

**MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE
FEDERAL HIGHWAY ADMINISTRATION GEORGIA DIVISION,
KIALEGEE TRIBAL TOWN OF THE CREEK NATION OF OKLAHOMA,
AND THE GEORGIA DEPARTMENT OF TRANSPORTATION**

In order to facilitate more effective and efficient cultural resources and traditional cultural property consultations between the Federal Highway Administration (FHWA) Georgia Division, the Kialegee Tribal Town of the Creek Nation, and the Georgia Department of Transportation (GDOT), the above parties, agree to the following:

The Kialegee Tribal Town of the Creek Nation, who have cultural affiliations in the State of Georgia, will identify appropriate cultural resource and traditional cultural property tribal contacts representing the Tribal Government. The FHWA Georgia Division, and its designee, the GDOT, who work in partnership to facilitate streamlined transportation decision-making, will identify appropriate contacts for whom the Kialegee Tribal Town of the Creek Nation may consult. The tribal contacts, FHWA contact personnel, and the GDOT contact personnel shall work together in a spirit of mutual cooperation, respect, and goodwill towards the implementation of the consultation process noted below, pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended.

Project Planning and Identification of Historic Properties

The FHWA Georgia Division, and its designee, the GDOT, in keeping with a government-to-government relationship, will ensure that the Kialegee Tribal Town of the Creek Nation is provided the opportunity to annually review and comment on the GDOT Statewide Transportation Improvement Program (STIP). This annual review shall provide the Kialegee Tribal Town of the Creek Nation an opportunity to identify and comment on traditional religious and cultural use properties that may be located within a project area during the planning stages of project development. The FHWA Georgia Division, and the GDOT recognize that the Kialegee Tribal Town of the Creek Nation may be reluctant to divulge specific information regarding location, nature, and activities associated with such properties based on cultural, traditional, and religious beliefs. All confidentiality concerns on the part of the Kialegee Tribal Town of the Creek Nation shall be taken into account during the identification process. Response to the STIP is open-ended, and the Kialegee Tribal Town of the Creek Nation may respond as they deem necessary or appropriate. The FHWA Georgia Division, and the GDOT shall incorporate the comments of the Kialegee Tribal Town of the Creek Nation into the project development process, while efforts to identify cultural resources and historic properties on undertakings shall proceed by the GDOT or its designee.

If no historic properties are identified, or historic properties are identified that do not meet the criteria for listing on the National Register of Historic Places (National Register ineligible), or there are historic properties (National Register eligible) present, but the undertaking will have no effect upon them, then a finding of "no historic properties affected" shall be rendered. This finding shall also include all maintenance and minor highway undertakings determined by the FHWA Georgia Division, the GDOT, and the State Historic Preservation Officer (SHPO) to have no potential to cause effects to National Register eligible historic properties. The GDOT shall provide documentation concerning the finding of "no historic properties affected" to the SHPO. The Kialegee Tribal Town of the Creek Nation will not receive documentation concerning project findings of "no historic properties affected" unless the Tribal Government has requested to be a consulting party. Consultation pursuant to Section 106 will be concluded on projects with a "no historic properties affected" determination if no objections are received within a 30-day time period after notification from the SHPO and the consulting parties.

Assessment of Adverse Effects

An Assessment of Adverse Effect occurs when an undertaking may alter, directly or indirectly, any characteristic of a historic property that qualifies the property for inclusion on the National Register of Historic Places. The FHWA Georgia Division, and the GDOT, in consultation with the SHPO, shall apply the criteria of adverse effect (36 CFR 800.5) to applicable historical properties on undertakings. For undertakings involving Assessment of Adverse Effects to historic properties, the Kialegee Tribal Town of the Creek Nation shall receive one copy each of the archaeological survey/testing report(s), the Requests for "Determinations of Eligibility," and the Assessment of Effects document. The Kialegee Tribal Town of the Creek Nation shall have 30 days to review and comment on the

findings, and may become a consulting party if the Tribal Government attaches religious and cultural significance to a property. Consultation under Section 106 will be concluded if a determination of No Adverse Effect is found. If a party disagrees with the finding of No Adverse Effect, it may within the 30-day review period, specify the reasons and request review of the findings from the Advisory Council on Historic Preservation (Council). If an Adverse Effect is found, consultation will continue to identify ways to avoid, minimize, or mitigate the adverse effects.

Resolution of Adverse Effects

If a proposed undertaking shall have an adverse effect to an historic property, then all parties (FHWA Georgia Division, GDOT, SHPO, and, if applicable, the Kialegee Tribal Town of the Creek Nation) shall enter into consultation to avoid, minimize, or mitigate the adverse effect. The consultation, if acceptable, should result in a Memorandum of Agreement (MOA) that shall be executed by all applicable parties. The Council may elect to participate and sign the MOA if conditions warrant their participation. The Kialegee Tribal Town of the Creek Nation shall receive one copy, when applicable, of an executed MOA. An MOA ratified by all parties will conclude the consultation pursuant to Section 106.

If consultation is not acceptable, the FHWA Georgia Division, the SHPO, or the Council may terminate the consultation. If consultation is terminated, the FHWA Georgia Division, must submit appropriate documentation and request the Council's written comments. If the Kialegee Tribal Town of the Creek Nation attaches religious and cultural significance to a property, they may provide their views and receive information when consultation is terminated. The Council will issue its comments in writing to the head of the FHWA.

Treatment of Burials Located without Prior Planning

If Native American burial(s) are discovered inadvertently during archaeological investigations by the GDOT or its designee, all work in the area of the burial(s) will be halted, the burial(s) will be secured to protect them from unauthorized excavation, and the Kialegee Tribal Town of the Creek Nation shall be notified by telephone within 24 hours and by registered mail within 72 hours of such discovery. Native American burial issues will be addressed on a project-by-project basis because of the inherent complexity of treatment methods and compliance requirements under the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA will apply only in those instances where the GDOT, at the direction of or under the auspices of FHWA Georgia Division, takes "possession and control" of Native American human remains, funerary objects or objects of cultural patrimony as defined by NAGPRA (25 USC 3001, Section 5[a]) or when Native American human remains, funerary objects or objects of cultural patrimony are located on federally owned land pursuant to 25 USC 3002, Section 3. In such cases the National Park Service's NAGPRA program manager will be consulted as to the legal sufficiency of the proposed actions. Additionally, the FHWA Georgia Division, and the GDOT shall comply with State of Georgia legislation regarding the treatment and disposition of human burials (OCGA 36-72, OCGA 31-21-6, and OCGA 44-12-260).

MOU Applicability to other Federal and State Legislation

1. (16 USC 470, 470w-6) The *National Historic Preservation Act* (NHPA) of 1966 as amended; Revised Section 106 regulations (December 12, 2000).
2. (42 USC 4321, 4331-2) The *National Environmental Policy Act* (NEPA) of 1969.
3. (42 USC 1996, 1973) The *American Indian Religious Freedom Act* (AIRFA) of 1978.
4. (16 USC 470Hh) The *Archaeological Resources Protection Act* (ARPA) of 1979.
5. (42 USC 3001-30013) The *Native American Graves Protection and Repatriation Act* (NAGPRA) of 1990.
6. Enhancing the Intergovernmental Partnership, Executive Order 12875 (October 26, 1993).
7. Government to Government Relations with Native American Tribal Governments, Executive Memorandum (April 29, 1994).
8. Indian Sacred Sites, Executive Order 13007 (May 24, 1996).
9. Consultation and Coordination with Indian Tribal Governments, Executive Order 13804 (May 14, 1998).
10. Abandoned Cemeteries and Burial Grounds OCGA 36-72 (1991).
11. Notification of Law Enforcement Agency Upon Disturbance, Distraction or Debasement of Human Remains (OCGA 31-21-6).
12. American Indian Human Remains and Burial Objects Held by Museums (OCGA 44-12-260).
13. Georgia Environmental Policy Act (GEPA) of 1991.

Terms of This Agreement

This agreement shall remain in effect indefinitely until terminated by any party (FHWA Georgia Division, Kialegee Tribal Town of the Creek Nation, and the GDOT) upon a 30 day written notice to the other parties. Any party to this MOU may request that it be amended, whereupon the parties will consult to consider such amendment. This agreement goes into effect with the signature and date of all parties.

FEDERAL HIGHWAY ADMINISTRATION

BY: *Larry R. Dreihaupt* DATE: 7/10/01

for Larry R. Dreihaupt, Division Administrator

KIALEGEE TRIBAL TOWN OF THE CREEK NATION OF OKLAHOMA

BY: *Lowell Wesley* DATE: June 12, 2001

Mr. Lowell Wesley, Mekko

GEORGIA DEPARTMENT OF TRANSPORTATION

BY: *J. Tom Coleman* DATE: 6-25-01

J. Tom Coleman, Commissioner