levels of building reuse (repair, renovation, alteration, and reconstruction) and defines historic buildings as those on or eligible for the National Register. In enumerating specific examples of alternative compliance, the new subcode eliminates much of the guesswork and liability fears common when applying the building codes to historic structures especially in regard to egress, fire-rating of walls and materials, and issues regarding doors, hardware, transoms, railings and stairways. The subcode, while flexible, also meets the Secretary of the Interior's Standards.

Other general improvements in the construction code include elimination of the "change of use" trigger causing full code compliance; replacement of the 25/50 percent trigger (rehabilitation costs exceed 25/50 percent of property base value) with site assessments for code requirements; and broadening of the "repair" category of work which would allow the replacement of historic building features with in-kind materials.

Copies of the Rehabilitation Subcode are available for \$10.00, payable to "Treasurer, State of New Jersey" and orders should be sent to: Department of Community Affairs, Division of Codes & Standards, Publications Unit-Box 802, Trenton, NJ 08625.

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New Mexico Bureau of Land Management Permitting Procedures; NMAC Members Provide Input

The proposal of the New Mexico Bureau of Land Management (BLM) to restructure its permitting procedures led to the joint meeting of the New Mexico Archeological Council (NMAC) and BLM on October 30, 1998, to discuss BLM permit areas in New Mexico. The proposal of BLM to subdivide the state into eight zones and several additional subdivisions definitely generated a response within the NMAC organization. In October of 1998, the ACRA board had gone on record in support of NMAC's proposal to simplify and clarify the process of obtaining BLM cultural resources permits in the state of New Mexico. While ACRA supports BLM's desire that archaeological investigations meet the highest possible standards, ACRA feels that the proposed permit procedures do not recognize comparable experience within the larger Southwest region. Furthermore, the BLM proposal effectively restricts companies, especially small enterprises, from actively pursuing work in many regions of the state.

Approximately 60 concerned archaeologists were present on October 30, 1998. The meeting opened auspiciously with Stephen Fosberg, State Archaeologist for the BLM, indicating that BLM would eliminate the subdivisions within the zones and that the days of experience for a Field Supervisor within a zone would be 80 days, of which 60 must be survey experience. Over 3 hours of professional discussion followed. The conduct of professional archaeology was the foremost consideration of all participants; nevertheless, the

consensus was that comparable experience outside the particular permit zone needed further consideration and that a smaller number of zones would be desirable. Dave Phillips, NMAC Legislative Chair, had originally countered with 2 permitting areas, Southwest and Plains, with the Dinetah special zone to be retained.

The problem of the day, however, was: How do you get 60 archaeologists, let alone 6, to agree on the archaeological and administrative division of a state? The solution was the conduct of a series of straw votes regarding 7 proposed plans. These plans were as follows: (1) the current proposed BLM plan, (2) Southwest (Dinetah)/Plains, (3) New Mexico as a single unit, (4) Anasazi (Dinetah)/Mogollon/Plains, (5) Anasazi (Dinetah) (Gallina)/Mogollon/Plains, (6) Stuart and Gauthier system, and (7) Desert-Basin and Range/Mountain-Plateau (Dinetah)/Plains. Except for proposals 3 and 7, the zones were primarily defined by people's perceptions of cultural boundaries or differences in the nature of archaeological manifestations. Proposal 7 appealed to a number of participants, because the division was based upon the geological and geomorphological contexts of archaeological sites rather than cultural zones. This proposal followed the apparent consensus that experience in locating sites within the dunal areas of the San Juan Basin should also qualify one to conduct survey in the Hueco Bolson of southeastern New Mexico. The straw vote results were:

Proposal	First Straw Vote*	Second Straw Vote**
Proposed BLM plan	12	0
Southwest (Dinetah)/Plains	25	7
New Mexico	26	11
Anasazi (Dinetah)/Mogollon/Plains	29	8
Anasazi (Dinetah) (Gallina)/Mogollon/Plains,	8	0
Stuart and Gauthier System	8	0
Desert-Basin and Range/Mountain-Plateau (Dinetah)/Plains	29	22

* Each person could vote for as many plans as they liked.

** Each person could vote for only one of the preferred four plans indicated by the first straw vote.

The end result of the meeting was the recommendation that a committee of NMAC members present a specific proposal for BLM permitting in New Mexico. Stephen Fosberg encouraged the NMAC leadership to move forward with its recommendations so that a determination might be made. However, no commitment was made to a particular plan and it remains to be seen how BLM will implement permitting. At this point in time, the NMAC committee has presented a draft plan to the BLM. The BLM has responded to the draft plan and has indicated that it is moving forward with the production of its new Handbook for New Mexico. In response to a NMAC request, Stephen Fosberg, BLM State Archaeologist, has invited the NMAC working committee to meet with him on December 18, 1998.

This problem of ensuring that competent professionals are conducting the archaeological investigations in any given region is not unique to the state of New Mexico or the BLM. Most states are wrestling with this problem; however, most have not reached a viable solution. ACRA and NMAC members feel that permitting requirements related to microregions are not the solution; the rejection of work not meeting acceptable standards should serve as a quality control measure. Any State Historic Preservation Officer, however, will tell you that rejection of substandard reports is not always effective.

Not everyone will be satisfied with the details of the eventual BLM permitting guidelines; nevertheless, the professionalism and the concern for the resource demonstrated in the October meeting is something of which all can be proud. What was missing in the October meeting was any spoken concern of how these regulations affect our clients (those entities whose actions precipitate archaeological investigations and who fund the required investigations). The establishment of permitting regulations related to microregions forces both small and large cultural firms to subcontract large portions of the work, thereby escalating the cost for our clients. We must never lose sight of the fact that the regulations were designed to balance the protection of historic properties with the needs of public and private development.

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