

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,  
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, PARTICIPATING TRIBES, AND  
THE GEORGIA DEPARTMENT OF TRANSPORTATION  
REGARDING THE SECTION 106 PROCESS FOR THE TRANSPORTATION PROGRAM IN GEORGIA**

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**WHEREAS**, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-aid Highway Program (Program) in the State of Georgia by funding and approving state and locally sponsored transportation projects that are administered by the Georgia Department of Transportation (GDOT); and

**WHEREAS**, for federally funded projects, the Georgia FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the State of Georgia (sometimes herein "State") complies with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR 800, as amended (August 5, 2004) and is the Lead Federal Agency for federally funded projects; and

**WHEREAS**, GDOT administers Federal-aid projects throughout the State of Georgia as authorized by 23 U.S.C. 302 and Title 32 of the Official Code of Georgia Annotated; and

**WHEREAS**, the U.S. Army Corps of Engineers, Savannah District (Corps) administers a Department of the Army permit program under the authority of the Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. 401 and 403), and the Clean Water Act of 1973, Section 404 (33 U.S.C. 1344), hereafter referred to as Permits, to which highway projects in Georgia may be subject; and

**WHEREAS**, for State funded projects, the Corps District Commander is the "Agency Official" responsible for ensuring that the Permits in the State of Georgia comply with Section 106 of the NHPA (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR 800, as amended (August 5, 2004) and is the Lead Federal Agency for state funded projects when a permit is required; and

**WHEREAS**, the responsibilities of the Georgia State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR 800 are to advise, assist, review, and consult with Federal Agencies as they carry out their historic preservation responsibilities and to respond to Federal Agencies' requests within a specified period of time; and

**WHEREAS**, FHWA has determined that construction, maintenance, and emergency relief projects as part of the Program, and related FHWA approvals for changes in access to the Interstate System in Georgia are undertakings pursuant to Section 106 of the NHPA and may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as Historic Properties, and has consulted with the SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the Corps has determined that projects authorized by Department of the Army Permits are undertakings pursuant to Section 106 and may have an effect on Historic Properties and the Corps will utilize this Programmatic Agreement (Agreement) for GDOT projects subject to its Permits; and

**WHEREAS**, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective Program alternative for taking into account the effects of the Program on Historic Properties in Georgia and

for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

**WHEREAS**, GDOT, in consultation with FHWA, the Corps, ACHP, and the SHPO, will develop a Cultural Resources Manual to accompany this Agreement containing guidance on how to implement the Agreement; and

**WHEREAS**, the following Federally recognized Indian tribes (Tribes) maintain ancestral and cultural connections to the land now recognized as Georgia, and the FHWA and the Corps have determined that undertakings subject to this agreement have the potential to affect historic properties having religious and cultural significance to the Tribes and therefore have consulted pursuant to 36 CFR 800.14(f): Absentee-Shawnee Tribe (AST), Alabama-Coushatta Tribe of Texas (ACTT), Alabama-Quassarte Tribal Town (AQTT), Catawba Indian Nation (CIN), Cherokee Nation (CN), Chickasaw Nation (CHN), Coushatta Tribe of Louisiana (CTL), Eastern Band of Cherokee Indians (EBCI), Eastern Shawnee Tribe (EST), Jena Band of Choctaw Indians (JBCI), Kialegee Tribal Town (KTT), Miccosukee Tribe of Indians of Florida (MTIF), Mississippi Band of Choctaw Indians (MBCI), Muscogee (Creek) Nation (MCN), Poarch Band of Creek Indians (PBCI), Seminole Nation of Oklahoma (SNO), Seminole Tribe of Florida (STF), Shawnee Tribe (ST), Thlopthlocco Tribal Town (TTT), United Keetoowah Band of Cherokee Indians (UKB); and

**WHEREAS**, the FHWA and the Corps, collectively referred to as Federal Agencies or separately each as Lead Federal Agency as further defined below, recognize that they have a unique legal relationship with Tribes as set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with Tribes must, therefore, recognize the government-to-government relationship between the Federal government and Tribes; and

**WHEREAS**, the Federal Agencies have consulted with the Tribes about this Agreement, have requested their comments, have taken any comments received into account, and pursuant to 36 CFR 800.2(c)(2)(ii)(E) have invited the Tribes to enter into an agreement that specifies how the Federal Agencies and the Tribes will carry out Section 106 responsibilities; and

**WHEREAS**, the aforementioned Tribes are sovereign governments and Federally recognized Indian tribes and participation in this agreement does not constitute a conveyance of tribal rights or sovereignty; and

**WHEREAS**, notwithstanding the aforementioned invitation to enter into an agreement, the Federal Agencies have invited AST, ACTT, AQTT, CIN, CN, CHN, CTL, EBCI, EST, JBCI, KTT, MTIF, MBCI, MCN, PBCI, SNO, STF, ST, TTT, UKB to enter into this Agreement as an invited signatory party to fulfill the requirements of Section 106; and

**WHEREAS**, any project involving tribal lands as defined in 36 CFR 800.16(x), or any project that may affect a property identified by a Tribe as possessing historic or traditional religious and cultural significance, shall not be governed by this Agreement, but shall be reviewed by the Federal Agencies in accordance with 36 CFR 800; and

**WHEREAS**, as of the date of this Agreement, no Tribe has agreed to enter into a separate Programmatic Agreement or other agreement with the Federal Agencies; and

**WHEREAS**, as of the date of this Agreement, the Muscogee (Creek) Nation and Catawba Indian Nation have agreed to enter into this Agreement as an invited signatory party and the Cherokee Nation has agreed to enter into this Agreement as a concurring party; and

**WHEREAS**, as of the date of this Agreement, the Chickasaw Nation, the Coushatta Tribe of Louisiana, the Miccosukee Tribe of Indians of Florida, the Mississippi Band of Choctaw Indians, and the Seminole Tribe of Florida have declined to participate as a signatory to the Agreement; and

**WHEREAS**, the Federal Agencies may invite additional Tribes that have sites of religious and cultural significance to enter into the terms of this Agreement as invited signatories or concurring parties in accordance with 36 CFR 800.14(f), and nothing in this Agreement prevents a Tribe from entering into a separate Programmatic Agreement or other agreement with the Federal Agencies for administration of Section 106; and

**WHEREAS**, GDOT has participated in the consultation and has been invited to be an invited signatory to this Agreement; and

**WHEREAS**, the Federal Agencies have consulted with the Advisory Council on Historic Preservation (ACHP) pursuant to 36CFR800.14(b) and the ACHP has opted to participate as a signatory to this agreement; and

**WHEREAS**, the Federal Agencies have notified the public, Federal and State agencies, and Certified Local Governments (defined in 54 U.S.C.A. § 300302) about this Agreement, have requested their comments, and have taken any comments received into account; and

**WHEREAS**, this Agreement shall supersede memoranda of understanding, letter agreements, and the 2012 Emergency Relief Programmatic Agreement among GDOT and the FHWA, and/or SHPO, dating between 1987 and 2015 (see Cultural Resources Manual for list); and

**NOW, THEREFORE**, FHWA, the Corps, participating Tribes, the SHPO, the ACHP, and GDOT (hereinafter collectively referred to as parties, signatories or signatory parties and individually as party, signatory, or signatory party) agree that federal and State funded projects in Georgia shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program and/or Permits on Historic Properties in Georgia and that these stipulations shall govern compliance with the Program and/or Permits with Section 106 of the NHPA until this Agreement expires or is terminated and do hereby agree as follows:

To aid the signatories of this Agreement, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Cooperating with Other Federal Agencies
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Federally Recognized Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Project Review
- VIII. Emergency Situations
- IX. Post-Review Discoveries
- X. Identification and Treatment of Human Remains
- XI. Monitoring and Reporting
- XII. Dispute Resolution
- XIII. Amendment
- XIV. Termination
- XV. Confidentiality
- XVI. Duration of Agreement

#### **STIPULATIONS**

The FHWA and Corps, shall ensure, for undertakings of their respective agencies and with the assistance of GDOT that the following measures are carried out:

#### **I. APPLICABILITY AND SCOPE**

- A. This Agreement supersedes and replaces in its entirety the Agreement among FHWA, SHPO,

and GDOT regarding FHWA's Emergency Relief Program dated March 8, 2012.

- B. This Agreement sets forth the process by which the FHWA and Corps, with the assistance of GDOT, will meet its responsibilities pursuant to Section 106 of the NHPA (54 U.S.C. § 306108).
- C. This Agreement applies to all highway projects subject to FHWA and Corps review under 23 CFR 771.115, 23 CFR 771.117, 33 CFR 320, and 33 CFR 330 (see Stipulation VII for details regarding the extent of delegated reviews).
- D. The FHWA is the Lead Federal Agency for Program undertakings and FHWA approved changes in access to the Interstate System in Georgia that require Permits pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act of 1973 in accordance with 36 CFR 800.2(a)(2) (references to Lead Agency in this context refer to FHWA).
- E. The Corps is the Lead Federal Agency for State funded highway undertakings, that require Permits pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act of 1973 in accordance with 36 CFR 800.2(a)(2) (references to Lead Federal Agency in this context refer to the Corps).
- F. The objective of this Agreement is to make more efficient the methods by which FHWA, the Corps, and GDOT review individual undertakings processed under Section 106 that may affect Historic Properties and to establish the process by which FHWA and the Corps (who retain ultimate Section 106 responsibility) carry out their Section 106 responsibilities.
- G. Through this Agreement, FHWA and the Corps authorize GDOT to initiate on their behalf and, in many cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.
- H. The FHWA and Corps retain the responsibility to consult with Tribes as required under 36 CFR 800, as amended. GDOT may assist FHWA and the Corps if individual Tribes agree to alternate procedures.
- I. FHWA and the Corps recognize that Tribes do have sites and land of religious and cultural significance within the State of Georgia, and in meeting its Federal trust responsibility pursuant to 36 CFR 800.2 (c)(2)(ii), FHWA and the Corps have invited the Tribes to enter (consult) on this Agreement that specifies how FHWA, the Corps, and the Tribes will carry out Section 106 responsibilities, including confidentiality of information.

## **II. COOPERATING WITH OTHER FEDERAL AGENCIES**

Cooperating Federal Agencies as defined in 40 CFR 1508.5 who recognize FHWA as the Lead Federal Agency for federally-assisted projects, and the Corps as the Lead Federal Agency for State funded projects, may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA, the Corps, and GDOT follow the requirements of this Agreement and the Cooperating Federal Agency's undertaking does not have the potential to cause effects to Historic Properties beyond those considered by FHWA, the Corps, and GDOT.

In the event that another federal agency not initially a party to or subject to this Agreement receives an application for funding/license/permit for an undertaking subject to this Agreement, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this Agreement and notifying the FHWA, the Corps, SHPO, and the ACHP that it intends to do so, and adherence to the terms of this Agreement.

### III. PROFESSIONAL QUALIFICATIONS STANDARDS

Actions prescribed by this Agreement that involve the identification, evaluation, recording, treatment, monitoring, or disposition of Historic Properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's (SOI) Professional Qualifications Standards (published in 48 FR 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA, the Corps, or GDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, including tribal representatives, providing their activities are conducted under the direct supervision of a person who does meet the standards.

### IV. RESPONSIBILITIES

The following section identifies the responsibilities of the Federal Agencies, and of GDOT in complying with the terms of this Agreement.

#### A. Lead Federal Agency Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), the Lead Federal Agency remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by GDOT under the authority of the Lead Federal Agency. At any point in the Section 106 process, the Lead Federal Agency may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. The Lead Federal Agency retains responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). At its discretion, the Lead Federal Agency may ask GDOT to assist in consultation if the individual Tribes agree to alternate procedures.
3. Pursuant to 36 CFR 800.6(a)(1), the Lead Federal Agency is responsible for notifying the ACHP of an adverse effect determination and offering the ACHP the opportunity to participate in the consultation.
4. The Lead Federal Agency shall provide ACHP copies of any Memorandum of Agreement (MOA) developed for undertakings with adverse effects to Historic Properties if the ACHP is not participating in the consultation.
5. The Lead Federal Agency shall be responsible for resolving disputes and objections pursuant to Stipulation XI of this Agreement.
6. The Lead Federal Agency will ensure that the steps in the Section 106 process are coordinated with Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act, in accordance with 36 CFR 800.3(b).

#### B. GDOT Responsibilities

GDOT, using staff and/or consultants meeting the SOI's professional qualifications standards (48 FR 44738-44739), will independently perform the work and consultation described in 36 CFR 800.3 – 36 CFR 800.6 (including any succeeding revisions to the regulations) on behalf of the Lead Federal Agency. Assignment of these responsibilities is based on adequate and appropriate performance by GDOT as evaluated through monitoring by the Federal Agencies pursuant to Stipulation X of this Agreement. These responsibilities include carrying out the following requirements:

1. 36 CFR 800.3(a) Determine whether the undertaking is a type of activity that has the potential to cause effects on Historic Properties.
2. 36 CFR 800.3(e) Solicit public comment and involvement.
3. 36 CFR 800.3 Identify additional consulting parties who should be invited to participate in the undertakings covered by this Agreement.
4. 36 CFR 800.4(a) and (b) Determine and document, in consultation with the SHPO, the

- scope of identification efforts and level of effort, including the undertaking's area of potential effect (APE).
5. 36 CFR 800.4 In consultation with the SHPO, identify Historic Properties within the APE included in or eligible for listing in the NRHP.
  6. 36 CFR 800.5(a)(1) In consultation with SHPO, determine whether Historic Properties may be affected by the undertaking by applying the criteria of adverse effect.
  7. 36 CFR 800.6 In consultation with the Lead Federal Agency, the SHPO, the ACHP (if it has chosen to participate), and any other consulting parties address any adverse effects through the development of avoidance, minimization, and mitigation measures and if needed, the development, circulation, and execution of a MOA, as appropriate.
  8. Provide the Lead Federal Agency copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes).
- C. GDOT, in consultation with the Federal Agencies, the ACHP, and the SHPO, will develop a manual containing guidance on how to implement this Agreement, specifically, how the agencies will coordinate and consult on GDOT projects. The Cultural Resources Manual must be completed and approved by the Federal Agencies prior to implementation of this Agreement. A table of contents for the manual is included in the Appendix. The manual will be made publicly available via GDOT's Cultural Resources website. GDOT will ensure that their staff and consultants act consistently with the procedures contained therein. The Cultural Resources Manual establishes the framework for the implementation of GDOT's Environmental Procedures Manual (EPM), specifically, Chapter 5, Section 3 of the EPM (available via GDOT's Cultural Resources Website) which outlines the survey and documentation requirements for GDOT's Cultural Resources Staff and/or consultants.
- D. GDOT's Cultural Resources Manual may be revised or amended from time to time. Any changes to the Cultural Resources Manual must be agreed upon in writing by FHWA, the Corps, SHPO, ACHP, and GDOT, and, upon approval, published on GDOT's Cultural Resources website. Such changes shall not be considered an amendment subject to Stipulation XII.

## **V. CONSULTATION WITH FEDERALLY RECOGNIZED TRIBES**

- A. FHWA as Lead Federal Agency
1. The Lead Federal Agency shall take the lead in identifying and establishing consultation with federally recognized Tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c)-(f). GDOT may provide general coordination information to Tribes with the Tribes agreement but the Lead Federal Agency shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes.
  2. GDOT, the primary recipient of Federal-aid Highway funds in the State of Georgia (OCGA, Title 32) will provide assistance to FHWA in consulting with the Tribes in compliance with Section 106 of the NHPA.
  3. GDOT, on behalf of FHWA, shall solicit comments from Tribes for undertakings that may affect Historic Properties of traditional religious and cultural significance to the Tribes and will consider these Tribal governments as consulting parties for these undertakings. FHWA shall retain the ultimate responsibility for complying with all Federal requirements pertaining to direct government-to-government consultation with the Tribes. Notwithstanding any other provision of this Agreement, FHWA shall honor the request of any Tribe for direct government-to-government consultation regarding an undertaking covered by this Agreement.
- B. Corps as Lead Federal Agency
1. The Corps shall retain the responsibility of complying with all federal statutes, Executive Orders and Corps policy memos mandating government to government consultation with federally recognized Tribes on federally permitted projects that impact Tribal areas of interest and traditional and religious cultural heritage.

2. The Corps consults with the Tribes which claim cultural affiliation in the area of interest by keeping them informed of undertakings, by providing requested materials, seeking Tribal opinions, and attempting to reach mutual agreements. For Corps Tribal consulting operating procedures, see the *Savannah Regulatory Guidelines for Consultation with Federally Recognized Tribes* in the Cultural Resources Manual.

## **VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC**

### **A. Additional Consulting Parties**

1. Consulting parties shall be identified in writing by GDOT in consultation with the SHPO pursuant to 36 CFR 800.3(c-f) and their participation in undertakings covered under this Agreement shall be governed by 36 CFR 800.3(f)(3). Individuals and organizations with a demonstrated interest in an undertaking shall be invited by GDOT in consultation with the Lead Federal Agency to participate in the Section 106 process (see Cultural Resources Manual for procedures). Any land-managing agency whose land may be affected by an undertaking shall be invited by GDOT to participate in the Section 106 process. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by GDOT and the Lead Federal Agency in consultation with the SHPO.

### **B. Public Involvement**

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by the Lead Federal Agency and GDOT's Public Involvement Plan (Plan) for NEPA Projects and GDOT's environmental compliance procedures (Plan available on GDOT's Cultural Resources website). The Public Involvement Plan provides guidance for identifying, informing, and involving the public. GDOT Cultural Resources Staff and consultants also follow a protocol for inviting potential consulting parties when initiating Section 106 (see the Cultural Resources Manual). The Lead Federal Agency's regulations regarding early coordination, public involvement, and project development will be followed. FHWA's regulations concerning public involvement can be found at 23 CFR 771.111. The Corps' regulations concerning Public Notices and Public Hearings can be found at Appendix B of 33 CFR Part 325 and at 33 CFR Part 327. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d), 800.3(e), and 800.11(c)(1 and 3).
2. GDOT shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on Historic Properties, in keeping with the intent of 36 CFR 800, as amended.
3. For those undertakings that do not routinely require public review and comment (e.g., Stipulation VII A below), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of Historic Properties, and the undertaking's potential impacts on them.
4. GDOT shall make the Lead Federal Agency and SHPO aware of any and all public interest and/or controversy as it relates to the Historic Properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

## **VII. PROJECT REVIEW**

GDOT's SOI qualified Cultural Resources Staff and consultants will implement the following review and consultation process for each finding under Section 106 for federally funded projects and State funded projects with a Permit:

### **A. No Potential to Cause Effects**

Certain GDOT maintenance activities and minor highway projects may constitute an undertaking, as defined in 36 CFR 800.16(y) but do not have the potential to affect Historic Properties included in or considered eligible for the NRHP as agreed upon by the signatory parties and enumerated in Section 5.2 of the Cultural Resources Manual.

1. Each project will be reviewed for applicability per 36 CFR 800.16(y) by GDOT Cultural Resources Staff.
  2. Each project fitting the activities described in Section 5.2 of the Cultural Resources Manual will be documented by GDOT Cultural Resources Staff and/or consultants with an internal GDOT memo or email (see Appendix B of the Cultural Resources Manual for template) and itemized as part of the Annual Report defined in Stipulation X.
- B. No Historic Properties Affected
1. For those undertakings in which there are a) no previously recorded properties within the APE and b) no newly identified Historic Properties within the APE as a result of survey, GDOT's Cultural Resources Staff and/or consultants will issue a finding of "no historic properties affected" in a No Historic Properties Affected Document and an Archaeology Short Report or In House Survey Report as appropriate (See Section 5.1 of the Cultural Resources Manual for details).
  2. If there are potential Historic Properties identified within the APE, GDOT's Cultural Resources Staff and/or consultants will apply the NRHP Evaluation Criteria per 36 CFR Part 63 in coordination with the SHPO and other consulting parties, as appropriate, to assess the need for any additional investigation and determine NRHP eligibility in accordance with 36 CFR 800.4 and 36 CFR 60.4. For those properties determined in consultation with SHPO as ineligible for the NRHP, GDOT will submit a No Historic Properties Affected Document for historic resources and/or a final draft Archaeology Report to conclude Section 106. For those properties determined in consultation with SHPO as eligible for the NRHP, GDOT will proceed with Part C or Part D of this stipulation as applicable.
- C. No Adverse Effect
1. For those undertakings where Historic Properties may be affected, GDOT's Cultural Resources Staff and/or consultants will apply the criteria of adverse effect in consultation with the SHPO, Tribes, and other consulting parties, as appropriate, in accordance with 36 CFR 800.5. Subsequent to avoidance and minimization efforts, if the effect of the undertaking will not be adverse, the GDOT Cultural Resources Staff and/or consultants will propose a finding of No Adverse Effect and will document their finding in an Assessment of Effects document that will include the project Need and Purpose, Description, maps, photographs of the resource in the area of proposed construction, Determinations of Eligibility (DOEs) for archaeological resources, construction plans in the area of the resource, and planning to minimize harm.
- D. Adverse Effect
1. Subsequent to avoidance and minimization efforts, if the GDOT Cultural Resources Staff and/or consultants determine that the undertaking will have an adverse effect on Historic Properties in consultation with the SHPO, Tribes, and other consulting parties, as appropriate, GDOT will issue a finding of Adverse Effect and will document the finding in an Assessment of Effects document that will include the project Need and Purpose, Description, maps, photographs of the resource in the area of proposed construction, DOEs for archaeological resources, construction plans in the area of the resource, avoidance alternatives, planning to minimize harm, and proposed mitigation.
  2. GDOT Cultural Resources Staff and/or consultants will consult with the SHPO, the Lead Federal Agency, Tribes, and any other consulting parties to evaluate the Adverse Effect finding and/or discuss options that would avoid or minimize adverse effects.
  3. If the GDOT Cultural Resources Staff and/or consultants determine that an undertaking may adversely affect a National Historic Landmark, GDOT's Cultural Resources Staff will notify the Lead Federal Agency, and the Lead Federal Agency will notify and request the SHPO, the ACHP, and the SOI to participate in consultation to resolve any adverse effects, as outlined in 36 CFR 800.10.
  4. For all undertakings in which adverse effects to Historic Properties cannot be avoided, GDOT's Cultural Resources Staff and/or consultants will notify the Lead Federal Agency, and the Lead Federal Agency will notify the ACHP of the finding of adverse effect. GDOT will continue to consult with SHPO, Tribes, and other consulting parties, as applicable, to resolve adverse effects and conclude the Section 106 process in



accordance with 36 CFR 800.6.

E. Re-Evaluations

Because Section 106 Review begins and is carried forward very early in GDOT's Plan Development Process so that Historic Properties can be given full consideration during the preliminary design phase, design changes are common as plans are finalized and right-of-way (ROW) acquisition begins. Often these design changes are minor in nature; therefore, the following procedures provide a way to document and communicate these changes without re-opening Section 106 consultation.

1. If, after Section 106 Review has concluded, there are changes to the design of a project, additional Section 106 consultation will not be required as long as the following conditions apply (see Cultural Resources Manual for details):
  - a. The APE has not changed beyond the limits of previous survey coverage documented in the original survey report;
  - b. The effects to NRHP eligible or listed Historic Properties have not changed; and
  - c. Less than 5 years have passed since the full project survey for Historic Properties, not including archaeological resources, was completed and concurred with by SHPO, or ROW has been authorized.
2. The design changes will be documented in a Memorandum that will be provided to the SHPO, Lead Federal Agency, and participating Tribes for review and files (see Cultural Resources Manual, Appendix B for template).

### VIII. EMERGENCY SITUATIONS

In the event that the State of Georgia (or a county or counties in Georgia) experiences a disaster (natural or otherwise) event triggering a state of emergency, as declared by the President of the United States and/or the Governor of Georgia, the guidance in the Cultural Resources Manual expedites the Section 106 review for Emergency Repairs as defined in 23 CFR 668.103 for federally funded projects where FHWA is the Lead Federal Agency. On State funded projects where the Corps is the Lead Federal Agency, emergency procedures will be conducted in accordance with 33 CFR 325.2(e)(4).

### IX. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When GDOT's identification efforts indicate that Historic Properties are likely to be discovered during implementation of an undertaking, GDOT shall include in any environmental document, contract, and specifications a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6 (see the Cultural Resources Manual for process).

B. Late Discoveries

1. If previously unidentified Historic Properties, or unanticipated effects are discovered after GDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with Specification 107.13A Protection and Restoration of Property and Landscape in the current version of GDOT's *Standard Specifications Construction of Transportation Systems* current edition and as may be amended from time to time (see the Cultural Resources Manual). GDOT will notify the Lead Federal Agency within twenty-four (24) hours of the discovery.
2. No further construction activities in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. GDOT and the Lead Federal Agency will notify SHPO, the Tribes, and other consulting parties as appropriate within forty-eight (48) hours. GDOT will further consult with the Lead Federal Agency, SHPO, the Tribes, and consulting parties to record, document, and evaluate NRHP eligibility of the property, if it has not been previously determined,

- assess the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects if it is determined that the property is eligible.
4. If neither the SHPO nor a Tribe files an objection within seventy-two (72) hours of GDOT's plan for addressing the discovery, GDOT may carry out the requirements of 36 CFR 800.13 on behalf of the Lead Federal Agency, and the ACHP does not need to be notified.

## **X. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS**

- A. In the event that human remains are identified prior to, during, or after project construction, GDOT will develop a treatment plan in consultation with the Lead Federal Agency, the SHPO, the Office of the State Archaeologist (through the SHPO), and other consulting parties, as applicable (see the Cultural Resources Manual for process).
- B. If it is determined that the human remains, including funerary objects, are associated with an American Indian or Native American occupation (as defined in 25 U.S.C. 32 § 3001(9)), the Lead Federal Agency and GDOT, at the discretion of the Lead Federal Agency, will consult with the Tribes prior to the development or execution of a treatment plan in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001-3013, 18 U.S.C. § 1170).
- C. All work involving the presence of human remains and abandoned cemeteries will comply with applicable State and Federal laws (36 CFR 800.13; 43 CFR Part 10, Subpart B; Official Code of Georgia Annotated (OCGA) § 36-72; OCGA § 31-21-6).
- D. Discoveries of unmarked graves, burials, human remains, or items of cultural patrimony on Federal lands shall be subject to NAGPRA (25 U.S.C. §3001-3013, 18 U.S.C. § 1170) and the Archaeological Resources Protection Act of 1979 (ARPA)(16 U.S.C. §470aa – 470mm).

## **XI. MONITORING AND REPORTING**

- A. The Federal Agencies and GDOT Cultural Resources Staff will arrange for an annual meeting with SHPO, the ACHP, and the Tribes to evaluate the Agreement, suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the Agreement. This evaluation meeting will take place annually within two (2) months of the anniversary of the effective date of the Agreement. The ACHP's participation in these meetings is optional, at the discretion of the ACHP.
- B. If a party of the Agreement concludes that performance under the Agreement is less than satisfactory, the parties shall consult at any time to improve performance and reconvene within six (6) months to evaluate improvements.
- C. One month prior to the scheduled annual meeting, GDOT Cultural Resources Staff shall submit to SHPO, the ACHP, the Tribes, and the Lead Agencies an Annual Report of projects reviewed by GDOT Cultural Resources Staff in accordance with Stipulation VII over the last calendar year from the effective date of the Agreement. Based upon a review of this list of projects, GDOT Cultural Resources Staff will make recommendations in the report for improving the implementation of the Agreement. The report will serve as the basis of the annual review meeting. GDOT Cultural Resources Staff will also update consulting party lists in the Cultural Resources Manual to reflect any updates made during the preceding year.
- D. If, upon review of the list and recommendations, the parties of the Agreement agree via email that an in-person meeting is not necessary, the parties of the Agreement may defer to a conference call or agree a meeting is not required for a particular year.

## **XII. DISPUTE RESOLUTION**

- A. Should any signatory party object in writing to the Lead Federal Agency regarding the manner in which the terms of this Agreement are carried out, the Lead Federal Agency will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. The Lead Federal Agency will honor the

request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The Lead Federal Agency shall establish a reasonable time frame for such consultations.

- B. Should any signatory party object to a Lead Federal Agency determination of eligibility, the Lead Federal Agency will submit the determination to the Keeper of the NRHP for resolution.
- C. Should any signatory party object to a Lead Federal Agency assessment of effect, the Lead Federal Agency will submit the assessment to the ACHP for resolution.
- D. If the objection is resolved through consultation, the Lead Federal Agency may authorize the disputed action to proceed in accordance with the terms of such resolution.
- E. If after initiating such consultation, the Lead Federal Agency determines that the objection cannot be resolved through consultation, the Lead Federal Agency shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including the Lead Federal Agency's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
  - a. Advise the Lead Federal Agency that ACHP concurs with the Lead Federal Agency's proposed response to the objection, whereupon the Lead Federal Agency will respond to the objection accordingly; or
  - b. Provide the Lead Federal Agency with recommendations, which the Lead Federal Agency shall take into account in reaching a final decision regarding its response to the objection; or
  - c. Notify the Lead Federal Agency that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, the Lead Federal Agency shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).
- F. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the Lead Federal Agency may make a final decision on the dispute and proceed accordingly.
- G. The Lead Federal Agency shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection.
- H. The Lead Federal Agency shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
- I. The Lead Federal Agency may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
- J. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify the Lead Federal Agency. The Lead Federal Agency shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to the Lead Federal Agency. The Lead Federal Agency shall establish a reasonable time frame for this comment period. The Lead Federal Agency shall consider the objection, and in reaching its decision, the Lead Federal Agency will take all comments from the other parties into account. Within 15 days following closure of the comment period, the Lead Federal Agency will render a decision regarding the objection and respond to the objecting party. The Lead Federal Agency will promptly notify the other parties of its decision in writing, including a copy of the response of the objecting party. The Lead Federal Agency's decision regarding resolution of the objection will be final. Following issuance of its final decision, the Lead Federal Agency may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

- K. The Lead Federal Agency's responsibility to carry out all actions under this Agreement that are not the subject(s) of the objection shall remain unchanged.

### **XIII. AMENDMENT**

Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment for no more than 90 days. This Agreement may be amended only upon written concurrence of all signatory parties. The amended Agreement will be filed with the ACHP.

### **XIV. TERMINATION**

- A. Any signatory party may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XIII, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement pursuant to Stipulation XIII.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
- D. Should this Agreement be terminated, the Lead Federal Agency would carry out the requirement of 36 CFR 800 for individual undertakings.
- E. Beginning with the date of termination, the Lead Federal Agency shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-6.

### **XV. CONFIDENTIALITY**

All parties to this Agreement acknowledge that information about Historic Properties, potential Historic Properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows the Lead Federal Agency to withhold from disclosure to the public, information about the location, character, or ownership of a historic property if any party determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic property; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

### **XVI. DURATION OF AGREEMENT**

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect (the date the last party signs), unless it is terminated prior to that time. Ninety (90) days prior to the conclusion of the five-year period, GDOT will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will automatically be extended for an additional five (5) years. If any party objects to extending the Agreement, or proposes amendments, GDOT will consult with the parties to consider amendments or other actions to avoid termination.

### **XVII. INCORPORATION OF WHEREAS CLAUSES**

The above "Whereas" clauses are hereby incorporated by reference as though fully set forth herein.

Execution and implementation of this Agreement evidences that the signatory Federal Agencies have delegated certain Section 106 responsibilities to GDOT, and have afforded ACHP a reasonable opportunity to comment on the undertakings identified in this Agreement, and that the signatory Federal Agencies have taken into account the effects of the Program and Corps permit program and their individual undertakings on Historic Properties, and that the signatory Federal Agencies have complied with Section 106 of the NHPA and 36 CFR 800 for the program and its individual undertakings.

PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,  
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, PARTICIPATING TRIBES, AND  
THE GEORGIA DEPARTMENT OF TRANSPORTATION  
REGARDING THE SECTION 106 PROCESS FOR THE TRANSPORTATION PROGRAM IN GEORGIA

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SIGNATORY PARTY

Federal Highway Administration

By:   
Moises Marrero, Division Administrator

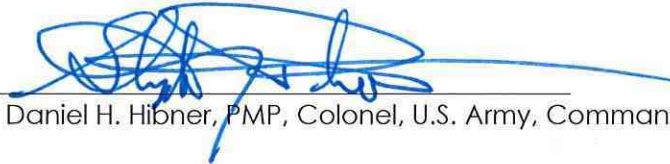
Date: Dec 9, 2019

PROGRAMMATIC AGREEMENT AMONG  
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SIGNATORY PARTY

U.S. Army Corps of Engineers, Savannah District

By:   
Daniel H. Hibner, PMP, Colonel, U.S. Army, Commanding

Date: 09 DEC 19

PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,  
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**SIGNATORY PARTY**

Georgia Department of Natural Resources, State Historic Preservation Officer

By: \_\_\_\_\_

  
Mark Williams, Commissioner

Date: \_\_\_\_\_

12-9-19



**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
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**SIGNATORY PARTY**

Advisory Council on Historic Preservation

By:   
John M. Fowler, Executive Director

Date: 12/13/19

PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
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INVITED SIGNATORY PARTY

Georgia Department of Transportation

By:  Date: 12/9/2019  
Russell R. McMurry, P.E., Commissioner

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
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**TRIBAL SIGNATURE PAGES:**

The Lead Agencies invited the Absentee-Shawnee Tribe (AST), Alabama-Coushatta Tribe of Texas (ACTT), Alabama-Quassarte Tribal Town (AQTT), Catawba Indian Nation (CIN), Cherokee Nation (CN), Chickasaw Nation (CHN), Coushatta Tribe of Louisiana (CTL), Eastern Band of Cherokee Indians (EBCI), Eastern Shawnee Tribe (EST), Jena Band of Choctaw Indians (JBCI), Kialegee Tribal Town (KTT), Miccosukee Tribe of Indians of Florida (MTIF), Mississippi Band of Choctaw Indians (MBCI), Muscogee (Creek) Nation (MCN), Poarch Band of Creek Indians (PBCI), Seminole Nation of Oklahoma (SNO), Seminole Tribe of Florida (STF), Shawnee Tribe (ST), Thlopthlocco Tribal Town (TTT), United Keetoowah Band of Cherokee Indians (UKB) to participate in the consultation to develop this Agreement and to enter into this Agreement as an Invited Signatory or Concurring Party.

The Federal Agencies will initiate government-to-government consultation with all other Tribes that may have an interest in historic properties, including properties of religious and cultural significance in the State of Georgia as these Tribes are identified by the Lead Agencies. In addition to providing these Tribes with the opportunity to enter into a separate Programmatic Agreement or other agreement with the Federal Agencies to address FHWA and/or the Corps' Section 106 responsibilities for its Undertakings in the State of Georgia, the Federal Agencies will invite each Tribe to enter into this Agreement as an Invited Signatory.

The Federal Agencies will incorporate additional executed signature pages by Tribal Invited Signatories or Concurring Parties into this Agreement in the order they are received by FHWA and/or the Corps.

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INVITED SIGNATORY PARTY

Muscogee (Creek) Nation

By: David W. Hill Date: 1-7-20  
David Hill, Principal Chief

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
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**Concurring Party**

Cherokee Nation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chad Harsha, Secretary of Natural Resources

PROGRAMMATIC AGREEMENT AMONG  
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Invited Signatory Party

Catawba Indian Nation

By: William Harris Date: 1-10-20  
William (Bill) Harris, Chief

By: Wenonah G. Haire, DMD Date: 12/17/19  
Wenonah G. Haire, DMD, Tribal Historic Preservation Officer

PROGRAMMATIC AGREEMENT AMONG  
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**Invited Signatory Party**

Alabama-Coushatta Tribe of Texas

By:  Date: 01/08/2020  
Cecilia Flores, Chairperson, Alabama-Coushatta Tribal Council

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