

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-



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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-

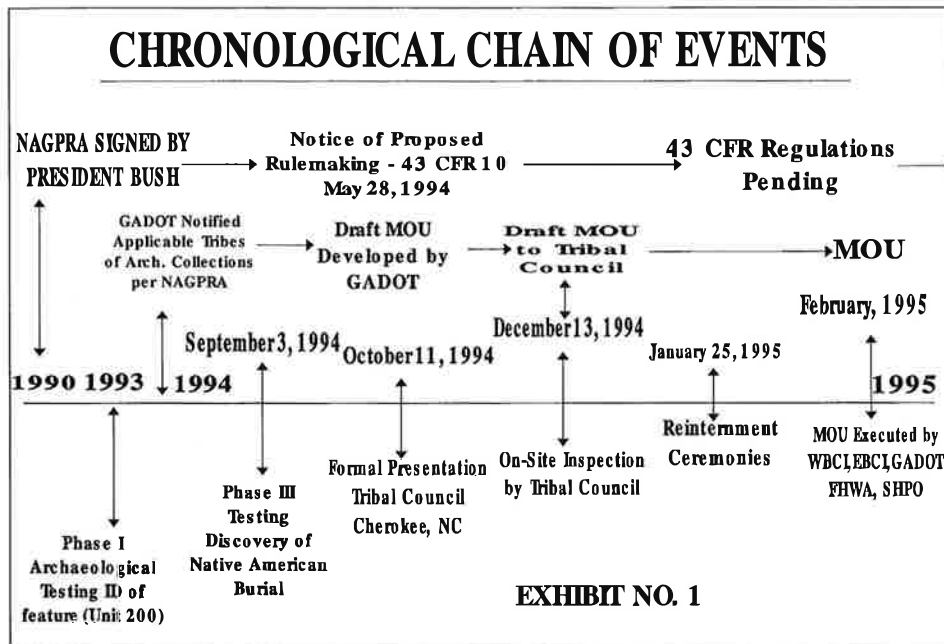
covery, a clear definition of "Federal Lands" (Section 2.(5) of the NAGPRA) had not been made, and both GDOT and FHWA conducted this activity as if provisions of NAGPRA applied due federal-aid participation in this project.

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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