

JGAC Semi-annual Report

—by Laurence Socci



Compared with the past year, this has been a “slow” legislative year so far. Yet, some new issues have arisen which we are closely following. However, preservation of railroad monumentation continues to be center stage in our advocacy efforts. The issue is moving forward in Congress, with many Members learning for the first time how vital is to land boundary surveys the preservation of the monumentation which defines rights-of-way. We need your help, more than ever, in educating Congress about this and other issues presented in this report.

FEMA Risk MAP

FEMA has moved from the Map Modernization Program to Risk MAP. Under the Risk MAP program, FEMA will attempt to address gaps in flood hazard data; increase public awareness and understanding of flood risks; lead and support state and local communities in risk-based mitigation planning; provide an enhanced digital platform to improve Risk MAP management; and align Risk Analysis programs to enhance decision-making capabilities. In April, the Office of Management and Budget (OMB) approved changes to the Floodproofing Certificate which includes significant changes to elevation certification.

COFPAES

The COFPAES Fall meeting will be on December 15. On the agenda of the Delegate meeting will be the proposed COFPAES legislation, the High Performing Communities Act of 2009. This proposed legislation was introduced during the Spring COFPAES Delegate meeting. The goal is for COFPAES to develop federal legislation which would create a program, led by the A/E community, to move toward clean energy; reduce the causes of global warming and climate change; design cleaner, less-energy-consuming buildings through sustainable and energy-efficient building envelope design and construction; integrate land use and transportation to cut commuting times, reduce pollution, and lower energy costs; and continue to contribute to cleaner air and water. In August, the Livable Communities Act of 2009 was introduced in Congress. COFPAES staff met recently with the Congressional staff sponsoring the bill to see if there is a way to incorporate the goals of the proposed COFPAES bill into the legislation already introduced. We believe we may be able to do so.

LOBBY DAY 2009

The 30-plus-strong ACSM advocacy group met with staffers working for Members of Congress in the House and Senate and discussed a number of key issues with them. Our topics this year were: the Preservation of Railroad Monumentation, 3% Withholding on Federal Contracts, Federal Funding for Trig-Star, Coastal Mapping Legislation, and Funding for BLM’s Mapping Projects. We will continue to build on our meetings throughout the Congressional term.

3% WITHHOLDING OF PAYMENTS ON GOVERNMENT CONTRACTS

The Government Withholding Relief Coalition, to which ACSM belongs along with 70 business associations, is working 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 (now set at 2012). Full repeal of the provision is the goal; in fact, legislation was introduced in the House (H.R. 275, by Congressman Meek of Florida) and the Senate (S. 292, by Senator Specter) to accomplish this goal.

PRESERVATION OF RAILROAD MONUMENTATION

At our Spring meeting in Salt Lake City, a white paper was approved and proposed legislation developed to address our preservation of railroad monumentation issue. Since that time, I have been working to promote the bill in Congress and find a sponsor. I met with House and Senate Committee staff, as well as 50 staff in the House and Senate who handle the issue. The main opposition that I have received, and what has kept

this bill from so far being introduced in Congress, has been that Members of Congress have not heard from people in their District about it and do not know how it specifically affects their District. As an organization, we need to step up our grassroots effort. If the issue is important, we need to call, e-mail, or fax our Representatives and Senators. We need to write op-ed pieces and letters to the editor in local papers. I can take care of things on Capitol Hill, but we need help from the people back home.

USGS COALITION

The USGS coalition exists to support the U.S. Geological Survey in all of its disciplines, including mapping. We will continue to be a strong voice in this coalition.

NATIONAL HEIGHT MODERNIZATION PROGRAM

A white paper on Height Modernization is being prepared for use during the appropriations process in Congress to secure funding for the program.

FUNDING FOR TRIG-STAR

Earlier this year, Wayne Harrison led a committee to put together the paperwork for an earmark request for Trig-Star funding through the office of Congressman Chris Van Hollen. The paperwork was timely filed, however, we were told by the Congressman’s office that although he considered Trig-Star to be an important project, he would not request an earmark for it because there were many other requests that were “District centered.” Funding for Trig-Star was part of this year’s Lobby Day. We expect to expand our request to more Members of Congress for FY 2011 and start the lobbying and application process earlier.

NATIONAL GEOSPATIAL ADVISORY COMMITTEE

John Matonich, NSPS president, was nominated to the committee. We are awaiting the decision of the nominating committee.

FLAIR Act, H.R. 1520

The FLAIR Act directs the Secretary of the Interior to develop a multipurpose cadastre of federal real property (an inventory of real property of the federal government) to assist with federal land management, resource conservation, environmental protection, and use of real property. It authorizes the Secretary to enter into cost-sharing agreements with states to include any non-federal lands in the cadastre. It limits the federal share to 50 percent of the total cost to a state for the development of a cadastre of non-federal lands in a given state. It also requires the Secretary to submit a report on existing real property inventories or any components of any cadastre; consolidation of inventories and components; the use of existing inventories and components of any cadastre; the cost savings that will be achieved; and recommendations for legislation.

LEARNED PROFESSIONAL EXEMPTION UNDER FLSA

We learned about a surveyor in Maine who was audited by the Dept. of Labor and was denied an exemption for overtime pay under the "learned professional" exemption pursuant to the FLSA. The surveyor was told by the DOL auditor that land surveyors do not qualify for the professional exemption, but may qualify under other exemptions, such as management. We are looking into the issue, and have contacted the Department of Labor, Wage and Hour Division for their review. We received information back from our contact at the DOL stating that the appointment of the person who would make the formal decision on this issue is not yet confirmed. However, upon review of the facts stated, "unofficially" it appeared that the exemption requested may not be warranted. Our contact did indicate that the DOL would never disavow that surveying is a professional activity, and that appeals would be considered on a case-by-case basis rather than as a blanket issue.

Our position is that Licensed Professional Surveyors qualify for a Learned Professional exemption under Title 29 C.F.R. because

they meet the criteria set forth in Section 541.301 as illustrated in DOL Fact Sheet #17D.

Section 541.301 (a) lists the three elements of the primary duty test as: (1) the employee must perform work requiring advanced knowledge; (2) the advanced knowledge must be in a field of science or learning; (3) the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

We are continuing to work through this issue with the Dept. of Labor. Look for our progress in future government affairs updates.

COASTAL MAPPING LEGISLATION

Legislation was introduced earlier this year (Ocean and Coastal Mapping Integration Act H.R. 365 and S. 174) which would direct the National Oceanic and Atmospheric Administration (NOAA) to coordinate federal ocean and coastal mapping and surveying activities with other federal efforts (including the Digital Coast, Geospatial One-Stop, and the Federal Geographic Data Committee), international mapping activities, coastal states, user groups, and nongovernmental entities. The legislation authorizes the Administrator of NOAA to:

- » Convene an ocean and coastal mapping advisory panel consisting of representatives from nongovernmental entities to provide input regarding activities of the committee.
- » Develop a plan for an integrated ocean and coastal mapping initiative within NOAA which: identifies all ocean and coastal mapping programs within NOAA, establishing priorities; encourages the development of innovative ocean and coastal mapping technologies and applications; and documents available and developing technologies, best practices in data processing and distribution, and leveraging opportunities with other federal agencies, coastal states, and nongovernmental entities.
- » Establish joint ocean and coastal mapping centers of excellence (including a joint hydrographic center) in institutions of higher education to conduct specified

activities, including research and development of innovative ocean and coastal mapping technologies, equipment, and data products, and mapping of the U.S. outer continental shelf.

AMERICAVIEW GEOSPATIAL IMAGERY MAPPING PROGRAM (H.R. 2489, S. 1078)

Legislation was introduced in the House and Senate which would authorize a comprehensive national cooperative geospatial imagery mapping program through the U. S. Geological Survey, to promote the use of the program for education, workforce training and development, and applied research, and to support federal, state, tribal, and local government programs.

Under the AmericaView Geospatial Imagery Mapping Program Act, the Secretary of the Dept. of Interior, acting through the AmericaView program, shall maintain AmericaView in each state to:

- » Share and cooperate in the development of geospatial imagery mapping applications, education, and training infrastructure in each state;
- » Cooperate with the AmericaView project to develop nationally consistent standards for geospatial imagery mapping in each state;
- » Expand the number of geospatial imagery mapping courses taught at educational institutions and provide training, remote sensing data, and teaching tools to educators;
- » Expand geospatial imagery mapping research at research educational institutions;
- » Expand the knowledge and use of geospatial imagery and map products in the current workforce through outreach programs, workshops, and other training opportunities;
- » Build partnerships with local governments to identify unique research and development needs and geospatial imagery mapping pilot projects;
- » Promote cooperation and sharing of expertise regarding geospatial imagery among participating states and within each participating state;
- » Enable the states to provide geospatial imagery to the USGS.

The legislation also calls for an advisory committee to be composed of at least one representative of each of AmericaView state, the USGS and the Department of Agriculture, and representatives of such other agencies as the Secretary may designate. ACSM will work to amend the legislation to provide for a representative from the private surveying and mapping community to be included in the advisory committee as well.

ASSOCIATION HEALTH PLANS

The Small Business Health Fairness Act of 2009 (H.R. 2607), introduced by Rep. Sam Johnson, amends the Employee Retirement Income Security Act of 1974 (ERISA) to provide for the establishment and governance of association health plans (AHPs).

The 2009 legislation establishes the Association Health Plan Fund and directs the Secretary of Labor to make payments to an insurer to maintain coverage for a plan if there is a reasonable expectation that, without such payments, claims would not be satisfied by reason of termination of coverage.

H.R. 2607 allows states to impose a contribution tax on an association health plan that commenced operations in a state after the enactment of the Act. Further, it preempts any state law that may preclude a health insurance issuer from offering health insurance coverage in connection with a certified AHP; or offering health insurance coverage of the same policy type to other employers operating in the state that are eligible for coverage as AHPs, whether or not such other employers are participating employers in such plan.

PUBLIC LAND SURVEY SYSTEM FOUNDATION

A Memorandum of Agreement between ACSM and the Bureau of Land Management (BLM) was signed on September 2, 2008, for the following purposes:

- » The creation of a single point of contact for surveyors in the United States for knowledge and information about the Public Land Survey System (PLSS) in support of critical national priorities;
- » To collect monies from various educational efforts to be used for the good of the profession;
- » To fund educational opportunities, scholarships and other training for

the survey profession as it relates to PLSS issues;

- » To fund joint projects for research or special effort with other entities, including the BLM, as they relate to PLSS issues; and
- » To publish additional BLM materials which are of interest to the private sector surveying community for which BLM has no budget to produce.

An agreement was recently reached so that all proceeds derived from the sale of the BLM's Manual of Surveying Instructions will be directed to the Public Land Survey System Foundation for the purpose of advancing the PLSS for the public good. ACSM will provide administrative services to the Foundation, and its eStore will be the outlet for sales of the Manual.

FUNDING FOR FEDERAL LAND MANAGEMENT

Just like the Nation's floodmaps, federal land maps are old, outdated, and in desperate need of updating. Federal funding would help address that need. ACSM will work to include land survey modernization at the federal level in the upcoming cycle of negotiations on appropriations levels.

eLOMA FOR FLOOD CERTIFICATION COMPANIES

As per a recent notice, FEMA will allow representatives of National Flood Determination Association member companies 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. ACSM is in discussions with FEMA, ASFPM, and NFDA regarding a plan to achieve the goals of CFS through the eLOMA process, given that FEMA opposes the expansion of CFS beyond North Carolina. The plan would include a training program leading to a NSPS-based certification targeted toward the submittal of applications using eLOMA. Funding will be sought to support research on the need, desire, and impact for developing a training program which would augment FEMA eLOMA efforts and make it possible to accept all submittal types included in CFS.

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ASPRS Approves Guidelines for the Procurement of Professional Services

The Board of Directors of the American Society for Photogrammetry and Remote Sensing (ASPRS) has approved the "Guidelines for Procurement of Professional Aerial Imagery, Photogrammetry, Lidar and Related Remote Sensor-based Geospatial Mapping Services." A copy of the Guidelines is available online at <http://www.asprs.org/guidelines>.

Developed over the past three years, the document provides a definition of "Professional Services" along with detailed procurement guidelines and recommendations. The approved document supersedes the outdated "Guidelines for Procurement of Photogrammetric Services from Private Professional Sources," originally adopted by ASPRS in 1986 and published in 1987 (see PE&RS Vol. 53, pp. 207-212).

The Guidelines were prepared by the ASPRS Procurement Guidelines Committee. The Committee was chaired by Doug Smith, ASPRS Professional Practice Division Director, and its members included representatives from the ASPRS Professional Practices Division, ASPRS members from state and federal government, the Management Association for Private Photogrammetric Surveyors (MAPPS), and the American Congress on Surveying and Mapping (ACSM).

The intent of the Guidelines is to provide public agencies, researchers, private entities, and other organizations with a resource they can use as a guide to help determine the best approach and methodology for procuring photogrammetry and related remote sensor-based geospatial mapping services. Information on the process (including documentation of the comments and Committee responses) is also available on the ASPRS web site.—A.M. Kinerney