Message

From: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Sent: 10/7/2020 9:46:32 PM
To: Beck, Whitney [beck.whitney@epa.gov]
CC: Hurld, Kathy [Hurld.Kathy@epa.gov]
Subject: RE: Consultation with Seminole Tribe of Florida - Florida 404 Program Assumption

Good to know, thanks!

Mindy Eisenberg
Associate Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4504T
Washington, DC 20460
Cell - (202) 821-8927
eisenberg.mindy@epa.gov

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Wednesday, October 07, 2020 5:11 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: FW: Consultation with Seminole Tribe of Florida - Florida 404 Program Assumption

FYI, the Seminole have asked about the possibility of being a signatory on the PA.

Best,
Whitney

From: Hicks, Matt <Hicks.Matthew@epa.gov>
Sent: Wednesday, October 7, 2020 4:20 PM
To: Hurld, Kathy <Hurld.Kathy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>
Subject: FW: Consultation with Seminole Tribe of Florida - Florida 404 Program Assumption

FYI...

From: Hicks, Matt
Sent: Wednesday, October 7, 2020 12:39 PM
To: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Mcgill, Thomas <Mcgill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Jaikaran, Bianca <Jaikaran.Bianca@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Clark, Maria <Clark.Maria@epa.gov>; Pugh, Katherine <Pugh.Katherine@epa.gov>; Zimmerman, Eve <Zimmerman.Eve@epa.gov>; Jones, Aaryn <Jones.Aaryn@epa.gov>; Johnson, Belinda <Johnson.Belinda@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>
Cc: Creswell, Michael <Creswell.Michael@epa.gov>; Laycock, Kelly <laycock.kelly@epa.gov>
Subject: FW: Consultation with Seminole Tribe of Florida - Florida 404 Program Assumption

Please see below an email from the Seminole Tribe with feedback on our September 28th policy and NHPA 106 consultation. As you can see, most of their comments pertain to the programmatic agreement (PA) that EPA is preparing

to meet its NHPA 106 obligations. The Seminole Tribe would like to be an invited signatory to the PA. Note that the tribe is requesting a copy of our notes from the September 28th consultation to review and provide feedback.

Thanks,

Matt

From: Paul Backhouse <PaulBackhouse@semtribe.com>
Sent: Wednesday, October 7, 2020 11:34 AM
To: Creswell, Michael <Creswell.Michael@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>
Cc: Anne Mullins <AnneMullins@semtribe.com>; kevincunniff@semtribe.com; Whitney Sapienza <WhitneySapienza@semtribe.com>; Rachael Santana <rsantana@llw-law.com>; 'mdiffenderfer@llw-law.com' <mdiffenderfer@llw-law.com>; Juan Cancel <JuanCancel@semtribe.com>; Bradley Mueller <bradleymueller@semtribe.com>; Karli Eckel <KarliEckel@semtribe.com>; Stacy Myers <StacyMyers@semtribe.com>; Andrew Bowers <AndrewJBowers@semtribe.com>; Jim Shore <JimShore@semtribe.com>
Subject: RE: Consultation with Seminole Tribe of Florida - Florida 404 Program Assumption

Good morning Mr. Creswell, Mr. Hicks, and Mr. Laycock,

Thank you again for your time earlier this week in consultation with the Seminole Tribe under Section 106 of the National Historic Preservation Act (NHPA) associated with the EPA's Federal Undertaking to approve or disapprove the State of Florida's 404 Program application. During that consultation you requested any feedback from the Seminole Tribe related to a potential Programmatic Agreement (PA) with the Advisory Council on Historic Preservation (ACHP), if Florida successfully assumes the 404 Program. This email constitutes the Seminole Tribe's initial feedback for EPA, but other feedback and comments may be forthcoming as we receive more information from EPA.

Section III.C of the Operating Agreement (OA) between the Florida Department of Environmental Protection (FDEP) and the State Historic Preservation Office governs Federal Review. Within that section, there are three instances where the FDEP shall send an application to EPA for review: 1) during public notice for projects within critical areas established under state or federal law, including sites identified or proposed under the NHPA; 2) where the consulting parties of the OA cannot agree on the effect determination of a proposed activity or where FDEP does not accept the recommendations of one of the consulting parties for the resolution of adverse effects; and 3) if the FDEP does not accept the effect determination of a proposed activity or recommendations for the resolution of adverse effects of the THPO/Indian Tribes. However, the OA does not currently provide a process or eligibility criteria to determine under what circumstances EPA will involve the ACHP. These criteria should be developed with associated timeframes within the PA.

In addition to the three areas laid out above, the Seminole Tribe would request that EPA involve ACHP in review of any disputes between the consulting parties on the area of potential effect and any disputes as to whether a site is eligible or potentially eligible for listing in the National Register of Historic Places (NRHP). Within the OA, the Federal Review provisions fall under the section header "Effects Determinations and Resolution of Adverse Effects." The Seminole Tribe believes that the area of potential effect determination and whether a site is eligible or potentially eligible for listing in the NRHP are additional areas where disputes requiring ACHP resolution could arise, but are not covered by the OA Federal Review section.

In instances where ACHP's involvement is requested, consulting or commenting Tribes should be provided an opportunity to discuss the dispute with ACHP and EPA.

The OA acknowledges at Section I. A.2.b.i that Indian tribes possess special expertise in assessing the eligibility of cultural resources or historic properties that may possess religious and cultural significance. The Seminole Tribe requests that a similar statement be included in the PA.

The Seminole Tribe is also interested in the possibility of participating in the PA as an invited signatory due to the potential for FDEP's 404 Program to impact religious and culturally significant historic properties and the Seminole Tribe's foreseeable role as a consulting party under the OA. At a minimum, the Seminole Tribe is requesting the draft PA and reserves the right to provide substantive feedback on the proposal. The Seminole Tribe is also awaiting the notes from the September 28th formal consultation to review and provide any feedback to EPA. Please provide those notes at your earliest convenience.

Thank you again for your engagement and commitment to this issue of great importance to the Seminole Tribe.

Sincerely,

Paul Backhouse, Ph.D., RPA
Snr. Director, Heritage and Environment Resources Office
Seminole Tribe of Florida

"Our traditional Seminole cultural, religious, and recreational activities, as well as commercial endeavors, are dependent on a healthy South Florida ecosystem. In fact, the Tribe's identity is so closely linked to the land that Tribal members believe that if the land dies, so will the Tribe."