

JGAC Semi-annual Report

—by Laurence Socci

ACSM's Joint Government Affairs Committee held its meeting during the Spring Conference in Salt Lake City. Many issues were discussed, even though we are very early in the new Congress. We worked on some of these issues in the past, and there are some new ones for which we will need help from members in all states. Below are snapshots of advocacy work projected to occupy us this year.

FEMA Flood Map Modernization. The original Map Modernization program is almost complete, and FEMA has started its RiskMAP program. RiskMAP is meant to shift the focus of flood hazard mitigation from the federal government to state and local communities. FEMA will continue to work with local communities to digitize and update their flood maps. The Office of Management and Budget assured the Flood Map Modernization Coalition that the Obama Administration will not cut any of the federal funding for flood map modernization. At this point, no legislation has been introduced in Congress relating to flood map modernization.

COFPAES. One of the major issues to be addressed at the spring meeting will involve design-build contracting. COFPAES welcomes input on the issue from member organizations. I expect that COFPAES will also address the issue of surveying and mapping on the GSA Schedule. Also, Congress may decide to revisit the Brooks Act to see if it is still the best way to procure federal A/E services. There are many opponents of the Brooks Act, and COFPAES will have to work to ensure that Brooks Act procedures are not watered down or removed altogether.

Lobby Day 2009. The 2009 Lobby Day will be held on September 24, 2009, with an education session on Wednesday, September 23, 2009. Now, more than ever we need as much participation as possible. This is our opportunity to educate Members of Congress and staff on the many important issues that affect surveyors.

3% Withholding of Payments on Government Contracts. The Government Withholding Relief Coalition, of which ACSM is a member, works to repeal Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005. A full repeal of Section 511 was in place in the House passed version of H.R. 1, the "American Recovery and Reinvestment Act of 2009", but the final bill that will go before the President only provides for a one-year delay in the provision's enactment to 2012. Legislation was introduced in the House and the Senate to ensure full repealing of the provision; S. 292 in the Senate (introduced by Senator Specter) and H.R. 275 in the House (introduced by Congressman Meek of Florida).

National Height Modernization Program. We are working on a white paper to help secure funding for the program. The document will be used during the appropriations process in Congress.

Funding for Trig-Star. Funding to the tune of \$250,000 is sought. Wayne Harrison is heading up the task of preparing the paperwork

for our 2009 funding request. The paperwork was filed in Congressman Chris Van Hollen's office by February 20, 2009.

National Geospatial Advisory Committee. The January 2009 Report of the National Geospatial Advisory Committee can be found on the NGAC website. We will continue to work with the new Secretary of the Interior to secure a seat on the Committee.

STEM Programs. Last year, we pursued the inclusion of surveying into the traditional Science, Technology, Engineering and Mathematics (STEM) designated program, which benefits students enrolled in STEM programs in the form of loan forgiveness. We have learned since that surveying is listed as a designated degree program under the titles "Surveying Engineering" and "Surveying Technology/Surveying." Students entering colleges and pursuing degrees in these programs will thus qualify for federal benefits, including grant opportunities and in some cases loan forgiveness.

Learned Professional Exemption Under FLSA. This issue came to our attention through a case in Maine where a surveyor was denied an exemption for overtime pay under the "learned professional" exemption pursuant to the FLSA. The surveyor was told by the Department of Labor auditor that land surveyors do not qualify for the professional exemption, but may qualify under other exemptions, such as management. A meeting with the Department of Labor Wage and Hour Deputy Administrator has been scheduled to get clarification and perhaps a standing ruling.

Economic Stimulus and Design Professionals. ACSM joined several other design profession groups in a letter to the Senate in support for funding from the economic stimulus bill for construction and modernization of schools and federal buildings. At the time of writing this report, \$40.6 billion was to go to local school districts using existing funding formulas, which can be used for preventing cutbacks, preventing layoffs, school modernization, or other purposes. School modernizations will thus have to compete with other priorities at the state level.

National Surveyor's Week Proclamation. President Obama did not issue a proclamation for National Surveyor's Week, 2009.

Imagery for the Nation. Imagery for the Nation is a new nationwide aerial imagery program that will collect and disseminate standardized multi-resolution products on set schedules. The program is estimated to cost approximately \$1.38 billion during the first 10

year cycle. It's expected that the program will save about \$120 million during that time through contracting for larger areas, reducing the number of duplicate programs, and eliminating certain overhead costs. We expect to work for funding for this program, as will other groups.

Agency Day. Since our traditionally strong collaboration with federal agencies is likely to intensify over the next two years, it is proposed that we hold an Agency Day as part of the ACSM Fall Meeting. This would give ACSM members a chance to hear key agency personnel talk about important issues that affect members.

Base Map Data Sale. In a unanimous decision, the three Justice panel of the California Court of Appeal affirmed the Santa Clara County Superior Court's decision requiring Santa Clara County to comply with public requests for a copy of its GIS parcel base map, under the conditions of California's Public Records Act (PRA). The Court validated the California First Amendment Coalition's (CFAC) demand for the data at no more than the cost of duplication, and without restrictions of use. In its appeal of the trial court's decision, the County tried several arguments to justify its policy of selling GIS base map data for over \$150,000, and belatedly, for withholding the data with the claim that its parcel base map was Protected Critical Infrastructure Information (PCII).

As per the Appellate Court's decision:

- I. Federal homeland security provisions do not apply here. Both the Critical Infrastructure Information Act and the accompanying Department of Homeland Security regulations make a distinction between submitters of critical infrastructure information (to DHS) and recipients of PCII (from DHS). The federal prohibition on disclosure of PCII applies only to recipients of PCII. Because the County did not receive PCII (it submitted its data to DHS in order to obtain PCII designation), the federal provisions do not apply.
- II. The proffered California Public Records Act exemption does not apply. After independently weighing the competing interests in light of the trial court's factual findings, the public interest in disclosure outweighs the public interest in nondisclosure.
- III. There is no statutory basis either for copyrighting the GIS basemap or for conditioning its release on a licensing agreement.

This issue was a matter of first impression ("de novo") in California, for which the Court concluded that "end user restrictions are incompatible with the purposes and operation of the CPRA."

National GIS. Two geospatial stimulus plans were proposed recently by the Coalition of Geospatial Organizations (COGO) and some members of the National Geospatial Advisory Committee (NGAC). The COGO proposal calls for the development of a National GIS. According to COGO, "a National GIS properly designed and effectively implemented, providing public access and using best technologies, will speed economic recovery by producing jobs and putting shovels in the ground more quickly." The competing proposal calls for investment in the U.S. National Spatial Data Infrastructure (NSDI). The proposal states that "an investment in building the NSDI will provide immediate benefits to the American information and communication technology industry." ACSM has not yet made a decision as to which proposal to endorse.

Funding for Federal Land Management. Like the flood maps around the country, federal land maps are old, outdated, and in desperate need of updating. Federal funding would help address that need.

Labor Issues. These were recently introduced through: (1) An Executive Order 13502 encouraging the use of union only project labor agreements on federal construction contracts; and (2) The Employee Free Choice Act, also known as Card Check. The February 9, 2009, Executive Order encourages government agencies to require union only project labor agreements (PLAs) on federal and federally funded projects in excess of \$25 million. The Executive Order creates a government procurement policy favoring union contractors and union workers. There are concerns on Capitol Hill that Congress will attempt to permanently attach PLA requirements on federal construction spending via legislation. A union-only PLA is a contract requiring that a project be awarded only to contractors and subcontractors who agree to: recognize unions as the representatives of their employees on that job; use the union hall to obtain workers; obtain apprentices exclusively through union apprenticeship programs; pay union wages and benefits; and obey the union's restrictive work rules, job classifications and arbitration procedures. The Employee Free Choice Act, also known as Card Check, would make it far easier for unions to unionize workers in small businesses, and it takes away the secret ballot procedure currently used in union elections. Opponents feel this will lead to intimidation of workers if they oppose unionization. The Employee Free Choice Act was introduced in Congress last year. It passed the House but will not be brought up for a vote in the Senate because the Senate does not have enough votes for it to pass. A third issue that we will be watching is the rumored expansion of the Davis-Bacon Act. President Obama has made it very clear that he plans to expand Davis-Bacon to cover far more workers than it does now. Thus far, no legislation has been introduced on this issue.

eLOMA for Flood Certification Companies. FEMA will henceforth allow National Flood Determination Association member company representatives to access the web-based eLOMA application. This authorization comes in the form of a Memorandum of Understanding between FEMA and NFDA, after nearly three years of discussions and negotiations. Shortly after hearing of the approved MOU, we contacted FEMA and friends in the industry to learn more about the MOU. It appears, the purpose of the MOU is to allow NFDA practitioners to fill out the forms and submit the eLOMA using the data provided by a licensed surveyor or engineer. The issue will be discussed internally by JGAC before meeting with FEMA.

PAC Auction Donations. Because of difficulties in raising funds through the PAC Auction, we are limited in our opportunities to use the PAC to its full potential. One solution may be to have big ticket items as part of the PAC Auction. Federal Election Commission officials assured me that we can obtain donations in cash and items for our auction from ACSM's corporate members. New ways of improving our PAC fundraising are needed as well.

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