

## Cultural Resources

# Consultation Initiation

- Applicability
- Regulations, Guidance, and Policy
- Initiation of Cultural Resources Consultation
- Determine Area of Potential Effects
- Consultation Participants
- Review Existing Information
- Notification Letter
- Consultation and the Bigger Picture

### APPLICABILITY

Both the federal government and the State of Georgia consider the effects of transportation projects on historic properties (i.e., cultural resources listed in or determined eligible for the National or Georgia Register of Historic Places) under specific circumstances. Consultation with consulting parties is a central part of this consideration. It applies to federal-aid or federally-permitted GDOT projects or state-funded GDOT projects with the potential to affect historic properties. Consultation should occur early and continue throughout the cultural resources regulatory process.

### REGULATIONS, GUIDANCE, AND POLICY

The primary cultural resource laws affecting GDOT projects are Section 106 of the National Historic Preservation Act (NHPA) and the Georgia Environmental Policy Act (GEPA).

#### Section 106 of the National Historic Preservation Act

Section 106 requires federal agencies to consider the effects of their undertakings on National Register-listed or eligible historic and archaeological resources. Agencies must also afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings.

GDOT projects that use Federal Highway Administration (FHWA) funding or that require a US Army Corps of Engineers (USACE) permit must comply with Section 106.

The Section 106 process accommodates historic preservation concerns with the needs of federal undertakings. It does this through consultation between agency officials and other parties interested in project effects to cultural resources.

### Georgia Environmental Policy Act

GEPA is similar in scope and intent to Section 106 but applies to state agency undertakings. It is designed to afford planning protections to significant cultural resources that may be impacted by a state agency's actions, including funding or grants.

For GDOT projects, GEPA is satisfied through Section 106 consultation for federal-aid or federally-permitted projects. If there is no federal involvement, cultural resources consultation is completed specifically to comply with GEPA. GDOT's GEPA process is closely modeled on the Section 106 compliance process and includes similar methods for consultation, resource identification, effects assessment, and avoidance, minimization, and mitigation of adverse effects to cultural resources.

### Section 106 and GEPA Consultation

GDOT addresses Section 106 and GEPA compliance through similar processes which include consultation with agency stakeholders and other interested parties. For both Section 106 and GEPA, the goals of the consultation process are essentially the same:

1. To identify and address stakeholder and interested parties' cultural resources concerns throughout the life of the project;
2. To identify cultural resources that have the potential to be affected by an undertaking;
3. To assess the effects of the undertaking on identified cultural resources; and
4. Identify ways to avoid, minimize harm, and/or mitigate adverse effects to cultural resources.

GDOT typically initiates the Section 106 process early in the planning stage to ensure adequate consultation, identify National Register-listed and eligible properties, and consider a broad range of project alternatives, as applicable. For state-funded projects, GDOT initiates GEPA consultation at the outset of a project. For state-funded projects that require a USACE permit, GDOT initiates Section 106 consultation on behalf of USACE once their area of jurisdiction is defined.

### Professional Qualifications

All GDOT employees or consultants conducting cultural resources consultation and Section 106 or GEPA compliance must meet the regulatory requirements of the Secretary of the Interior's Professional Qualification Standards (36 CFR 61).

## INITIATION OF CULTURAL RESOURCES CONSULTATION

Cultural resources consultation begins by determining if a GDOT project is an undertaking subject to cultural resources laws and regulations.

### Establish Undertaking

Per Section 106 regulations (36 CFR 800), an undertaking is defined as “a project, activity or program funded in whole or part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.”

GDOT projects that are federal-aid or federally-permitted typically have the potential to cause effects to historic resources and are thus considered federal undertakings and subject to the full Section 106 consultation and compliance process.

Non-federal, state-funded GDOT projects must typically comply with GEPA to address cultural resources concerns through a consultation and compliance process similar to Section 106. In addition, local government projects must comply with the GDOT GEPA process if more than half of total project costs are GDOT-funded or if the project involves GDOT funds of \$250,000 or more.

### Maintenance and Minor Projects

Components of the 2019 Programmatic Agreement (PA) between the FHWA, USACE, GDOT, and the State Historic Preservation Officer (SHPO) and its attendant *Section 106 Cultural Resources Manual (CRM)*, document the consensus determination that certain GDOT maintenance and minor highway projects constitute an undertaking, but do not have the potential to cause an effect to cultural resources. Therefore, these projects are not subject to consultation under Section 106, and this finding is documented in the project record. The list of project activities that have been agreed to have no potential to cause effect to historic properties is documented in Chapter 5.2 of the Section 106 *CRM*.

Section 106 Programmatic Agreement and Cultural Resources Manual, GDOT and Multiple Agencies, 2019

## DETERMINE AREA OF POTENTIAL EFFECTS

If a project has the potential to cause an effect to a historic property, then the Section 106 process is initiated. Resources within the project’s Area of Potential Effects (APE) must be identified and documented. The APE is defined as “the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist.”

The APE for GDOT projects is based on the nature and the scope of the project, guidance in Chapter 4 of the *CRM*, and GDOT’s experience with similar projects.

### History

Generally, for identification of historic above-ground buildings and structures (i.e., above-ground resources), the APE includes existing and proposed right of way (ROW) and the project's viewshed. Factors to be taken into consideration when developing the historic resources APE include topography, vegetation, integrity of setting, a resource's siting, and planned future development. The APE for a new location transportation facility may be broader since a new roadway may cause impacts and effects to a larger area.

### Archaeology

For archaeological site identification (i.e., below-ground resources), the APE is generally limited to the project's physical footprint including all existing and required ROW and easements. Broader investigations may be conducted on a case-by-case basis.

Certain project types have specific guidelines for development of the APE, including curb cut projects (*CRM* Chapter 4.2) and improvements to signalized intersections (per the 2018 Memorandum of Understanding between GDOT, FHWA, and SHPO regarding the Definition of the Section 106 Area of Potential Effect for GDOT Traffic Operations Projects, Improvements to Existing Signalized Intersections).

## CONSULTATION PARTICIPANTS

Following the determination of an undertaking and delineation of the APE, consultation participants or "consulting parties" can be identified.

### Federal Agency

The federal agency official with jurisdiction over an undertaking holds the legal responsibility for compliance with Section 106. For federal-aid GDOT projects, FHWA is typically the agency official with jurisdiction. On state-funded projects, another federal agency such as USACE may be the agency official with jurisdiction if the project requires a federal permit.

### GDOT

Per the 2019 PA and past agreements, FHWA delegates certain Section 106 responsibilities to GDOT to act on its behalf. Therefore, GDOT typically leads Section 106 consultation on FHWA projects. Per the 2019 PA, USACE also delegates certain Section 106 responsibilities to GDOT.

GDOT acts on its own behalf for non-federal, state-funded projects and leads the GEPA consultation and compliance process. For some state-funded projects, GDOT consultants have been designated to act on GDOT's behalf. In these cases, cultural resources consultation should be coordinated with the designated consultant rather than a GDOT Historian. However, tribal consultation is always conducted through the GDOT Tribal Liaison.

### State Historic Preservation Officer

The SHPO plays a key role in the Section 106 process by consulting and concurring on resource identification and project effects. The SHPO is represented by staff from the Historic Preservation Division (HPD) of the Georgia Department of Natural Resources. For state-funded GEPA projects with no federal funding or permit, the SHPO does not participate in consultation.

### Regional Commissions and Local Government

In Georgia, twelve regional commissions provide local planning assistance to member cities and counties and are invited to participate in consultation for projects within their service areas. Likewise, city and county governments are also invited to participate in consultation for projects within their jurisdictions.

### Federally Recognized Tribes

Federally recognized American Indian tribes with a demonstrated interest in the project area are also considered consulting parties under Section 106. Federal agencies such as FHWA and the USACE are responsible for government-to-government consultation with federally recognized tribal governments on all federal undertakings. Certain day-to-day tribal consultation activities, such as Section 106 initiation, have been delegated to GDOT by FHWA and the USACE per the 2019 PA and will be carried out by GDOT in accordance with established consultation procedures particular to each agency and tribe.

If a state-recognized tribe identifies interest in an undertaking, the tribe will be invited to participate as a consulting party as a member of the public; however, this consultation will not be considered government-to-government consultation.

### Organizations and Individuals

Organizations and individuals with a demonstrated interest in the undertaking due to the nature of their legal or economic relationship to the undertaking may also be invited to participate in the Section 106 process. These often include local historic preservation organizations.

Per the 2019 PA's *Section 106 CRM*, certain government agencies and organizations are included as consulting parties based on their particular area of interest or a project's location:

- > The Superintendent of the Chickamauga-Chattanooga National Battlefield Park is invited to become a consulting party for all GDOT projects located within Walker, Catoosa, and Dade Counties.
- > The National Park Service Intermountain Trail Office is invited for all GDOT projects located within the vicinity of the Trail of Tears National Historic Trail.

- > The Georgia Trust for Historic Preservation is invited to become a consulting party for GDOT projects that involve historic properties of state or national significance.
- > The Gullah-Geechee Cultural Heritage Corridor Commission is invited for projects located within the Gullah-Geechee Cultural Heritage Corridor.
- > The Georgia Civil War Commission and Georgia Battlefield Association are invited for projects that involve known Civil War-era properties.
- > The DeKalb History Center and the DeKalb County Historic Preservation Commission are included as consulting parties for projects in DeKalb County; the Cherokee County Historical Society for projects in Cherokee County; and the Atlanta Urban Design Commission for projects in the City of Atlanta.

### Secretary of the Interior

The Secretary of Interior is invited to participate in consultation for all GDOT projects with a National Historic Landmark within the APE. The National Park Service Southeast Regional Office National Historic Landmark contact is also invited to participate.

### Federal and State Property Managers

Representatives of any federally- or state-owned property located within the APE are invited to become consulting parties.

### Advisory Council on Historic Preservation

The ACHP is notified when an undertaking under Section 106 may adversely affect a historic property. GDOT and FHWA typically contact the ACHP later in the Section 106 process when a potential adverse effect is identified and documented.

## REVIEW EXISTING INFORMATION

Background research must be conducted to determine what, if any, cultural resources have been previously identified within a project's APE. As applicable, previously identified resources are referenced in GDOT's Notification letter to potential consulting parties (see below).

### History

City and County Surveys through Georgia's Natural, Archaeological, and Historic Resources Geographic Information System (GNAHRGIS): The county/city-wide surveys for historic above-ground resources, completed under the direction of HPD, are reviewed to locate any previously-identified historic resources within the APE. Survey forms for previously-identified resources, on file at HPD or available through GNAHRGIS, should be copied for use during the field survey and for inclusion in cultural resources documentation.

*National Register-listed Properties:* The county listing of existing and proposed National Register resources is consulted to locate existing and proposed National Register-listed

properties within the APE. Any National Register nomination forms and any Proposed National Register Summary Forms, on file at HPD, are copied for use during the field survey and for inclusion in the cultural resources documentation.

The National Park Service is currently updating its online database and file storage system; available records can be accessed here:

[National Register Database, National Park Service](#)

*National Historic Landmarks (NHLs)*: The online listing of NHLs is consulted to determine if any are located within the APE; the list is available here:

[List of National Historic Landmarks by State, National Park Service](#)

*Georgia Historic Bridge Survey (GHBS)*: The GHBS is consulted to determine if any National Register-eligible bridges are located within the APE. If a documented bridge is identified in this database within the APE, a copy of the bridge survey form is not required for the Notification letter, however it should be included in subsequent Section 106 documentation. The GHBS is routinely updated, and the most-current survey can be obtained by contacting one of the GDOT History Team Leaders.

*Statewide Historic Railroad Context (Rail Context)*: The statewide historic railroad context (titled *Georgia's Railroads, 1833-2015, Historic Context and Statewide Survey*), is consulted to determine if any National Register-eligible railroads are located within the APE. If a documented railroad is identified within the APE, copies of the applicable rail survey forms are included in the Notification letter and in subsequent Section 106 documentation. The rail context can be obtained by contacting one of the GDOT History Team Leaders.

### Archaeology

*Literature Search*: An extensive background literature research is conducted to document previously identified archaeological sites, including National Register-listed or eligible resources; identify areas of high site potential within and adjacent to the survey corridor; and develop cultural contexts for the survey corridor.

Background research will include a review of pertinent documents housed at the University of Georgia Archaeological Site Files in Athens (GNAHRGIS may also be utilized); the Map Library and the Georgia Room at the University of Georgia, Athens; HPD, Atlanta; the Georgia Department of Archives and History, and the Surveyor General's Collections, Atlanta. Note: Georgia Archaeological Site File searches expire after 1 year, and therefore new searches may be required for addendum surveys.

The state's preservation plan, *A Vision for the Future*, available at HPD, its archaeological component, *A Strategy for Cultural Resource Planning in Georgia*, and appropriate archaeological contexts are consulted. Specific contexts that should be regularly utilized include *Historic Streetcar Systems in Georgia* and its attendant GIS, and *Georgia's Old Federal Road*. These contexts are available on GDOT's Cultural Resources webpage and can also be obtained by contacting one of the GDOT Archaeology Team Leaders.

Researchers should also be cognizant of the Trail of Tears National Historic Trail, as well as the existence or potential presence of traditional cultural properties, as described in the National Register bulletin *Guidelines for Evaluating and Documenting Traditional Cultural Properties*.

In addition, site specific research at county level record sources including, libraries, courthouses, and historical and archaeological societies will be conducted, as required, during the site evaluation phase of the survey. Historic and current maps and aerial photography should also be utilized to identify the presence of potential sites, such as cemeteries and historic roads and trails.

*ARPA Permit:* If any project archaeological investigation may be required on federal land, a federal Permit for Archeological Investigation will likely be required. Because the timeline on receiving a permit is uncertain, any anticipated permits should be applied for as soon as possible.

The federal agency should be the authority on property ownership, not the local tax assessor, and should be consulted to understand the scope of federal property involved in a project. Furthermore, the federal agency may have specific information on resources located within its property that should be considered during the review of existing information.

The federal land manager's authority for issuing a permit is contained in statutes and regulations. Permits for Archeological Investigation may be issued under the Archaeological Resources Protection Act (ARPA), the Antiquities Act, or both. Some federal agencies also cite their own authorizing laws as an authority to issue archeological investigation permits.

The permit is a legal document that spells out the nature and location of the archeological research that is permitted, the manner in which the research is to be conducted, where any material that is recovered and the investigation records will be curated, and under what conditions the project can be suspended.

## NOTIFICATION LETTER

GDOT notifies relevant consulting parties of project and consultation initiation through a Notification letter. The letter also requests information regarding known historic resources within the APE from the consulting parties, American Indian tribes, and other individuals or organizations that may have knowledge of, or concerns with, such resources.

### Section 106 or GEPA?

The letter should be tailored to the project and indicate whether GDOT is seeking information in compliance with Section 106 or GEPA.

### Recipients

The letter serves as GDOT's invitation to potential consultation participants or "consulting parties," as identified above, to participate in the Section 106 or GEPA process, as well as to inform those parties of the identification efforts made to this point in the process. Recipients have 30 days to reply to the letter.

### Format/Template

The preparer must use the appropriate GDOT Notification letter template for Section 106 projects or GEPA projects. Three letter templates are available, one for FHWA projects, one for GEPA projects, and one for USACE projects.

### Project Description

The project description in the Notification letter must be thorough and complete. It should include specific locations of the beginning and ending points of the project, amounts of existing and proposed ROW, median and lane widths (if applicable), and the total project length. Furthermore, the project description in any subsequent documentation should be consistent with the project description in the Notification letter.

If the scope of the project is modified after the distribution of the Notification letter but prior to the completion of the process, the project description must be revised in subsequent documentation with an explanation that the description has changed since distribution of the letter.

### Transmittal

Consultants should forward draft Notification letters to [CR\\_Notifications@dot.ga.gov](mailto:CR_Notifications@dot.ga.gov) for GDOT review. For GEPA projects with consultant reviewers, the letter should be transmitted to the appropriate personnel for review.

Upon GDOT review and approval, the Historian (both GDOT or consultant) will distribute copies of the Notification letter to the relevant consulting parties, excluding American Indian tribes.

Tribal notification for all projects is handled by the GDOT Tribal Liaison or designated staff Archaeologist who will edit the draft Notification letter to include the appropriate tribes based on project location and tribal area of interest. The GDOT Tribal Liaison or assigned staff Archaeologist will then mail the approved Notification letter to the appropriate American Indian tribes per established methods of government-to-government coordination. The GDOT Tribal Liaison maintains a list of current American Indian tribal contacts and consultation preferences used to determine their inclusion as consulting parties based on project location.

Upon receipt of the Notification letter, the federal agency (FHWA or USACE) will ensure that a copy of the letter is sent to the ACHP and the Secretary of the Interior as appropriate. The ACHP is sent the Notification letter if the undertaking may have substantial impacts on important historic resources, important questions of policy or interpretation are encountered or anticipated, procedural problems are encountered or foreseen, or issues of concern to American Indian tribes are identified. The Secretary of the Interior is sent the letter if an adverse effect is anticipated to an NHL.

### Responses

The consultant Historian will retain and provide GDOT copies of any correspondence received in response to the Notification letter, if the GDOT Historian is not copied on the original response.

GDOT will provide consultants with copies of any correspondence received concerning a particular project. This includes SHPO's Early Coordination Memorandum, which will indicate the HP or GP number assigned to the project by the SHPO. Because this number is SHPO's primary method of tracking a project, this number should always be included in subsequent documentation and correspondence pertaining to a specific project. For some state-funded projects which do not include SHPO involvement, no SHPO coordination memo will be received and no HP or GP number will be assigned. For projects that were originally initiated under FHWA but have since changed funding and now fall under the jurisdiction of the USACE, SHPO may assign a new HP number in reference to the project and this should be included in all subsequent documentation.

As applicable, the GDOT Historian will respond to correspondence from consulting parties confirming their status as such.

The GDOT Tribal Liaison or assigned staff Archaeologist will respond to correspondence received from tribal representatives and ensure that the responses are saved to the project file. Responses will be shared with appropriate team members, unless identified as sensitive by the tribe, in which case consideration will be made to its proper handling and storage.

### Prior Consultation and Re-notification

Some GDOT projects represent lengthy planning efforts and multiple phases of cultural resources consultation.

Generally, projects do not require re-notification (sending an additional Notification letter) barring passage of a significant amount of time, typically 10 years. However, some projects that have changed substantially in scope may be candidates for re-notification.

Consultants should coordinate with the GDOT Historian as needed to determine the extent of prior consultation efforts and the potential need for re-notification.

### CONSULTATION AND THE BIGGER PICTURE

Consultation initiation kicks off the compliance process for GDOT projects under either Section 106 or GEPA. It invites applicable consulting parties to the table and thus sets the stage for all future cultural resources coordination. The consultation will aid in identifying cultural resources and related project concerns. Consulting parties will have the opportunity to review and respond to forthcoming cultural resources documentation.

Following consultation initiation, cultural resources identification continues and includes field survey and additional research. The results of field surveys and project research are summarized in reports that indicate which resources are listed in or recommended eligible for the National (or Georgia) Register. These reports are provided to the consulting parties for comment as part of the consultation process. Reports for projects requiring Section 106 compliance are provided to the SHPO for concurrence.

After listed and/or eligible cultural resources are identified and, as applicable, concurred with by the SHPO, project effects to those resources are considered and documented after all reasonable efforts are made to avoid, minimize, and/or mitigate adverse effects to them. Effects assessments are also documented in reports provided to the consulting parties and, as applicable for Section 106 projects, to the SHPO for concurrence. Mitigation efforts are documented in a Memorandum of Agreement (MOA) for Section 106 or a mitigation request form for GEPA and signed by the appropriate responsible parties. These efforts and agreements are also provided to consulting parties to conclude consultation.

*Guidebook Revision History*

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Updated Hyperlink Buttons	Initiation of Cultural Resources Consultation; Review Existing Information	4/23/2021
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