Georgia’s Section 106 Programmatic Agreement
A Partnership of Agencies and Non-Resident Tribes and How We Got There

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How We Got There...

- Identifying the Need for the Programmatic Agreement
- The Corps of Engineers
- Federally-Recognized Tribes
- Practical Tips
Overview of GDOT’s 2020 Work Program

State = $2,208,887,300

- Motor Fuel Tax: $0.279 Gallon Gasoline, $0.313 Gallon Diesel
- Hotel Fee: $5 Per Night
- Annual Alternative Fuel Vehicle Fee: $212.78 Non-Commercial, $319.27 Commercial
- Annual Heavy Vehicle Highway User Impact Fee: $50 - $100

Federal = $1,607,707,398

- U.S. Department of Transportation Federal Highway Administration
- Federal Transit Administration
- Federal Aviation Administration
- Federal Rail Administration

TOTAL = $3,816,594,698
Why a Programmatic Agreement?

- Consolidate existing FHWA/GDOT MOUs and Letter Agreements
- Provide Corps/GDOT Section 106 procedures
- Provide an opportunity for the Tribes to participate in the development of streamlining efforts
- Facilitate Georgia DOT’s Cultural Resource Section Response to Georgia’s 2016 Transportation Funding Act
How Was the Agreement Developed?

Timeline of Events

November 2017
First Meeting with FHWA, the Corps, and GDOT

January 2018
Work on the Draft PA Begins

May 10, 2018
Webinar held with Tribes

May 24, 2018
FHWA, Corps, SHPO, & GDOT hosted a table at the Eco-Café at To Bridge a Gap

October 15, 2018
PA submitted to the Tribes and public for review and comment

Interagency Meeting November 2017

TBAG 2018 Conference – Tulsa, OK
How Was the Agreement Developed?

**January 23, 2019**
Intertribal Meeting at GDOT

**June 12, 2019**
Tribal and Agency Meeting to Review Project Activities with No Potential to Cause Effect

**December 9, 2019**
PA Signing Ceremony

**December 13, 2019**
PA Ratified

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Intertribal Meeting January 2019

Intertribal Meeting January 2019

Signing Ceremony December 2019
How it started before 2015

• In 2012, the Corps and Georgia DOT ratified a Memorandum of Understanding (MOU)
  • The utility of this agreement provided for “one-off” projects

• The MOU identified two tracks under which the Corps might take jurisdiction over the Section 106 of a project:
  • Section 106 was completed through FHWA and the findings and concurrences were adopted by the Corps (if those documents received concurrence within 24 months of Corps involvement)
  • Section 106 was not complete/not started, then the Corps would act as the Lead Federal Agency – defining the Permit Area, obtaining concurrences for Cultural Resources documentation, completing mitigation stipulations for adverse effects, etc.

• For these projects, it is important to note that Appendix C was not applied by the Corps Cultural Resources person
TFA Passes in 2015

- GDOT began to program large scale projects using a percentage of the state’s gas tax defined by the Georgia legislature. The 2012 MOU would not hold up to the new challenges:

  - GDOT would not seek concurrence on eligibility or effects from SHPO on state funded projects
  - APE vs. Corps Permit Area
  - Appendix C
  - Delegation – how the day-to-day would look under this brand-new agreement
  - Would the ACHP and tribes be willing to enter an agreement with the Corps on Georgia DOT’s behalf
  - Helping other GDOT personnel understand that no FHWA hook did not mean no federal hook with cultural resources
  - Timing of a permit vs. Section 106 vs. project milestone timing such as Right-of-Way acquisition
Devil in the Details

Appendix C

• The immediate concern for most participants about Corps involvement in the PA was Appendix C. The limited jurisdiction of the Corps and how historic resources are subject to Section 106 under their per view. In addition, the Corps too was weary about if they could be under the same agreement signed by ACHP. In fact, there was one such agreement – though written with small projects in mind – between Virginia DOT, FHWA, Corps, ACHAP and the TVA.

• The ACHP and the Corps agreed to referring to Appendix C as their “Operating Procedures”

• The Corps leveraged relationships and procedures established by GDOT and FHWA to present their Section 106 procedures and that their involvement in the PA would make their procedures more transparent
Timing of Section 106 within the Environmental Review Process: Federal vs. State Funded Projects

**Section 106 Four Step Review Process:**
- **Step 1:** Initiation of Section 106
- **Step 2:** Identification of Historic Properties
- **Step 3:** Assess Effects
- **Step 4:** Resolve Adverse Effects

**Federally Funded 106**

1. Receive Study Area Layout
2. Conduct Resource Surveys
3. Transmit Reports to Agencies and Tribes
4. Transmit Resource Boundaries to Design
5. Hold Avoidance & Minimization Measures Meeting
6. Receive Preliminary Plans
7. Assess Impacts to Cultural & Ecological Resources
8. Prepare Draft Environmental Document if needed
9. 4(f) Resource Coordination with FHWA if needed
10. Conclude Section 106 Consultation
11. Receive 404 Permit if required
12. Prepare Final Environmental Document

**State Funded 106**

1. Receive 404 Permit if required
2. Prepare Final Environmental Document

**GEPA Process**

*GDOT follows the GEPA Process when there are no federal funds or permit actions on a project*
How it’s Going One Year Later

The Corps on the PA

• 60% of the $3.8 billion dollars spent in 2019 for road projects were funded with state dollars. This meant that the Corps taking jurisdiction of most of those projects – either in entirety or partially

• Within the first year of the PA, we have had to develop procedures to keep projects already programmed moving forward without missing project schedules:

  • Developed new procedures to ascertain permit area/APEs with a Scope of Analysis which identifies those Waters of the U.S. that will be affected by the project
  • Once permit area is identified – new Notifications are sent out on behalf of the Corps detailing the portion(s) of the project that are under the jurisdiction of the Corps
  • Once identified, new reports and assessments of effects are compiled to only identify those resources within the Corps permit areas
  • GDOT provided SHPO with a staff person for review of GDOT Section 106 through the Corps
  • And bi-weekly meetings with the Corps Cultural Resources staff to go over projects
# How it's Going One Year Later

## RE: USACE Regulatory Archaeologist/GDOT CR Section Monthly Meeting - January 13

<table>
<thead>
<tr>
<th>PI#</th>
<th>County(s)</th>
<th>SAS#</th>
<th>Corps PM</th>
<th>Partial/Full Jurisdiction</th>
<th>GDOT Archaeologist/Historian</th>
<th>Notes from November 10</th>
<th>Notes from December 9</th>
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<tbody>
<tr>
<td>0015002</td>
<td>Lowndes</td>
<td>F66D</td>
<td>Tyrone</td>
<td>Full</td>
<td>Rachel B/Cayley</td>
<td>Received concurrence on AQF 10/26; no tribal responses yet as of 1/3/20; NHPA was also sent to SHPO and Corps—no concurrence required.</td>
<td>This one is complete and can come off the list.</td>
</tr>
<tr>
<td>0006328</td>
<td>Chatham</td>
<td>2010-00170</td>
<td>Brian</td>
<td>Full</td>
<td>Rachel P/Madeline</td>
<td>NSA working on MS – fieldwork ended last week. MS will likely not be to GDOT for review until after Thanksgiving. Archaeology Addendum and re-eval for utilities - almost ready to be transmitted.</td>
<td>GDOT has received the DR Man Sum for review. NSA provided coordination on music to Rachel and she provided it to Rodney; have not yet received any specific suggestions/leads yet but will follow up. No updates for history. Also, Rodney - this project has identified need for contact list/database for contacts with Gitah Geechee artists. Rodney spoke to Melissa last about that recently and she provided suggestions to Rodney. Still looking at what format it will take but goal is to identify proper individuals to contact throughout the state.</td>
</tr>
<tr>
<td>00016032, et al (SR 20)</td>
<td>Cherokee</td>
<td>2015-0047</td>
<td>Nicole</td>
<td>Full</td>
<td>Pam/Cayley</td>
<td>Terri noted that ROW continues to be purchased; trying to get ahead so that we can release the parcels. History has first set of PARS (7) complete. Will use chart to help track completed PARS since full stipulation is for 60+ resources. Rodney</td>
<td>The consultant has NTP for the revisions to the Archaeology report based on MCM comments; anticipate those to be submitted in January. Once GDOT reviews and approves, the document will be finalized and distributed. With this NTP will also likely have addenda.</td>
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Tribal Consultation

Timing and Approach

- 20 Federally-Recognized Tribes with ancestral homelands in Georgia

- Tribal representatives were engaged after agencies had established working relationship on PA and agreement on stipulations...but early enough to be able to participate in development of the agreement

- Identify roles, points of contact, method of engagement

- Important to the agreement was a firm recognition of the trust responsibility of the federal government to consult with federally-recognized tribes
Tribal Consultation

Building Upon Existing Relationships

- Leveraged long standing relationships to assist with newer or developing relationships
  - Existing GDOT/FHWA MOU agreements

- Distinguished between federal agencies at key points/topics, tribal consultation being one of them
  - Allowed for distinctions between agencies

- For the Corps, provided flexibility for growth in what coordination with GDOT and the tribes looked like as relationships developed
Tribal Engagement

Continued engagement throughout the development process

- **Introductory Tribal Webinar** – May 2018
- **To Bridge A Gap Conference** – May 2018
  - Face-to-face information session
- **Interagency Consultation Meeting** – January 2019
  - In-Person Dialogue – all agencies present
  - Consultation on proposed stipulations and project level consultation protocols – held after transmittal of draft PA/CR Manual
  - Travel Assistance Made Available
- **Invited Signatories and Concurring Party Invitations** – March 2019
- **Webinar to Discuss NPTCE Activities** – June 2019
- **Webinar to Discuss Revised Agreement** – August 2019
- **Signing Ceremony** – December 2019
Day to Day Consultation

- Agencies retain ultimate responsibility for government-to-government consultation
- GDOT may solicit comments from tribes on their behalf, with agreement by the tribes [per 36CFR800.2(c)(4)]
- Consolidated previous MOU between GDOT/FHWA and several with individual tribes dating from 2006-2012
- Previously the Corps handled all tribal consultation on GDOT actions
- Established communication protocols and consultation steps, consideration of tribal comments, process for treatment of human remains, etc.
- Varies by federal agency when needed
Tribal Consultation

Invited Signatories and Concurring Parties

• Intertribal meeting discussion resulted in several tribal requests to become invited signatories to the agreement

• Required conversations amongst federal agencies, executive management
  • Non-resident tribes vs. tribal lands

• 20 tribal invitations from FHWA in consultation with Corps
  • First PA with both FHWA, the Corps, and tribal signatories
  • Invited Signatories: Muscogee (Creek) Nation, Alabama-Coushatta Tribe of Louisiana, Catawba Indian Nation
  • Concurring Party: Cherokee Nation of Oklahoma

• Continuation of relationships and trust built over time
Practical Tips

Create a Schedule and Keep it

- Schedule monthly meetings with signatories
- Maintain review deadlines (meetings help with maintaining this)
- Identify roles, points of contact, method of engagement – especially important for tribal consultation

<table>
<thead>
<tr>
<th>Title</th>
<th>Objectives and Action Items</th>
<th>Event Date/Deadline</th>
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<tbody>
<tr>
<td>Programmatic Agreement and Cultural Resources Manual</td>
<td>Discuss ACHP Comments; NPTCE Webinar Dry Run</td>
<td>May 7, 2019</td>
</tr>
<tr>
<td>Monthly Meeting</td>
<td></td>
<td>June 10, 2019</td>
</tr>
<tr>
<td>Webinar with Tribes and SHPO</td>
<td>PA updates since Intertribal; NPTCE Activities; Follow-up on Signatory Invitation. GDOT to coordinate with participation from the group</td>
<td>June 12, 2019</td>
</tr>
<tr>
<td>Submit Revised PA and CR Manual</td>
<td>GDOT to incorporate all changes resulting from intertribal and Webinar as well as comments from ACHP on CR Manual submitted 4/11/2019</td>
<td>GDOT to provide Revised PA and CR Manual to group and Tribes 7/12 and Group and Tribes to provide formal comments on revised PA and CR Manual 8/12</td>
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<td>Phone Conference with Tribes</td>
<td>Group to host a phone conference with the Tribes to solicit feedback on their review of the PA and CR Manual as well as their signatory status. Gauge interest in participating in a signing ceremony.</td>
<td>August 7, 2019</td>
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Hold Lots of Meetings

- Identify the critical people who need to be at the table – at the start
- Have preliminary conversations with agencies prior to formal meetings
  - Different participants may need separate meetings to discuss preferences/needs – FHWA, Corps, Tribe, etc.
- Outline process and plan for coordination to everyone (tribes included) up front
- Engage with tribes early and throughout – demonstrates intent to incorporate tribal perspectives into the agreement
- Track comments and questions for follow-up
Practical Tips Continued...

Use All the Tools in the Toolbox

- Allow for different procedures for GDOT vs. other applicants for federal funds/permits
- And between federal agencies regarding tribal consultation
- Utilize a manual to accompany the PA
- Use flow charts to illustrate process
- Be ready with templates upon ratification

Section 106 Review Procedures
FHWA/USACE/GDOT/SHPO/Local Section 106 Programmatic Agreement

LFA = Lead Federal Agency
http://www.dot.ga.gov/IS/Environment/CulturalResources/PA