



**The CRM Industry in the Age of Trump
Webinar Presentation 11/28/2016
Transcript**

Introduction

Hello and welcome. This webinar is offered by ACRA – the American Cultural Resources Association.

Our presenter is Marion Werkheiser. Marion is cofounder and managing attorney at Cultural Heritage Partners. Cultural Heritage Partners is a law, government affairs, and business innovation firm serving exclusively clients with needs related to the protection and appreciation of history. With offices in Washington, DC, Richmond, Virginia, and Brussels, Belgium, CHP represents clients globally including professional associations, governments, tribes, museums, private businesses, and families.

CHP has served as ACRA's government relations counsel in Washington, DC for the past several years, and Marion also provides executive leadership to the organization.

Marion is a self-described political junkie who began her career as a 16-year-old page in the U.S. House of Representatives. She has run grassroots and candidate campaigns, and she maintains excellent relationships with Members of Congress and their staff members across the political spectrum. Marion Werkheiser is a graduate of Indiana University and Harvard Law School. In 2014, the Register of Professional Archaeologists honored her with its Seiberling award for her "significant and sustained efforts in the conservation of archaeological resources."

With that, we turn to Marion to help us understand the implications of the 2016 election for the cultural resource management industry.

Marion Werkheiser

Good afternoon, everyone. Thank you for joining us.

I am very excited by the interest in this webinar. As of last count, we were nearing 2,000 registrants. Our diverse audience today includes CRM professionals; federal employees and agency officials responsible for administering our nation's preservation program, and university professors and students of archaeology, anthropology, architecture, and related fields.

Which leads me to my first point, which, less than an hour from now, will also be my last point: now is the time to get organized and to work together to ensure that the CRM industry thrives in the next administration. ACRA's goal continues to be a stable, healthy, and well-resourced environment in which to do your important work.

So, put down the bottle—whether you have them opened in celebration of the electoral outcome or to ease your pain—and let's prepare ourselves for the next 2 and 4 years, even while we lift our eyes to a longer-term plan to have the value of our field better understood by policy-makers and presidents of all stripes.

Because we have such a broad audience joining us today, I am going to begin my presentation with a quick overview of the cultural resource management or "CRM" industry. I will then discuss what we can expect from the new Administration on policies that are important to CRM. Finally, I'll describe how you can join ACRA's organizing effort to make your voice heard in Washington.

Many of you sent questions in advance. Be assured I have read all of them, and am tailoring my talk to address as many of them as I can. My colleagues will be available in the days ahead to answer any additional questions you have. I hope you'll leave today with a better understanding of the challenges facing the industry, opportunities for growth, and specific actions you can take. Let's get to it.

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There are approximately 1,300 CRM firms in the United States. Those firms employ more than 10,000 professionals—such as archaeologists, architects, architectural historians, and historians. ACRA is the national trade association representing the interests of CRM firms of all sizes and specialties. We estimate that the CRM industry generates at least \$1 billion dollars in revenue annually. Most CRM firms are also small businesses, and their chief clients are private sector developers and government agencies.

CRM firms undertake much of the legally mandated cultural resource studies in the United States, and the majority of their work derives from processes established in the National Historic Preservation Act or "NHPA" and the National Environmental Policy Act, or "NEPA."

Throughout 2016 the nation has commemorated Preservation50, the 50th anniversary of passage of the NHPA. That legislation said:

"Congress finds and declares that...the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects, and will assist economic growth and development."

Those values still guide the CRM industry's work today.

Section 106 of the NHPA establishes a process that is triggered whenever a development project requires a federal permit, uses federal dollars, or takes place on federal land. The responsible federal agency must identify historic properties that may be affected by the undertaking, assess the effects, and attempt to resolve any adverse effects. The process also allows interested members of the public and Native American tribes to express their concerns about a proposed project. CRM firms help agencies identify and assess those effects, facilitate effective public consultation, and help provide responsible solutions that aim to balance development and preservation goals.

Similarly, NEPA requires that agencies consider the impacts of major federal actions on the environment, which also includes impacts on cultural resources. CRM firms help identify and evaluate those effects.

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Advocacy is such an important part of ACRA's mission because a wide range of government policies impact CRM businesses. Every time there is an election, the results have the potential to affect the health of our industry--for better or worse, or sometimes both.

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The past few years in Washington have been marked by gridlock. President Obama and the Republican House and Senate had very different policy agendas, and so the President threatened to veto much of the legislation proposed by Republicans. Only legislation with bipartisan support was able to pass and be signed into law. Faced with gridlock in Congress, President Obama has frequently used Executive Orders and agency regulations to further his agenda.

The November election results will likely change this dynamic. Whenever one party controls the White House, the Senate, AND the House of Representatives, we expect to see major pieces of legislation passed into law. The next Congressional elections are not until 2018, so we expect the Republican leadership to push through as much of its agenda as it can in the next two years.

We also expect Donald Trump to use his powers as President and head of the Executive Branch to advance his priorities through Executive Orders and changes in regulations and enforcement in the agencies. President Trump can also rescind executive orders signed by President Obama.

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This year's election was unconventional and unprecedented in many ways. Typically, we can look to Presidential candidates' record of previous public service to understand how they may approach governing as President. But President-Elect Trump has never held public office, and

he does not have a public record on many issues that would help us understand his priorities. To understand his agenda, we have sifted through his public speeches, interviews with news media, and reviewed his campaign and transition websites.

It is much easier to divine how Congressional Republicans will seize the opportunity to advance their policy agenda, and for that we can look to previously introduced legislation, leadership's public statements, and the party platform. President-Elect Trump spent much of the campaign attacking his fellow Republicans, including House Speaker Paul Ryan, and so it remains to be seen how much of the party platform will be championed by Trump as President.

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As with any new Administration, there is likely to be both good news and bad news for CRM. Today I will focus on 4 areas of likely impact:

One: The Republicans' regulatory reform agenda and implications for environmental and historic preservation reviews

Two: Infrastructure and energy development

Three: Tax reform and small businesses

Four: Funding for social sciences research

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We need to be ready for proposals to weaken Section 106 of the NHPA and the review processes of NEPA. And we need to expect efforts to exempt major classes of federal undertakings from being subject to review.

President-elect Trump's transition team states, "Regulatory reform is cornerstone of the Trump Administration, and the effort will include a temporary moratorium on all new regulation, canceling overarching executive orders and a thorough review to identify and eliminate unnecessary regulations that kill jobs and bloat government."

Specifically, the Republican Party platform explains, "We will... modernize the permitting process under the National Environmental Policy Act so it can no longer invite frivolous lawsuits, thwart sorely needed projects, kill jobs, and strangle growth."

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In the past few years, Congressional Republicans have introduced bills that would exempt major categories of development from Section 106 and NEPA review, such as any federal undertakings within 200 miles of the U.S. border; and bills that would allow agencies to

discount effects on historic properties for reasons of national security. We can expect similar proposals this year.

The FAST Act, the 5-year transportation bill that passed this time last year, called for an interagency committee to review NEPA and suggest ways to reform NEPA regulations and implementation. We can expect that a Trump administration will take that effort even further.

Speaker Ryan's plan calls for reforming NEPA by eliminating duplicative reviews and creating time limits (called "shot clocks") for NEPA reviews. The Speaker would also limit the ways that agency findings under NEPA could be challenged in court.

In addition, President-elect Trump stated as recently as last week that his Administration will not issue any new regulation without repealing two regulations already on the books.

In addition to exempting classes of projects, we also expect efforts to delegate what are currently federal responsibilities to the states. The Republican platform calls for empowering states to take a stronger role in environmental regulations, arguing that the state level is the more appropriate place for decisions about environmental impacts to be considered. That delegation could be highly problematic for the CRM industry, as many states do not have laws that require historic and environmental reviews when issuing their permits. It would shift our advocacy efforts to the states.

One of you sent this question in advance: "If Congress decided to roll back Section 106 or NEPA, how long would it take to affect our work?" The answer is that it can take a long time to change final existing regulations. Even if proposals were introduced to dramatically change the Section 106 or NEPA process in January of 2017, we would expect that our advocacy coalition would have several months to up to several years to influence the results on the ground. Keep in mind however, that even if a new Congress is elected in 2018 that is friendlier to CRM, it would take them equally long to reverse course.

Finally, many CRM firms have been following the new Waters of the US rule, which expands the types of waterways subject to jurisdiction of the US Army Corps of Engineers, and which would expand CRM firms' work. The Republican leadership has called the rule "a travesty" and has made it clear that they wish to rescind the Waters of the US rule as soon as possible and narrow the jurisdiction of the Corps.

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Next, let's look at infrastructure development.

In what could be a boon for CRM firms, President-elect Trump and Congress have expressed interest in passing a major infrastructure bill that would fund upgrades to roads, airports, hospitals, and ports.

Typically, major federal spending on infrastructure is positive for the CRM industry, because any of those projects that spend federal dollars must be reviewed under Section 106. But President-Elect Trump's infrastructure proposal talks about using tax credits to incentivize private developers to finance private infrastructure projects—and so it remains to be seen how much of that activity would be subject to Section 106 review.

We will also need to be vigilant that the infrastructure program does not exempt classes of projects from historic and environmental review.

On transportation, the Republican platform calls for abolishing the Federal Transit Program and funding historical renovations through other sources, likely at the state or local level—that would be the funding that has been called “transportation enhancements”, “transportation alternatives,” and now, under the FAST Act, just “surface transportation block grants.”

The new administration has also talked about modernizing the electrical grid and promoting more oil and gas development. The Republican platform notes that “it should not take seven to ten years to plan and construct a transmission line.... We support expedited siting processes.”

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The new administration has also promised to open up public lands for oil and gas development, mining, and other activities. Development on public lands is subject to Section 106 review. Again, we need to be vigilant that certain classes of projects are not exempted from reviews.

Whether and how the administration changes its development policy on public lands will likely depend on the leadership of the new Secretary of the Interior. President-elect Trump has not yet announced his pick for this important position, which oversees many agencies of importance to the CRM industry, such as the National Park Service, the Bureau of Land Management, the Bureau of Reclamation, and others. Names being floated in Washington include former Alaska Governor and Vice Presidential Candidate Sarah Palin; Wyoming's only Congressperson, Cynthia Lummis; Oklahoma Governor Mary Fallin; the Founder of Lucas Oil, Forrest Lucas; and former Congressman Richard Pombo. I am confident in saying that whomever is chosen is likely to be much more friendly to oil, gas, and mining interests on public lands than the current Administration.

Finally, it is worth mentioning that key planks of the Republican platform call for federal public lands to be transferred to state ownership, or allowing state governments to make decisions about what activities can be conducted on them, such as energy development. They say, quote “Congress should give authority to state regulators to manage energy resources on federally controlled public lands within their borders.” It is also a priority of the Republican platform to amend the Antiquities Act to require Congressional and state legislature approval of any future national monument designations. There have been bills introduced every year attempting to amend the Antiquities Act, and they have not advanced; next year may be different.

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It is unfortunate that this political leadership change is happening when the Congressional authorization for the Historic Preservation Fund, or HPF, has expired. The HPF, which is funded through revenues from offshore oil leases, provides much needed funding for state and tribal historic preservation offices, certified local governments, and competitive grants. The HPF's Congressional authorization expired in September 2015, and preservation organizations led by the National Conference of State Historic Preservation Officers, have been working with Members of Congress all year to pass reauthorization.

There are several vehicles in Congress that could see votes before the end of this year; otherwise, we will need to regroup on this issue next year. It's important to understand that the fact that authorization has expired does not mean that SHPOs will not receive any funds—there are plenty of funds in the offshore oil revenue account to continue to pay for these programs—but it would be much better if we had a long-term reauthorization in place.

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Let's talk about tax reform.

In what could also be a boon for CRM business owners, Republicans are gearing up to pass a major tax reform bill next year. Their stated priorities are to simplify the tax code and make it, quote, "flatter and fairer." Speaker Ryan's proposal would reduce the top personal income tax bracket to 33%. He would also repeal the estate tax. Finally, he would also lower the tax rate on corporations and small businesses.

One area of deep concern for CRM firms, however, is how the historic rehabilitation tax credit will be treated in the tax package. Preservation groups led by the National Trust for Historic Preservation have gathered important data on the significant economic benefits of the tax credit program and are working to ensure that it survives and thrives in the new tax code.

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We can expect other policy changes that will affect small businesses. Republicans have said they intend to repeal the Affordable Care Act ("Obamacare.") We do not yet know what form that will take, or what would replace Obamacare. Small businesses will want to keep informed about various proposals and how they could affect employer-sponsored health insurance plans.

We are also keeping an eye on Department of Labor policies. Just last week a federal judge issued an injunction against the Obama Administration's overtime rule that made employees making less than \$47,476 eligible for overtime pay. We can expect that the Trump Administration is unlikely to fight to uphold that rule. Similarly, the Republican platform is clear that Republicans think that minimum wage should not be established nationwide by Congress but rather set by state and local governments.

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The fourth area of concern for the CRM industry is federal funding for archaeology, history, and social sciences research. My colleagues and I at CHP are also pleased to conduct federal government affairs efforts for the Society for Historical Archaeology, which will help take the lead on advocacy this issue. Representative Lamar Smith of Texas, the Republican chair of the House Science, Space, and Technology Committee, has introduced legislation in the past couple of years to restrict federal funding for archaeology, anthropology, and the social sciences. Rep. Smith was the first member of Congress to contribute to Donald Trump's campaign, and we expect his proposals may gain more traction next year.

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So, in summary, the CRM industry is looking at a tale of two futures in a Republican controlled Washington, DC. On the one hand, from a business profitability perspective, infrastructure spending and opening up more public lands for development could create more demand for CRM services and, because of tax reform, you might get to keep more of what you earn from those greater opportunities. On the other hand, in terms of appreciation by policymakers of the economic and social value to the public of heritage management and the regulations that encourage it, we are clearly entering into MUCH more hostile territory where the instinct is to reduce the need for your services.

ACRA's message to you is simple: when we are organized and proactive, we can successfully navigate these challenges as we have proven before. In fact, the founders of ACRA started the organization back in the mid-1990s, galvanized by the 104th Congress's attempts to de-fund the Advisory Council on Historic Preservation—the independent federal agency that advises the President and Congress on preservation policy. We were successful then in articulating the public benefits of the nation's historic preservation program and defeating those proposals.

We were successful again in defending Section 106 regulations when, in the mid-2000s, Chairman Pombo—the same Congressman on the short list for Interior Secretary-- attempted to curtail the scope of Section 106. And we have been successful on many other issues, for example, defeating attempts to exclude particular classes of project from review.

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In this time when our country seems so divided, what we do to balance development with our country's values in heritage preservation is even more important. The Section 106 process in particular gives members of our communities an important opportunity to have their voices heard about projects that will affect them. Maintaining the opportunity for Americans at the local level to have a say in federal projects is important for the health of our nation moving forward.

To have the greatest chance of upholding our nation's historic preservation program in the coming months and years, we must organize now. ACRA is reaching out to other professional organizations, client trade associations, and likeminded groups to coordinate our advocacy strategy and to build a strong advocacy coalition. We have a much greater chance of success when we work together to explain why cultural resource management matters.

It is easy to paint all Republicans or Democrats with a broad brush and presume that because of their party affiliation they oppose or support Section 106. I can tell you from many years of personal experience, this is not the case. Historic preservation attracts champions from all corners of the country, all different backgrounds, and all kinds of political persuasions. We have found that your conversations with your representatives about why you care about the NHPA and what you do can be persuasive and create the connections that deliver votes on important legislation.

We need to shore up our advocates on both sides of the aisle. To that end, ACRA is planning a lobby day in Washington in March that will bring advocates to the Hill from across the country to educate Members of Congress about the importance of the work we do and the public value that the Section 106 produces.

We are creating a rapid response effort that will be prepared to respond to any attacks on Section 106 or our nation's preservation program. We need you to be our partners in this effort—please fill out our survey so that we can plug you into these efforts.

We are also organizing at the state level. Many of the Republican's proposals include empowering states to take over environmental regulation—we need to educate our state leaders about why a responsible balance between development and preservation is a cornerstone value of our country.

The new administration may also present opportunities to further some of ACRA's priorities, such as improving the quality of cultural resources data to inform early stage planning of development projects so that Section 106 reviews may be completed in more efficient and timely ways. We need to be ready to make the case that these efforts are worth investing in.

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How You Can Help:

1. One: Listening to this webinar is a first step – please share the link to this presentation with your professional network via social media and your company email list.
2. Two: If you work for a CRM firm that is not a member of ACRA, now is the time to join. The future of your industry is on the table and if you are not seated at the table, you are what's for dinner.

3. Three: We will email a link to a survey along with the link to the recording of this webinar. Please complete it as soon as possible. We promise to share results with you and to tell you how your answers will inform our advocacy strategy.
4. Four: Contribute financially to our advocacy fund. You can find the link on ACRA's website.
5. Five: In a single page, write out how your business benefits your local, state and national economy. Describe some of the best projects you've been able to deliver. Send it to us and have it ready for when you visit your Congressperson on their next trip back home.
6. Finally, watch the Facebook Page of ACRA and of my firm, Cultural Heritage Partners, for updates on our strategy and progress.

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As promised, I'll end as we began: our growing coalition CAN and WILL have our voices heard in Washington and in statehouses, when we organize and join forces. Thank you for your time and attention.

Please Complete the Survey Available at:
<https://www.surveymonkey.com/r/3XJVDLK>