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## VISUAL EFFECTS AND CELL TOWERS: A DIFFERENT POINT OF VIEW

By

J. W. Joseph, New South Associates, Inc.

Daniel G. Roberts, John Milner Associates, Inc.

Recent conversations with several clients in the telecommunication industry suggest that the industry and the National Historic Preservation Act (NHPA) are on a collision course, one which may wind up before Congress (this collision course is above and beyond the telecommunication industry's suit against the Advisory Council regarding its rule-making authority). While the executed Nationwide Programmatic Agreement on Co-location will allow co-location of antennas on existing towers built prior to March 16, 2001, in most instances without additional 106 review, it is apparent that the telecommunication industry's relationship with the nation's cultural resources community is strained. Indeed, Sprint has recently filed a petition with the FCC arguing that tower siting and construction are not federal undertakings ([http://www.towerlaw.com/news/legal\\_update/pdffiles/SprintPCS.pdf](http://www.towerlaw.com/news/legal_update/pdffiles/SprintPCS.pdf)).

The telecommunication industry is operating under a Congressional directive to complete a national cellular system. The result will be thousands of cellular towers built in the next few years. For each new tower, the cellular tower companies are faced with Areas of Potential Effect (APEs) measured in miles; lengthy review periods; a lack of consensus between industry representatives and SHPO reviewers on the effects of cell towers on historic resources; standards and requirements that vary widely from state to state; determinations of adverse effect based on liberal interpretations of 36 CFR 800; and "creative" mitigations which, in the words of more than one of our clients, amount to "extortion" by some regulatory agencies. "Creative" mitigation measures of which we are aware that are out of proportion with the significance of cell tower impacts include telecommunication companies being required to provide funding for community restoration/preservation projects; for heritage tourism initiatives; for the preparation of National Register of Historic Places nominations for extensive historic districts; for the completion of historic contexts; and for HABS/HAER documentation of buildings whose physical condition will not be changed by the construction of a tower.

Ours is a reflexive and conservative discipline, constantly looking back. We do not deal well with change but, since our training has for most of us focused on some aspects of the past, we

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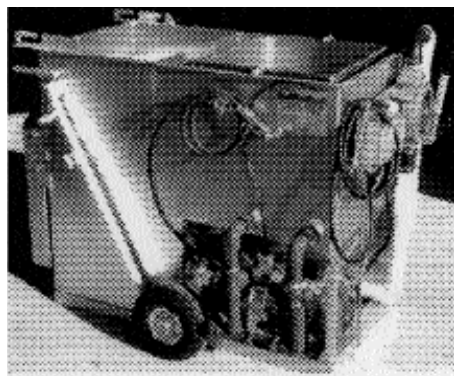
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## MESSAGE FROM THE EXECUTIVE DIRECTOR

*By Tom Wheaton*

ACRA was well represented at this year's SAA conference. This was the largest SAA conference yet, in no small part due to its being in New Orleans. For a second year, Kevin Pape and Patrick O'Bannon conducted their contracting workshop to a group of academics, agency folks and new consultants. Later that day (with our display again prominently displayed in the rear of the same room), Terry Klein and the University of Maryland presented a federal contracting workshop. Both workshops were very successful, according to comments made to me throughout the conference. As these workshops become de rigeur, the folks who plan projects in the agencies, the professors who are preparing our future employees, and our competition will be better prepared, resulting in a more level playing field for all.

Because of a misunderstanding between SAA, ACRA and the University of Maryland, Terry's workshop was held at the same time we had the traditional ACRA open meeting. This meeting was relatively well attended as we had 8-10 people at any one time, a great improvement over the normal attendance. We have at least one new member as a result.

Friday morning, Kay Simpson, Susan Chandler, Jeff Altschul and I met with our SAA counterparts to discuss future collaboration. We talked about training, how CRM is done, and areas where we can work together, including government relations. We ended by planning on making the breakfast an annual event. This sort of meeting should also be held with the NCPH, SHA, AIA, etc., to give ACRA more exposure at the upper levels of these organizations and to begin

building the ties we need to fully integrate private sector cultural resources consulting into these various fields. Board members and Liaison Committee members, need to take the lead on this. Liaison Committee members please let me know if you would like to start the ball rolling in your organization.

The Business of CRM session on Sunday morning was surprisingly well attended despite the day and time. We had over 40 attendees mainly from the private sector and federal agencies. In case you missed the announcements, Elton Prewitt gave a talk on project management, Mike Polk gave one on insurance, Kay Simpson presented on budgets and overhead, Duane Peter talked about dealing with clients, Kevin Pape gave a talk on handling succession, and I tried to fill Chuck Niquette's shoes by giving his safety presentation. As a result, we have been asked to present at the Federal Preservation Forum meeting later this year in California. I will know more later, but we may need a person or two from California to address some of these business issues for them. This session is light on details, but gives an indication of the breadth of the issues the private sector confronts and gives us a chance to engage people in the agencies, academia and other sectors in a dialog, hopefully a productive dialogue.

ACRA will also have a space at the Renovations and Restoration Conference later this summer in New Orleans. If we can find someone to donate their time, we can provide our new display. Please let me know if you would be interested.

## Acra Board of Director's Spring Meeting in Portland, Oregon March 3, 2001

*By Terry Klein, Secretary*

The ACRA Board of Director's Spring 2001 meeting was held in Portland, Oregon. Jo Reese of Archaeological Investigations NW, Inc., sponsored the meeting and handled all local arrangements. The main topics discussed at the board meeting were the following.

### **ACRA 2001 Annual Conference in Cincinnati, Ohio**

The 2001 annual meeting will be held at the Omni Netherland Hotel on September 6-9, 2001. The Board discussed having a forum during the meetings that would better represent the membership, including a way for businesses to get together to talk to their representatives on the Board. There should also be opportunities for committee meetings on Saturday, possibly as a round table discussion during lunch. These efforts will provide a great opportunity for firms to network.

Potential workshops and sessions may focus on technology, team building, management practices, cell towers and Section 106 compliance, government contracting (such as with the National Park Service), and education.

### **ACRA Displays**

The paneled display on "Why Join ACRA" was reviewed by the Board. This display was taken to the Society for American Archaeology (SAA) annual meeting in New Orleans in April, and will be taken to the summer Transportation Research Board meeting in Key West, Florida, in July. The display on "why hire an ACRA firm?" is in progress. Tom Wheaton is the contact person on the display, so if an ACRA member firm sees an opportunity for placing a display at a conference, they should contact Tom.

### **Direct Election of Officers Bylaw Amendment**

The Board considered and approved changes to Articles III and IV of the Bylaws, which addresses ACRA officers and the election of Board members. It was felt that our organization has matured to a point that the membership should be able to directly elect the trade association's officers. Therefore, the articles were changed so that ACRA officers will be elected though a vote of the membership, as opposed to election by sitting Board members, which is the current practice. The officers elected by the membership will then serve as voting members of the Board. The Board will now consist of elected officers and no more than 21 additional members. The non-officer Board members will be equally divided into the three firm-size categories: large, medium, and small.

### **ACRA Committees**

There is a need for ACRA committees to grow, become more active, and obtain new members. Firms should consider having different members of their organization serve on ACRA committees. These committees are the heart of ACRA's activities, and are an excellent opportunity to actively participate in and even influence activities that affect all of our businesses.

### **Contracts Workshop/Seminar**

The contracts workshop and seminar given by Kevin Pape and Patrick O'Bannon continues to be a popular ACRA offering. The workshop was offered at the Society for Historical Archaeology annual meeting in January and at the

## EDUCATION COMMITTEE REPORT

*By Steve Mehls*

SAA meeting in April. The Board discussed the need to train other ACRA members to present the workshop. With more individuals trained to give the workshop, ACRA can offer the workshop at more conferences across the country, including regional meetings.

### Membership

ACRA has reached its goal of contacting most firms, but the number of new firms joining is not as high as it can be. ACRA is getting new members as a result of existing members talking to non-members, directing them to the ACRA web site. Clearly, one-on-one interaction with non-member firms is critical to increasing ACRA membership, highlighting how ACRA has access to useful information to help and promote their businesses, whether they are a small firm or part of a large architectural or engineering firm. This information exchange occurs through the annual meetings, Newsletter, MembersOnly web site, involvement on committees, and networking among other ACRA members.

So, those of you reading this Newsletter who are ACRA members, do what you do every day, and do well - selling. You are our best advertisement on the benefits of ACRA membership.

As most ACRA members have noticed, since February the ACRA-L has been full of comments on CRM training, education and how to do it. I gave up counting after the first 75 or so postings. Without rehashing all those messages and what we have been discussing in the Education Committee, we would like to briefly summarize where we are now and where we are headed.

Three areas of concern have been identified by the Education Committee and indirectly by the readers of ACRA-L. The first is CRM education and what should be "required" of students. Dozens of suggested classes have been put forward such as one concerning the NEPA process and the integration of NEPA/NHPA. Amongst the Education Committee it was decided that before we went forward to universities or other institutions we need to define what it is "we" as ACRA and the potential employers of these students want in their training. Toward that goal we received tentative approval from the Board of Directors at the March meeting to survey the ACRA membership to gather the input we need to define what skills and classes CRM education should include.

The second area of concern is internships, which we are discovering are problematic at best. The internship issue includes not only the requirements of the school(s) both for the student and the supervisor, but also what is it that we in ACRA want to accomplish with an internship program. We need to define what the student will gain from the program beside experience and possibly X credit hours.

Our third area is what the Education Committee has dubbed "continuing education." Many ideas are floating around under this heading including how to get the ACRA sponsored "Business of CRM" workshop to more audiences, and, should some type of continuing ed be offered at our annual meetings? What is being offered in the field of "distance education" these days that may be applicable to CRM and to our businesses? As a sidebar we are securing an article examining distance education for an upcoming issue from a leader in that field.

If you are interested in helping out with one or more of these topics or problems, please let one of us on the committee know because we are always looking for help.



## Cell Towers ..

*continued from Page 1*

should know change is inevitable. Cellular towers are introducing new visual elements to our landscape, but that change itself is a part of historical development. It seems to us that the treatment of cellular towers under Section 106 has become overly rigorous, that the trend is toward even more rigorous survey and documentation requirements, and we do not see that the effects of the construction of cell towers warrant such intensive levels of investigation and mitigation. In the Mid-Atlantic and Southeast, where we work, several SHPOs have specified an APE of anywhere from a one- to five-mile radius from the proposed tower location to survey and identify historic resources, assess their eligibility for nomination to the National Register of Historic Places, and recommend whether the tower would have an effect on National Register-eligible and listed resources. In one case in which we were involved, more than 120 properties older than 50 years were recorded and evaluated. In another, eight historic districts were identified that contained upwards of 600 properties, with full state survey forms required for each property, complete with original photographs. In both cases, a scope and level of effort was required that compared with the documentation of a mid- or even large-sized historic town, all triggered by the need for one cell tower. Moreover, where National Register eligible or potentially eligible structures are identified in the APE, the assessment of effect will often require balloon tests, crane tests, or computer simulations to determine if the proposed tower can be seen from each National Register property. In our experience, SHPOs all too frequently will recommend that if the tower can be seen from the resource, and particularly if its view is clear, then there is an adverse effect, and something will be required to mitigate that adverse effect. The result is a lengthy, intensive, subjective, and often costly process, all to evaluate the impact of new construction whose threat to historic properties at worst lies only in a change of view.

The National Historic Preservation Act and Section 106 do not mandate that viewsheds that can be seen from a National Register property cannot change. We have always understood there is an adverse visual effect when an undertaking changes the setting and feeling of a National Register-eligible site. Putting a cell tower in the back yard of Mount Vernon is an adverse effect; putting a cell tower a mile from Mount Vernon is unlikely to change the characteristics

that make it eligible to the National Register. Yes, the distant cell tower seen from the front steps of Mount Vernon changes its viewshed, but the viewshed has been changing since Mount Vernon was built and will continue to change as long as it is standing. There were more fields and scattered period buildings in George Washington's day that are no longer standing, there are countless modern buildings that have been built within view since then, and the roads leading up to Mount Vernon were not paved 200, even 100, years ago. Neither the National Historic Preservation Act nor 36 CFR 800 requires us to plow fields where there is now forest, build reproduction historic farmhouses, demolish modern buildings, or scrape back the pavement so we are driving on dirt. And it should not prevent cell towers from being built within view of National Register properties, or result in excessive mitigative measures, as long as the tower does not significantly and disproportionately alter the setting or feeling of the property.

There is an urgent need for guidance on the appropriate level of effort and techniques for assessing and mitigating the visual impact of cell towers. For any given historic property there are two primary types of views: those of the property and those from the property. It is clear from the regulations that visual impacts may occur when new construction can be seen in the immediate proximity of the property. As with the Mount Vernon example, if a cellular tower were to be placed in the immediate rear yard of a National Register-eligible historic farmstead, it would likely alter the setting of that property, resulting in an adverse effect. What is unclear are the regulation's intent regarding the area outside a property's boundaries and the extent to which these are considered a part of the setting. If, in our example, the tower is placed in a location where it is visible from the property, let's say a half mile away where it can be seen when sitting on the front porch of the farmhouse, we do not see how the construction of that tower would have an adverse effect on the farmstead's setting. In the assessment of visual impacts of cellular towers many SHPOs appear to have adopted a landscape approach that we think goes beyond the spirit and intent of the NHPA. The area beyond a National Register property's boundaries is always subject to developmental change and the NHPA was not intended to fix those areas outside such boundaries to a certain period of time, appearance, or condition. Of course, there are situations in

which multiple individual National Register eligible properties sharing a common theme or aspect may be found within a distinctive and historically significant environment and upon which the tower's construction might have an adverse effect, but these situations are uncommon.

We strongly urge that the issue of how APEs are defined for cellular tower projects be revisited. In most cases with which we are familiar, a one- to five-mile radius is excessive. The rationale appears to be that since we are assessing visual effects, we must survey and evaluate all of the potentially eligible properties within view. However, at long distances, towers, even if visible, in our opinion, do not alter historic settings. We strongly recommend a greatly reduced APE in most instances, no more than a mile radius from the tower site in most cases and less than that in environments with greater relief and/or vegetation cover.

Approaches to mitigating effects of tower construction should also be reconsidered. If a tower has a visual effect, then the mitigation should be visual. In our opinion, camouflaging a tower, reducing a tower's height to lessen its effect, or planting vegetative screening to limit the view of a tower are appropriate options for mitigating visual effects. HABS/HAER documentation is an appropriate option where construction of the tower would result in the destruction of the resource or change to the resource's setting. Developing historic contexts, completing state survey forms, creating heritage tourism initiatives, and preparing extensive National Register nominations are not appropriate forms of mitigation for most cell tower projects.

Some elements of the cultural resources community seem to have identified the telecommunication industry as a convenient source of funding. Cell tower projects should not be used to increase the area of each state that has been inventoried for historic structures, thereby beefing up state inventory files, nor should the telecommunication industry be forced to contribute funding to communities for broad-based preservation projects in exchange for building towers. We seem to forget that the public, including residents of these communities and members of the cultural resources community itself, are creating the demand for cellular telephones, and that Congress has mandated the construction of the national cellular network. We think some regulatory agencies have overstepped their mandate in the process.

Abuse of regulatory authority under any circumstance is uncalled for; abuse of regulatory authority in an antiregulatory climate is foolhardy. We strongly urge the FCC to take the lead in bringing a sound and reasoned public approach to the treatment of cell tower projects; the Advisory Council and National Park Service to take the lead in presenting guidelines for the assessment of cell tower visual effects; the FCC and SHPOs to take the lead in defining more appropriate APEs and mitigation strategies; and all of us in the cultural resources industry, including consultants, to do our part in making levels of effort more in concert with the scope and scale of cell tower undertakings. Indeed, the revised 36 CFR 800 regulations encourage just such an approach.

*The views presented above are those of the authors and do not necessarily represent the opinions of New South Associates, Inc., John Milner Associates, Inc., ACRA, or any other organization with which we are associated.*

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**See the next page for details.**



## ACRA 2001 Conference Details

### The Program

The centerpiece of the conference will be two, three-hour sessions (one on Friday and one on Saturday) focusing on "Increasing Business Effectiveness." Taught by Steven Lesser (see bio), these sessions will be directed towards the development of "strongly demonstrated skills in the areas of **project management, problem solving, process improvement** and in **leadership** itself to support the implementation of those skills and their consequent tasks. The two, three-hour workshops are designed to be interactive, topical, and functional, enabling attendees to:

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Other segments of the conference program will include technological and technical demonstrations on digital data collection, GIS, and HABS/HAER documentation and photogrammetry; a panel discussion on CRM strategies for cell tower construction; and a practical discussion on succession planning; as well as the usual board meeting, general business meeting, and ACRA Awards ceremony. A new feature to the conference will be organized roundtable lunch and dinner discussions focusing on constituency representation and committee involvement in ACRA. An architectural walking tour of downtown Cincinnati is planned for late afternoon Friday. On Saturday evening, all attendees will be transported to the **FORT ANCIENT SITE** for a tour, including the museum and gift shop, and a catered picnic.

The costs for all conference events will be included in the registration fee, which will be finalized in June 2001. Detailed information about the program, hotel registration, and meeting registration will be posted on the ACRA website by July 1, 2001. For information, please call either Kevin Pape or Marcy Gray at 513-287-7700.

### Room Rates

The negotiated room rates for the ACRA conference are \$99.00 for a single and \$119.00 for a double.

**Steven Lesser** is an industry and services consultant with over 30 years work experience. This includes strategic consulting, development and implementation of organizational change, marketing, sales and credit programs and project management for multinational and regional companies worldwide. As Regional Managing Director of InfoWorks International's Asian Pacific region, based in Sydney, Australia, he established the partnership with his Chicago based partners in 1991, following a successful career in business and the financial services industry. Major clients include JP Morgan, Maybank, Petronas, Countrywide Bank, Renong Berhad, Citibank, Globe Telecom Philippines, Timex and many others. He has been actively consulting and training in Australia and New Zealand as well as the South East Asian Region (primarily in Malaysia, Singapore, Indonesia, Hong Kong and Philippines) for over a decade. ACRA conference attendees will be very fortunate to have the opportunity to benefit from his training program.

## Legislative Update

*By Nellie Longworth*

### Senate Leadership to Shift to The Democrats This Week, Hopefully

With the party switch of Sen. Jim Jeffords from GOP to Independent, plans are in the works to shift the leadership back to the Democrats this week for the second time this year. (Remember: the Democrats were in the majority in the Senate for a few days in January before President Bush took the oath of office).

The plan offered by the Senate Democrats is to take over the chairmanship and a one-seat majority on all committees and subcommittees. The hitch in a smooth transition could come from the GOP who want the Democrats to agree to protect the President's agency and judicial nominations already in the pipeline. If a compromise cannot be agreed upon, the GOP has threatened a filibuster which would effectively delay the transition. It will be up to Sens. Lott (R-MS) and Daschle to hammer out an organizational resolution since neither the GOP or Democrats have the 60 votes necessary to block a filibuster.

Majority Leader-to-be Tom Daschle has signaled a number of departures from Senate GOP energy and environmental initiatives. Drilling in the Arctic National Wildlife Refuge is "finished" and the promotion of nuclear energy is unlikely until the Congress finds solutions to the nuclear waste issue. Energy initiatives will reject the Administration's supply-side solutions to increase domestic production of energy in favor of conservation and alternative energy sources.

Committee chairmanships seem set, with Sen. Jeffords (I-VT) taking the helm of the Environment and Public Works Committee and Joe Lieberman (D-CT) chairing the Clean Air, Private Property & Nuclear Safety Subcommittee. Jeff Bingaman (D-NM) will chair the Energy and Natural Resources Committee with Dan Akaka (D-HI) heading up the National Parks, Historic Preservation, and Recreation Subcommittee. Pro-environmental Max Baucus (D-MT) will lead the Transportation and Infrastructure Committee and will preside over the reauthorization of Tea-21. In appropriations,

Robert Byrd (D-WV) will chair the full Appropriations Committee and its Subcommittee on the Interior. Tom Harkin (D-IA) will chair the Agriculture Committee, John Breaux (D-LA) Finance, Patrick Leahy (D-VT) Judiciary, Paul Sarbanes (D-MD) Banking, Edward Kennedy (D-MA) Health and Labor Committee, Ernest Hollings (D-SC) Commerce, Carl Levin (D-MI) Armed Services, and Joseph Biden (D-DE) Foreign Relations.

It is believed that the committees will set their agendas quickly after the passage of the organizational resolution.

### Fran Mainella Named First Woman to Head the National Park Service

During a visit to the Everglades National Park on Monday, President Bush announced his selection for the director of the National Park Service, Fran Mainella. Florida Parks Director Mainella brings 30 years of park experience to her new role and has been the director of the Division of Recreation for the Florida Department - which includes 155 state parks and 500,000 acres - since 1989.

Director-designate Mainella has the support of environmental groups who note her role in developing a 40-year plan for the restoration of the Everglades and who has successfully used the Land and Water Conservation Fund to acquire environmentally sensitive land for the project. Mainella will replace Dennis Galvin who has been acting director of the NPS and who will now return to the position of deputy director.

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*Prepared by Nellie L. Longworth, Consultant, for ACRA subscribers who agree that, without prior written permission from NLL, they will not post weekly or special reports on paper or any computer network, homepage or bulletin board accessible by any entity or individual other than its members, officers, directors, board members, staff, and any others listed above. ACRA may, however, make "fair use" of the weekly news or special reports or periodical newsletters and may rewrite or paraphrase and distribute information contained in them. Credit N. Longworth, Consultant.*

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# ACRA

## EDITION

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### ACRA's Members-Only Listserv

ACRA now has an online discussion group just for members. "MembersOnly" is a listserv that operates much the same way as ACRA-L, with the exception that it is only available to ACRA members. Its purpose is to offer the board, members, and the executive director a venue to share the latest news from ACRA; promote dialogue between members on current issues; and enable members to post announcements or inquiries.

To subscribe to the list, a member must contact ACRA's Executive Director, Tom Wheaton. Once you have supplied Tom with your e-mail address, he will subscribe you to this list. Contact Tom at 770-498-5159 or e-mail: [tomwheaton@newsouthassoc.com](mailto:tomwheaton@newsouthassoc.com).

### 2001 ACRA EDITION SCHEDULE

DEADLINE	PRODUCTION
February 5	February 19
April 2	April 16
June 4	June 18
August 6	August 20
October 1	October 15
December 3	December 17

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### ACRA Edition

is a bi-monthly publication of The American Cultural Resources Association. 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.

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.

Please address comments to:

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ACRA News  
[ejharris@aol.com](mailto:ejharris@aol.com)

or

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