

Programmatic Agreements
and
Tribal Section 106 Consultation

Some Oklahoma Observations

Basic Oklahoma Facts

- Almost 40 Resident Federally or State Recognized American Indian Tribes
- Few Indigenous Tribes (Caddo, Wichita, Cheyenne-Arapaho, and a few others)
- Little Reservation or Tribal Land
- Large Native population
- Several large, politically influential and highly integrated Tribes (Chickasaw, Cherokee, etc)
- Resident Tribal Citizens are also Oklahoma road users
- Increasingly important financial and political ties between Oklahoma DOT and some Tribal interests
- Long tradition of FHWA delegating 106-related activities to the State DOT

Oklahoma Consultation Procedure

- Initiated in late 1990's without direction from FHWA. Establishment of ODOT Section 106 Tribal Liaison position. No preliminary negotiation of Programmatic Agreements, but informal contacts with tribal cultural officials by Tribal Liaison.
 - Written notification/requests for comment at initiation of 106 process (30-day comment period). Sent to Tribes with current or probable past ties to project area. Sent both to Tribal Chairperson and known cultural preservation official.
 - Immediate informal (email/phone) contact if any cultural resource of likely interest to Tribes identified in ODOT CR study.
 - Second notification with completed cultural resources study
 - Any additional consultation if requested

Programmatic Agreements

- Issue raised in 2003 by Caddo Nation to FHWA. No concern with ODOT process but concern about Federal government-to-government relationship
- Began joint FHWA/ODOT visits to Tribal HQ's to discuss Section 106 process, ODOT procedures, and development of MOUs or PA's to formalize federal tie-in and authority
- At present initial meetings have been held with Caddo, Wichita, Cheyenne-Arapaho, Comanche, Cherokee, Chickasaw, Muscogee (Creek), Seminole, and Choctaw, representing the major indigenous groups and most populous removal groups.
- Signed PA with Caddos, drafts undergoing review with remainder

Observations

- Broad Tribal satisfaction with pre-existing ODOT processes. Completed PA with Caddo essentially formalizes federal authority over existing process conducted by State. All tribes want coordination primarily with ODOT, with federal involvement only in event of disagreements between ODOT and tribes
- If anything ODOT does too much, too formally. Some tribes have suggested less paperwork, more use of phone/email, fewer projects reviewed, smaller areas of Tribal responsibility. No resistance to 30-day review times. One tribe indicated that evidence of consultation with OK SHPO and State Archaeologist was sufficient.
- Pre-existing ODOT Process greatly assisted FHWA involvement. FHWA could adopt and propose well-defined procedures with which Tribes were already familiar.
- Somewhat disappointing rate of response to ODOT consultations remains a source of concern to ODOT. Approximately 20% of 383 requests so far in 2005, similar percentage in previous years. Responses only from 17 of the 38 tribes (45%)
- ODOT has sent questionnaire to Tribal cultural preservation offices to determine if more streamlined or simplified processes would help.

Final Note from Oklahoma

- All State DOTs face different challenges in implementing mutually satisfactory solutions to Tribal consultation, and have different relationships with FHWA which affect this, but the Oklahoma answer was...

JUST DO IT!

It's easier to ask for forgiveness than to ask for permission