UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-3104

December 16, 2020

The Honorable Billy Cypress, Chairman
Miccosukee Tribe of Indians of Florida
P.O. Box 440021 Tamiami Station
Miami, Florida 33144

Subject: EPA's Response to Comments Regarding Consultation on EPA's Action on the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program and Consultation Under the National Historic Preservation Act

Dear Chairman Cypress:

On August 31, 2020, the U.S. Environmental Protection Agency issued a letter to the Miccosukee Tribe of Indians of Florida that extended the opportunity for consultation and coordination on EPA's action to approve or disapprove the State of Florida's request to assume administration of a Clean Water Act (CWA) Section 404 program. EPA's letter provided a weblink to access the complete package included with the State of Florida's request, which EPA received on August 20, 2020, and which included the Operating Agreement (OA) signed by the Florida Department of Environmental Protection (FDEP) and the Florida State Historic Preservation Officer (SHPO).

On September 2, 2020, the EPA also invited Miccosukee Tribe of Indians of Florida to participate in consultation under Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, with respect to the State of Florida's request. On September 23, 2020, EPA received a call from your office affirming the Tribe's interest to consult on EPA's action to approve or disapprove the State of Florida's request to assume administration of a Clean Water Act (CWA) Section 404 program and under Section 106 of the NHPA.

On September 15, 2020, EPA invited the Miccosukee Tribe of Indians of Florida and other tribes with interests in Florida to participate in an informational webinar that was held on September 22, 2020. The informational webinar provided an overview of the federal requirements and processes regarding a state/tribe request to assume administration of a CWA Section 404 program, as well as an overview of the NHPA undertaking and the Section 106 consultation process. The purpose of the webinar was to assist tribes with making an informed decision about whether they wanted to consult with EPA relative to Florida's request to assume the CWA Section 404 program. During the webinar, EPA emphasized that the State's request to assume the CWA Section 404 program excludes Indian country as defined at 18 U.S.C. 1151. EPA also provided notification of its plan and proposed process to comply with NHPA Section 106 by entering into a programmatic agreement (PA) utilizing the OA between the FDEP and the SHPO as the foundation of the PA. EPA requested that the tribes identify issues, gaps and/or concerns with the OA which EPA would try to address in the PA. EPA shared the slide presentation

given during the informational webinar with the Tribe and all other invitees on September 22, 2020. Additionally, EPA provided a copy of the PA to the Tribe and the other consulting parties on November 25, 2020. In response to comments received, EPA made modifications to the PA and transmitted a revised version of the PA to the Tribe and the other consulting parties on December 10, 2020.

Following the informational webinar, EPA and the Miccosukee Tribe of Indians of Florida continued communication during the consultation process as summarized in Enclosure A. Additionally, EPA provided a draft PA to the Tribe and the other consulting parties on November 25, 2020. In response to comments received, EPA made modifications to the PA and transmitted a revised version of the PA to the Tribe and the other consulting parties on December 10, 2020.

Provided in Enclosure B is a responsiveness summary that includes EPA's responses to comments received from the Tribe and the other consulting parties during the consultation process. EPA is providing the complete responsiveness summary per the request of the Advisory Council on Historic Preservation (ACHP) and with the agreement of the consulting Tribes during a December 14, 2020 meeting. The EPA intends to execute a PA with the ACHP, FDEP, and the Florida SHPO prior to taking action on the State of Florida's request and will send the Tribe a copy of the PA once executed

EPA appreciates your engagement throughout the government-to-government consultation process and your important feedback and input on the PA and EPA's action on Florida's request. We will inform you of our final decision regarding Florida's request to assume the CWA Section 404 program by separate letter following our decision.

If you have any questions regarding this matter, please contact me at (404) 562-9345, or have a member of your staff contact Mr. Kelly Laycock at (404) 562-9132 or [HYPERLINK "mailto:laycock.kelly@epa.gov"].

Sincerely,

Jeaneanne M. Gettle, Director
Water Division

Enclosures:

A. Summary of Communication Between the EPA and Miccosukee Tribe of Indians of Florida During Consultation on EPA's Action on the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program and Consultation Under the National Historic Preservation Act
B. EPA Responses to Comments from the National Historic Preservation Act Section 106 Consulting Parties on Florida's Request for Assumption

cc: Mr. Gene Duncan, Water Resources Director, Miccosukee Tribe of Indians of Florida

Fred Dayhoff, Tribal Historic Preservation Officer, Miccosukee Tribe of Indians of Florida

Enclosure A:

Summary of Communication Between the EPA and the Miccosukee Tribe of Indians of Florida During Consultation on EPA's Action on the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program and Consultation Under the National Historic Preservation Act

- 8/31/20: EPA letter issued to the Tribe inviting tribal consultation on FL Assumption.
- 9/2/20: EPA letter issued to the Tribe inviting them to consult under NHPA Section 106 with a link to access the documents that comprised Florida's request for Assumption.
- 9/15/20: EPA email to 8 tribes with an invitation to an Informational Webinar on 9/22/20.
- 9/22/20: EPA hosted the Informational Webinar.
- 9/22/20: EPA email to 8 tribes providing pdf of Webinar slides.
- 9/23/20: Tribe call to EPA with notification of their interest to consult under both the broader consultation on EPA's review of Florida's request for assumption and under NHPA.
- 9/23/20: EPA call with the Tribe to schedule consultation, and 10/8/20 was first date available for Tribe.
- 10/8/20: EPA hosted consultation call with the Tribe.
- 10/20/20: EPA email transmitting notes from consultation call on 10/8/20 and requesting feedback.
- 11/20/20: Tribe call to EPA requesting a second consultation call with potential date of 12/2/20.
- 11/24/20: EPA call and email to Tribe to try to schedule second consultation call.
- 11/25/20: EPA email to consulting parties transmitting draft PA for review and comment.
- 11/30/20: Email communication between EPA and the Tribe to schedule a call for 12/3/20.
- 12/2/20: NHPA PA call with all consulting parties.
- 12/3/20: EPA hosted 2nd consultation call with the Tribe.
- 12/9/20: Tribe letter issued to the EPA transmitting comments on the draft PA.
- 12/10/20: Tribe email requesting a meeting with EPA and the Corps of Engineers.
- 12/10/20: EPA email to consulting parties transmitting revised PA.
- 12/11/20: EPA email transmitting notes from consultation call on 12/3/20 and requesting feedback.
- 12/14/20: EPA hosted call with consulting parties to discuss revisions to PA.
- 12/16/20: EPA letter issued responding to the Tribe's request to meet with EPA and the Corps of Engineers.