

# Protecting Native American Graves

by Clyde B. Johnson, SR/WA

One of the unique things about the highway business is dealing with the endless variety of problems that arise on a daily basis.

This work, for me, has provided an endless source of pride, amazement, opportunity and satisfaction as highways develop from the initial concept through final construction.

As a true Georgia native, the opportunity to work for the Federal Highway Administration (FHWA) in my home state provides an additional source of satisfaction. Recently, my participation in the reinterment of a Native American under the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and Section 106 of the Historic Preservation Act of 1966 highlighted the need for acquiring agencies to be more responsible and sensitive to Native American cultures.

The Cherokee's ("Principal People" as they considered themselves) were once one of the largest Native American tribes east of the Mississippi with a tribal history that dates back over 4,000 years. Around the time of the first Europeans, their number totaled over 25,000, and their lands encompassed most of the southeastern United States. In 1838, subsequent to the passing of the Indian Removal Act of 1830, more than 14,000 Cherokees were forced from their Appalachian Mountains and moved along the "Trail of Tears" to their present day reservation in Oklahoma. These Cherokees formed what is regarded today as the Western Band of the Cherokee Indians (WBCI). A small number of Cherokees (more than 1,500) re-



***"It will be a very hard thing to leave the country that God gave us. Our friends are buried there, and we hate to leave these grounds."***

mained in the eastern mountains and formed what was later to become the Eastern Band of the Cherokee Indians (EBCI). Over the years, this divided nation has established many first through their self-ad-

ministration of tribal affairs and continues to be a major force in the Native American culture.

The Cherokee's concept of tribal identity and maintenance of their culture was reflected in our contacts with many tribal representatives. The Cherokees always reflected a deep desire to maintain and promote their cultural identity, which accounted for the high regard shown the younger members (sons and grandsons) who participated with us in this activity. During the ceremony that will be discussed later, a quote from Dee Brown's book, *Bury My Heart at Wounded Knee*, came to mind. "It will be a very hard thing to leave the country that God gave us.

Our friends are buried there, and we hate to leave these grounds." This statement focused the close association that exists between Native American culture, their ancestors, and their homeland. It also became more apparent as we entered into formal consultation later with the Tribal Council. The NAGPRA activity undertaken by the Georgia Department of Transportation (GDOT), the FHWA, and the response by others who participated in this activity, justified the need for this act, and hopefully, our experience will assist others who may find themselves working under NAGPRA and Section 106 requirements when events require their implementation. A chart providing a chronological chain of events (EXHIBIT No. 1) will assist in following related activities occurring simultaneously at the state (GDOT), federal and project level. It should be noted that, at the time of this dis-

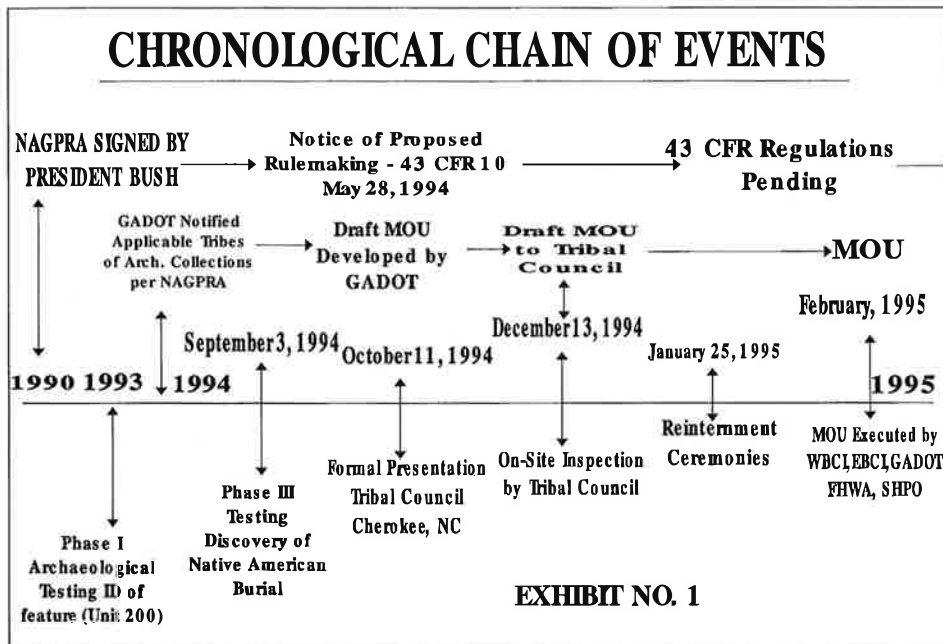
covery, a clear definition of "Federal Lands" (Section 2.(5) of the NAGPRA) had not been made, and both GDOT and FHWA conducted this activity as if provisions of NAGPRA applied due federal-aid participation in this project.

## NAGPRA

On Nov. 16, 1990, President George Bush signed into law an act that addresses the rights of members of Indian Tribes and Native Hawaiian organizations and their lineal descendants to Native American human and cultural items affiliated with these groups. This law requires consultation as part of the discovery or excavation of human remains or cultural items on federal lands (any land other than Tribal lands that are controlled or owned by the United States government ... United States "control" refers to those lands in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person).

This law applies to "any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" this has been further clarified in (NPRM) 43 CFR Part 10, as "The definition of Indian Tribe has been clarified to refer to those Indian Tribes and Native Alaskan entities on the current list of recognized Indian tribes as published by the Bureau of Indian Affairs."

On May 28, 1993, *Federal Register*, Vol. 58, No. 102, provided a Notice of Proposed Rulemaking (NPRM) for regulations implementing the NAGPRA act. After reviewing all comments on the NPRM, final regulations are scheduled for issuance in late 1995. Basically, these proposed regulations provide information on how to handle Native American remains, cultural items, cultural affiliation, definitions of approximately 31 key terms, procedures that address intentional and inadvertent excavation of human remains or cultural items, how to conduct inventories of these items that may exist in museums, procedures for determining lineage, conflict arising from disputed claims, and finally, procedures that deal with illegal



trafficking in these items. Currently, the proposed regulations cover 17 sections, 4 subparts and 5 appendices all dealing with the above items. The Act itself provides for

proper treatment of these items and establishes a mechanism to ensure that items now in the possession of federal agencies or museums receiving federal funds are returned



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## INITIAL SITE INSPECTION

to the appropriate tribal group.

Section 10.5 of the NPRM represents one of the most important sections in that it addresses consultation requirements applicable to both intentional and inadvertent discovery of human remains or cultural items on federal lands. It outlines the role of the Federal Agency, consultation requirements with appropriate tribal organizations, and the need to establish a programmatic agreement for such activities.

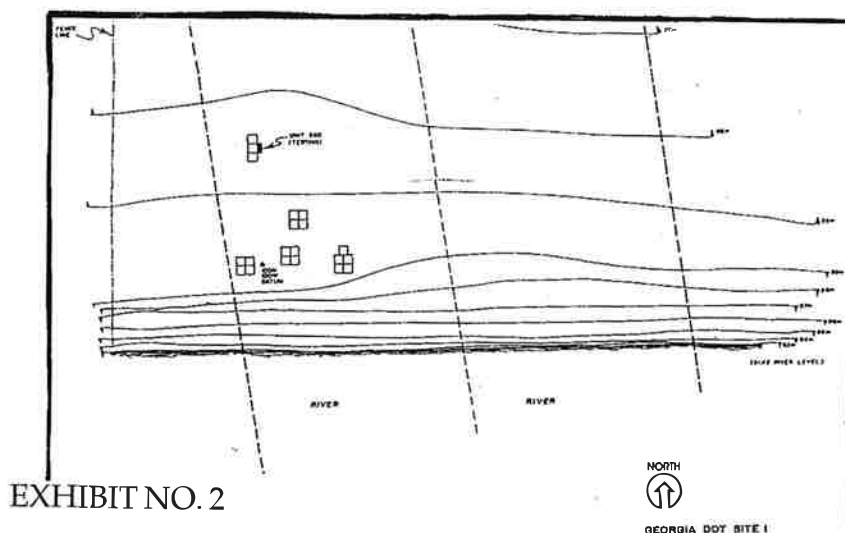
### THE GEORGIA NAGPRA EXPERIENCE

On Aug. 17, 1994, during Phase III Archaeological testing being conducted on a GDOT project, one confirmed burial site was discovered that contained Native American remains consisting of a cranium and mandible. The location of the burial pit was shovel tested under Phase I site analysis in late 1993, at which time a feature (indications of a remainder of a feature), first thought to be a fire or trash pit was noted by archaeologist, coded Unit 200, Feature 600, and scheduled for further analysis (SITE TESTING, EXHIBIT NO.2).

NOTE: In order to protect the site and in respect of the Eastern Band of the Cherokee Indians, all references to site/project locations have been deleted from all maps and documents.

Data recovery at Unit 200, Feature 600 actually began on Aug. 15, 1994, with excavation blocks established to encompass the previously noted feature. On Aug. 16, 1994,

#### SITE TESTING LOCATIONS



*PHOTO 1 - Bob Enorf explaining proposed project. (pictured left to right), Clyde Johnson - FHWA, Teres Bradley McCoy - Tribal Council, Chris McCoy - Cherokee High School Rep., Louise Maney and Isabel Catolster - EBCI, Myrtle Johnson - EBCI-Cherokee Elem., Chip Morgan (2nd row) - GADNR.*

### INITIAL SITE INSPECTION BRIEFING



*PHOTO 2 - Archaeologist, Chris Espenshade, discussing burial pit (bags contain dirt and artifacts removed from pit) and procedures and findings noted on site during testing.*

the top of the feature was revealed and on the 17th, a large cranial bone was encountered by the archeologist. The cranial bone was exposed and cleaned sufficiently to assist in the determination that it was human. Slightly below the cranial bone, a mandible was noted with visible teeth that indicated extreme wear (typical of mature Native American dentition). At that time, it was determined the remains belonged to a Native American member of the Swift Creek culture, circa AD 750. A field report submitted by the consultant in charge of the excavation indicated that the site was heavily utilized during the Swift Creek period, contained shards, deer bone, turtle bone and deer antler. Also, the pit was overlaid by deposits of moderate to high density Swift Creek pottery and Woodland projectile points. Further excavation of the burial pit failed to disclose additional burial features.

After verification that the bones were human, they were returned to their original location (and position). All soil and materials extracted from Feature 600 was bagged, identified and returned to the site. All archaeological activity at Feature 600 was halted, and representatives of the Georgia State Historic Preservation Office (SHPO) were contacted.

Since procedures could vary depending on the lead agency involved, all activity around similar features was halted; however, excavation in other areas was permitted pending a decision from the GDOT. After consultation, the GDOT advised they would be in charge of consultation and notification. At this time, the GDOT advised all parties not to disseminate information regarding the discovery for security purposes.

Bob Entorf, GDOT historian in charge of the project, verified that the consultant had completed the following procedures on the original find, and these procedures would be applied to any future discovery:

1. STOP all work or activity in the area immediately adjacent to the burial;
2. REPORT the burial immediately to the on-site archaeologist in charge so that the observation may be confirmed;
3. NOTIFY immediately GDOT personnel, Specifically the Project Archaeologist, or the State Environmental and Location Engineer;
4. PROTECT by reasonable means any aboriginal, prehistoric, or American Indian remains, or burial objects, securing the area from unauthorized personnel or activity.

At the time, the principal goal was to ensure security of the burial site and protect it by all reasonable means. The site was partially filled, and all indications of special excavation activity was removed. The site was made as inconspicuous as possible pending further action.

Analysis of burial objects indicated a high probability that the Native American remains were associated with the Cherokee Indian Tribe. On Sept. 2, 1994, representatives of GDOT, and the Federal Highway Administration (FHWA) contacted the Chief of the WBCI, provided additional information on the burial and advised they would forward a letter, as required by the NAGPRA, to implement the informal consultation requirements pending further action. Representatives of the EBCI were advised and assumed primary responsibility for future action. As

required by the NAGPRA, GDOT forwarded correspondence to FHWA formally requesting to initiate consultation and advising that they had contacted applicable federally recognized Native American Tribes of the discovery. On Sept. 20, 1994, a short presentation was made to the Georgia Council on Native American Concerns. The Department and their consultants were then invited to make a formal presentation to the Council of EBCI's in Cherokee, North Carolina.

### S70-1. EXCAVATION OF SKELETAL REMAINS.

(a) The graves of Cherokee people and their ancestors are sacred and shall not be disturbed or excavated.

(b) in the event skeletal remains of a Cherokee are excavated, such remains shall be reburied, together with all associated grave artifacts as soon as shall be reasonable possible. All such remains disinterred outside Cherokee trust lands shall be re-

### REINTERMENT CEREMONIES



*PHOTO 3 - Individuals participating in reinterment ceremonies (left to right) George Squirrel, Walker Calhoun, Isabel Catolster, and Pat Calhoun of EBCCI, Teresa Bradley McCoy - Tribal Council, Patrick Smith and Walter Rattler - EBCCI, Clyde Johnson - FHWA. Photo taken Jan. 25, 1995 by Bob Entorf.*

On Oct. 11, 1994, representatives from the GDOT, FHWA, and the archaeological consulting firm made a presentation at the Annual Council Meeting of the ECBI's in Cherokee, NC. The presentation began with GDOT discussing the proposed project activity up to field testing. The consultant, representing GDOT, explained archaeological testing procedures utilized on the site and the activity resulting in the discovery of the Native American remains. At this time, the Tribal Council appointed Teresa Bradley McCoy, Councilmember, to head a committee to provide oversight and coordination on this issue. It was interesting to note that Ms. McCoy later expressed her appreciation to GDOT and FHWA for the sensitive response displayed with the discovery and treatment of the Native American remains. The Tribal Council provided a copy of their laws and regulations (Chapter 70, Subsection 70-1) Excavation of Skeletal Remains, as follows:

buried at the Cherokee Memorial Cemetery in Vancore, Tennessee.

(c) The remains of Cherokee people shall not be subjected to destructive skeletal analysis.

SOURCE: Res. 92, eff. Jan. 30, 1983.

The GDOT presentation before the Tribal Council followed a presentation by another agency requesting permission to conduct test on Native American remains discovered on their project to determine if "arthritis" was a problem for early Native Americans. Tribal Council members later related their concerns regarding the insensitivity shown by some agencies toward their culture and ancestors. The sensitivity shown by GDOT facilitated working with the Council committee on this issue. Subsequently, coordinating through Ms. McCoy, a field trip was scheduled for members and representatives of the tribal council. On Dec. 13, 1995, an on-site inspection of the burial feature (INITIAL SITE INSPECTION,

PHOTO NO.1) was conducted (author's note, Chris McCoy, an honor student at Cherokee High School, attended the inspection as a representative of his school and participated in the discussions surrounding the discovery of the feature). During the inspection, representatives of the GDOT and their consultants carefully explained testing procedures, objects found and analysis of these objects (INITIAL SITE INSPECTION BRIEFING, PHOTO NO. 2). Immediately

state-owned property. The Tribal Council advised that they would like to conduct re-interment ceremonies for the remains according to Cherokee customs.

On Jan. 25, 1995, re-interment ceremonies were conducted by tribal representatives of the Eastern Band of the Cherokee Indians who graciously allowed both GDOT and FHWA representatives to participate fully in the ceremonies under the direction of the tribe (REINTERMENT CEREMONIES,

our efforts. The rapport and friendship established with representatives of the Tribal Council will enable us to work together on future archaeological discoveries with much less skepticism and concerns. Outreach efforts by all participants clearly bridged any cultural gaps and mistrust while providing conflict resolution at all level of project involvement. The friendship exhibited by the Tribal Council and its representatives toward non-tribal members reflected their beliefs and affinity for their homeland and cultural heritage. We were treated as equals and allowed to participate in their cultural activities as partners. As a follow-up to our activities, we were invited to make a presentation on the "NAGPRA" activity to students of the Cherokee School System. This presentation is currently being scheduled, and we expect it to be another great experience. □

### **ARCHAEOLOGICAL MATERIAL RETURNED UNDER NAGPRA MOU**



**PHOTO 4**

after the discovery and subsequent identification that the remains reflected a high probability of being Cherokee, GDOT developed a draft (MOU) that established procedures to be followed by all parties regarding the avoidance, excavation, treatment, and disposition of all remains, associated funeral objects of the tribe and objects of cultural patrimony discovered during construction activities at the site. The draft MOU was circulated for review and comments between state and federal agencies before the initial site visit in December. At this time, draft copies were provided to Ms. McCoy for review by the tribal council.

Following our initial site visit, Tribal Council representatives working with GDOT/FHWA consulted on the best course of action regarding the burial remains. After consultation with the Tribal Council, the GDOT elected to shift the proposed facility slightly, re-inter the remains at the original location and incorporate this area into the final right of way for the project. This proposal would ensure that the remains stay at the original location and provide some protection by locating it within

PHOTO NO.3). As required by NAGPRA five bags of archaeological material previously recovered from testing conducted on the site was returned to Ms. McCoy and re-interred with the remains. Ms. McCoy was provided the original log indicating all archaeological material (ARCHAEOLOGICAL MATERIAL RETURNED UNDER NAGPRA MOU, PHOTO NO.4) returned to the Tribe (copy in addendum) and two copies of the MOU executed by the GDOT and FHWA for signature by the Tribal Principal Chief. According to tribal customs and requirements, no photographic records of the actual ceremony was made; however, having been allowed to actively participate in the ceremony (just as a tribal member) the humility and dignity exhibited during the ceremony was impressive.

### *Bridging the Cultural Gap*

What was accomplished by this activity? Execution of one of the first MOUs under NAGPRA was completed. More importantly, GDOT and FHWA, as acquiring agencies, established an additional link in

*Author's Note: Mr. Walker Calhoun and grandson Patrick Smith (Photo No. 3) are featured in the April, 1995, issue of "National Geographic."*

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*He is a part-time instructor at Georgia State University, School of Business, Department of Real Estate. He has published numerous articles on transportation and environmental issues and received the International Right of Way Association's Mark A. Green Scholarship Award for best Professional article of the Year in 1991. He was a Frank C. Balfour "Professional of the Year" finalist in 1992, 1993 and nominated again for 1994. He was nominated as Federal Employee of the Year "Volunteer Nominee" by the Atlanta Federal Executive Board for 1992 and 1993, and nominated in the field of "outstanding Scientific/Professional" for 1995.*

*He is President of the International Right of Way Association, Georgia Chapter 22, and serves as the Vice-Chairman of the International Transportation Committee. He served on the city of Alpharetta Recreation Commission for over six years and was appointed to the Planning and Zoning Commission in 1988. He has over 20 years of experience in right-of-way appraising, relocation, negotiations, property management, corridor protection, hazardous waste and environmental issues.*