

PROGRAMMATIC AGREEMENT
for the
CONSULTATION PROCESS
among the
FEDERAL HIGHWAY ADMINISTRATION,
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
and
THE CADDO NATION OF OKLAHOMA

Whereas, Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470 et seq.) provides definitions and procedures for consultation between federal agencies and Native American tribes for federal undertakings, as defined in 36 CFR §800.16(f) & (y); and

Whereas, the Louisiana State Historic Preservation Officer (LASHPO) is a consulting party in Section 106 review within the State of Louisiana; and

Whereas, the Federal Highway Administration (FHWA) is responsible for compliance with Section 106 and its implementing regulations (36 CFR §800) for Federal-Aid transportation projects throughout the State of Louisiana, along with other authorities such as Executive Orders, the National Environmental Policy Act (NEPA), the Native American Graves Protection and Repatriation Act (NAGPRA), The American Indian Religious Freedom Act (AIRFA), and the Archeological Resources Protection Act (ARPA); and

Whereas, the Louisiana Department of Transportation and Development (LADOTD) administers federal-aid transportation projects throughout the State of Louisiana as authorized by Title 23 U.S.C. and employs professional staff capable of completing the Section 106 process on behalf of FHWA and has a record of successful compliance with Section 106; and

Whereas, FHWA has determined that federal-aid highway transportation projects it funds within the State of Louisiana are federal undertakings carried out by LADOTD; and

Whereas, the FHWA and LADOTD recognize that certain of those undertakings may have an effect upon historic properties included in or eligible for inclusion in the National Register of Historic Places and properties that not only possess cultural and religious significance but that contain Native American burials and funerary objects that require compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001 et seq.) and its regulations (43CFR §10); and

Whereas, the representatives of the FHWA and LADOTD have engaged in consultation with representatives of the Caddo Nation of Oklahoma (hereafter, "the Nation") to establish a Programmatic Consultation Process; now

Therefore, the FHWA, LADOTD, and the Nation do hereby agree to the following for federal-aid highway transportation projects in Louisiana:

1. Agreement Period. This agreement becomes effective when fully executed by all parties hereto and shall remain in effect for five years. The agreement shall automatically renew unless one party notifies the other parties in writing of its intent to terminate the agreement in accordance with Section 12 below.

2. Federal Recognition. The Nation is acknowledged by the Federal Government with a government-to-government relationship with the U.S. and is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and thus has status to establish a programmatic consultation process under 36 CFR 800.14(b).

3. Consultation FHWA grants LADOTD, using staff housed in the Environmental Section, authority to fulfill FHWA's consultation requirements with the Nation. FHWA shall approve the outcome of all consultations with the Nation prior to its award of any assistance for undertakings under the Federal Aid Highway Program or other program involving FHWA assistance or approval.

4. Point of Contact

- A. The FHWA points of contact for correspondence shall be Program Operations Manager and the Environmental Specialist.
- B. The point of contact for correspondence to LADOTD shall be the Environmental Engineer Administrator for consultation on projects, or NAGPRA-related matters. LADOTD shall provide FHWA with all documentation necessary to fulfill NEPA, Section 106, and NAGPRA requirements as part of its environmental process.
- C. The point of contact for correspondence to the Nation concerning federal undertakings shall be the Historic Preservation Officer of the Caddo Nation, and the Nation's point of contact for NAGPRA shall be the NAGPRA Officer of the Caddo Nation. The Nation shall direct all correspondence to the Environmental Engineer Administrator point of contact.
- D. Each party shall notify the other parties in writing when the point of contact changes. Such changes shall not require amendment of this agreement.

5. Area of Concern: LADOTD has consulted with the Nation to establish the specific area of the State of Louisiana for which the Nation has concerns for historic properties. The Nation provided a list of the parishes that they deem to be the Area of Concern within the State of Louisiana. The parishes are Avoyelles, Bienville, Bossier, Caddo, Caldwell, Claiborne, Concordia, DeSoto, Grant, Jackson, LaSalle, Lincoln, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Sabine, Union, Vernon, Webster, and Winn.

6. Project Specific Consultation: LADOTD shall consult with the Nation as early as possible in project planning and development by providing the Nation with a list of projects within the Area of Concern that are programmed for the next five years. This list will be provided twice a year, by January 30th and July 30th.

LADOTD will continue to solicit the views of the Nation by letter on proposed LADOTD projects in the Area of Concern. LADOTD will continue to require other entities such as cities, parishes, metropolitan planning organizations, etc., to solicit the views of the Nation on projects funded by FHWA. The Nation shall provide documentary information in writing that would assist LADOTD in determining when Native American sites may be affiliated with the Nation's ancestral or historic occupation of Louisiana. In addition to the general solicitation, LADOTD will:

- A. notify the Nation by letter of specific transportation projects that fall within their Area of Concern where Native American sites have been identified;
- B. notify the Nation by letter when a site that can be culturally affiliated with the Nation is identified in the area of potential effects of a proposed project that is outside of the Nation's Area of Concern; and
- C. notify the Nation when a site identified within the Nation's Area of Concern is believed to be affiliated with another federally-recognized tribe, providing the basis for that belief, and stating that future consultation will be confined to that other tribe unless the Nation objects within 30 days of receipt of the letter.

7. Timing. The Nation shall be provided thirty (30) days from receipt of information in which to review and provide comments to LADOTD for a:

- A. Finding that no historic properties are present or likely to be present in the area of potential effect of the project.
- B. Determination of eligibility for the National Register of Historic Places
- C. Determination of the project's effect on a historic property; and/or
- D. Treatment plan to excavate or mitigate adverse effects of the project on a historic property.

If the Nation fails to comment within thirty (30) days of receipt of a request for review and comment, LADOTD and FHWA may proceed to the next step in the consultation process. Failure to comment will not prevent the Nation from re-entering consultation at a later point. If the Nation re-enters the consultation process, LADOTD and FHWA shall continue the consultation without being required to reconsider previous determinations of findings.

8. Determination of Eligibility. LADOTD shall provide the Nation an opportunity to comment on the assessment of eligibility for the National Register of Historic Places (under 36 CFR 60) for each Native American archeological site within the Nation's Area of Concern to be affected by a proposed transportation activity. In the event that the Nation objects within thirty (30) days of receipt to LADOTD's assessment of eligibility for a Native American site, LADOTD shall review the documentation provided by the Nation to support its objection and make a reasoned response to the Nation. If the Nation continues to object, LADOTD shall provide FHWA a copy of the documentation along with copies of the results of consultation with other consulting parties. FHWA shall review this documentation, consult with the Nation and LASHPO to resolve the objection, and notify all consulting parties of the FHWA's determination. If the Nation disagrees with FHWA's determination of eligibility, the Nation may ask the Advisory Council on Historic Preservation (ACHP) to request FHWA to obtain a determination

from the Keeper of the Register. The ACHP retains discretion as to whether it should make the request of FHWA.

9. Treatment. LADOTD shall provide the Nation an opportunity to comment on LADOTD's treatment plan for any Native American historic property in the Nation's Area of Concern, as follows:

- A. where feasible, the historic property will be avoided by the proposed transportation activity; and
- B. where avoidance is not feasible, treatment shall be carried out in accordance with the *Archaeology and Historic Preservation: The Secretary of Interior's Standards and Guidelines*, and be commensurate with the significance of the historic property and may include educational or public outreach efforts.

In the event that the Nation objects to the treatment plan within thirty (30) days of receipt of the proposed treatment plan, LADOTD shall review the documentation provided by the Nation to support its objection and make a reasoned response to the Nation. If the Nation continues to object, LADOTD shall provide FHWA a copy of the documentation along with copies of the results of consultation with all consulting parties. FHWA shall review this documentation and:

- i. consult with the Nation and the LASHPO to resolve the objection or with the Advisory Council on Historic Preservation; and
- ii. notify all consulting parties of the outcome.

10. Native American Graves. In the event that Native American burials that may be culturally affiliated with the Nation are anticipated or discovered during archeological excavation or during construction of the project, FHWA and LADOTD shall seek to avoid impacts to the site. If it is not feasible to avoid the site and the burials, LADOTD shall:

- A. comply with the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671-681);
- B. develop a treatment plan in accordance with Article 9 above; and
- C. if discovered on Federal lands, comply with the Native American Graves Protection and Repatriation Act.

During the excavation of any Native American graves, LADOTD shall also take measures to ensure:

- i. that there is respectful, dignified treatment of burials at all times during excavation and analysis; and
- ii. that opportunities are provided for the culturally affiliated tribe to visit the site and provide comments during archeological excavation and for the Nation to perform appropriate ceremonies.
- iii. that security is provided to prevent vandalism when archaeologists are not present at the site;
- iv. that photos are not taken of human remains or open graves other than for photographic documentation needed for the recordation of the excavation;

- v. that public tours of the cemetery are given only if considered to be appropriate by the affiliated tribe.

11. Emergency Discovery Procedures. In the event of an emergency discovery of a Native American site after award of a construction contract, LADOTD 2000 Standard Specifications of Road and Bridges mandates that operations be discontinued (Section 107.27) so that an appropriate assessment may be made. Moreover, LADOTD shall:


- A. comply with the Louisiana Unmarked Human Burial Sites Preservation Act for discoveries of human burial sites;
- B. notify the Nation and LASHPO of the finding by telecommunication of the find and invite them to visit the site with LADOTD; and
- C. notify the Nation and LASHPO by fax of their determination of the need (or not) for further investigations. If further investigations are determined to be warranted, LADOTD shall provide the Nation and LASHPO with a copy of the plan of those investigations by fax. The Nation and LASHPO shall have two full business days to respond, unless otherwise specified. If the Nation objects to the investigations, LADOTD shall provide FHWA a copy of the documentation along with copies of the results of consultation with all consulting parties. FHWA shall review this documentation and render its decision, notifying all parties of its decision.

12. Amendments and Termination. Any party to this consultation agreement may request that it be amended, whereupon the parties shall consult to consider such amendment. Any party to this agreement may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR 800.4-800.6.

13. Severability. In the event any one or more of the provisions contained in this agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

14. Signatory Warranty. The undersigned signatories represent and warrant that each has full and complete authority to enter into this contract on behalf of their organizations. These representations and warranties are made for the purpose of inducing the parties to enter into this contract.

FEDERAL HIGHWAY ADMINISTRATION



William Sussmann
Division Administrator

5/29/03
DATE

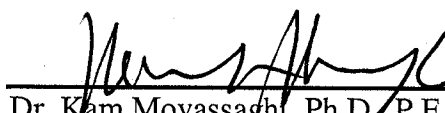
CADDO NATION



LaRue Martin Parker
Chairperson, Caddo Nation

5-8-03
DATE

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT



Dr. Kam Movassaghi, Ph.D., P.E.
Secretary

5-16-03
DATE

