Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 12/4/2020 10:23:08 PM
To: Hurld, Kathy [Hurld.Kathy@epa.gov]
CC: Beck, Whitney [beck.whitney@epa.gov]
Subject: Re: proposed NHPA consultation meeting re: the State of Florida's request to assume a 404 program

Thanks

Sent from my iPhone

On Dec 4, 2020, at 4:59 PM, Hurld, Kathy <Hurld.Kathy@epa.gov> wrote:

----DELIBERATIVE-----

Mindy,

See below. A few items that will be challenging in my opinion Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- Kathy

From: Calli, Rosemary <Calli.Rosemary@epa.gov>
Sent: Friday, December 4, 2020 4:34 PM
To: Beck, Whitney <beck.whitney@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Hurld, Kathy <Hurld.Kathy@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Mcgill, Thomas <Mcgill.Thomas@epa.gov>; Morgan, James <Morgan.James@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Subject: FW: proposed NHPA consultation meeting re: the State of Florida's request to assume a 404 program

FYI

From: Ian Thompson <ithompson@choctawnation.com>
Sent: Friday, December 4, 2020 4:22 PM
To: Mcgill, Thomas <Mcgill.Thomas@epa.gov>; Jaime Loichinger <jloichinger@achp.gov>; Javier Marques <jmarques@achp.gov>; Christopher Wilson <cwilson@achp.gov>; Timothy.Parsons@dos.myflorida.com; Aldridge, Jason H. <jason.aldridge@dos.myflorida.com>; Mason, Heather <Heather.Mason@FloridaDEP.gov>; Gray, Stephanie A <Stephanie.A.Gray@FloridaDEP.gov>; THPO@pci-nsn.gov; kweatherford@pci-nsn.gov; lhaikey@pci-nsn.gov; chead@pci-nsn.gov; GeneD@miccosukeetribe.com; beverlyt@miccosukeetribe.com; kevind@miccosukeetribe.com;

JeanineB@miccosukeetribe.com; Amy Castaneda <AmyC@miccosukeetribe.com>; lyannem@miccosukeetribe.com; CraigV@miccosukeetribe.com; paulbackhouse@semtribe.com; kevincunniff@semtribe.com; Stacy Myers <StacyMyers@semtribe.com>; Anne Mullins <AnneMullins@semtribe.com>; Whitney Sapienza <WhitneySapienza@semtribe.com>; Juan Cancel <JuanCancel@semtribe.com>; Bradley Mueller <bradleymueller@semtribe.com>; KarliEckel@semtribe.com; mdiffenderfer@llw-law.com; rsantana@llw-law.com; section106@mcn-nsn.gov; RaeLynn Butler <raebutler@mcn-nsn.gov>; lwendt@mcn-nsn.gov; rosoweka@mcn-nsn.gov; Lindsey Bilyeu <lbilyeu@choctawnation.com>; Madison D. Currie <mcurrie@choctawnation.com>
Cc: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Pugh, Katherine <Pugh.Katherine@epa.gov>; Zimmerman, Eve <Zimmerman.Eve@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Carleton, Ken <kcarleton@choctaw.org>; Alina Shively <ashively@jenachoctaw.org>
Subject: Re: proposed NHPA consultation meeting re: the State of Florida's request to assume a 404 program

Mr. McGill,

The Choctaw Nation of Oklahoma thanks the EPA for consulting with us on the draft Programmatic Agreement that would govern NHPA compliance were the state of Florida to assume the 404 Program from the EPA. The Florida counties of Bay, Escambia, Okaloosa, Santa Rosa, Walton, and Washington lie within the Choctaw Nation's area of historic interest. Choctaw sacred sites and historic sites that are eligible for inclusion on the National Register of Historic Places are located in this area.

For the actual procedures of NHPA compliance, this PA draws mostly on an Operating Agreement (OA) made between the Florida Department of Environmental Protection and the Florida SHPO. Our understanding is that this agreement was finalized without considering the comments that have been submitted by federally recognized Tribes. In using this already finalized document as the core of NHPA compliance for this PA, the EPA is foreclosing on Tribes' ability to consult in a meaningful way. We request that the OA document be reopened.

According to I.A.2.b.i. of the OA, the Florida Department of Environmental Protection, "shall consult with any Indian tribe that attaches religious and cultural significance to historic properties that me be affected by an application." This conflicts with 36CFR 800.(2)(4), which indicates that federal agencies remain responsible for consultation with Tribes even when other NHPA Section 106 duties have been delegated. Executive Order 13175 and the ACHP's statement on "Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation under Section 106 of the National Historic Preservation Act" both affirm this responsibility on the part of federal agencies. A federal agency may delegate its government-to-government consultation responsibility towards a Tribe under the NHPA only with that Tribe's written consent. As this is has not occurred, the EPA still has the responsibility of conducting government-to-government consultation with Tribes on these permits. This needs to be reflected in the OA and PA.

Section 1.B.3. of the OA commits Tribes to specific compliance roles. The PA relies upon the OA for the process of NHPA compliance. This and be remedied by reopening the OA and offering Tribes signatory status on the PA.

Section 1.B.4.d. indicates that the applicant will be responsible for coordinating historic properties review for general permit (no notice) applications. This role needs to be clearly defined.

Regarding Section II.C.4.b. Human remains found in the navigable waterways of the United States are subject to NAGPRA. Choctaw Nation's perspective is that neither the OA nor the PA can remove NAGPRA's jurisdiction from these Native American remains. The OA needs to provide details about how the proposed notification and consultation process will work with EPA's responsibilities under NAGPRA.

The Choctaw Nation of Oklahoma will not support the PA until the issue of the EPA attempting to delegate its responsibility to conduct government-to-government consultation with federally recognized Tribes under NHPA and NAGPRA has been resolved.

Assuming that this can be resolved, the Choctaw Nation requests adding to the PA's stipulation 5 wording to the effect that the annual report of activities conducted under this agreement will be sent to all federally recognized Tribes that have expressed an historic interest in Florida, regardless of whether they are signatories to the PA.

Choctaw Nation requests adding a clause that will automatically terminate this PA after 5 years, unless the signatories agree to continue the agreement for another five years.

Finally, the EPA has indicated that Tribes were selected for consultation on this PA via the information on HUD's website. The HUD website was not created in full consultation with Tribes, and does not necessarily have accurate information on Tribal areas of interest. The Jena Band of Choctaw Indians and the Seminole Nation of Oklahoma should be afforded the opportunity to consult on this agreement as well.

We look forward to continuing work on the agreement.

Respectfully,

Ian Thompson PhD, RPA

Tribal Historic Preservation Officer,

Senior Director,

Historic Preservation Dept,

Wheelock Academy,

Tuskahoma Capitol Museum.

Choctaw Nation of Oklahoma

PO Drawer 1210

Durant, OK 74701

1-800-522-6170 ext. 2216

www.choctawnationculture.com

From: Mcgill, Thomas <Mcgill.Thomas@epa.gov>
Sent: Tuesday, November 17, 2020 4:36 PM
To: Jaime Loichinger <jloichinger@achp.gov>; Javier Marques <jmarques@achp.gov>; Christopher Wilson <cwilson@achp.gov>; Timothy.Parsons@dos.myflorida.com <Timothy.Parsons@dos.myflorida.com>; Aldridge, Jason H. <jason.aldridge@dos.myflorida.com>; Mason, Heather <Heather.Mason@FloridaDEP.gov>; Gray, Stephanie A <Stephanie.A.Gray@FloridaDEP.gov>; THPO@pci-nsn.gov <THPO@pci-nsn.gov>; kweatherford@pci-nsn.gov <kweatherford@pci-nsn.gov>; lhaikey@pci-nsn.gov <lhaikey@pci-nsn.gov>; chead@pci-nsn.gov <chead@pci-nsn.gov>; GeneD@miccosukeetribe.com <GeneD@miccosukeetribe.com>; beverlyt@miccosukeetribe.com <beverlyt@miccosukeetribe.com>; kevind@miccosukeetribe.com <kevind@miccosukeetribe.com>; JeanineB@miccosukeetribe.com <JeanineB@miccosukeetribe.com>; Amy Castaneda <AmyC@miccosukeetribe.com>; lyannem@miccosukeetribe.com <lyannem@miccosukeetribe.com>; CraigV@miccosukeetribe.com <CraigV@miccosukeetribe.com>; paulbackhouse@semtribe.com <paulbackhouse@semtribe.com>; kevincunniff@semtribe.com <kevincunniff@semtribe.com>; Stacy Myers <StacyMyers@semtribe.com>; Anne Mullins <AnneMullins@semtribe.com>; Whitney Sapienza <WhitneySapienza@semtribe.com>; Juan Cancel <JuanCancel@semtribe.com>; Bradley Mueller <bradleymueller@semtribe.com>; KarliEckel@semtribe.com <KarliEckel@semtribe.com>; mdiffenderfer@llw-law.com <mdiffenderfer@llw-law.com>; rsantana@llw-law.com <rsantana@llw-law.com>; section106@mcn-nsn.gov <section106@mcn-nsn.gov>; RaeLynn Butler <raebutler@mcn-nsn.gov>; lwendt@mcn-nsn.gov <lwendt@mcn-nsn.gov>; rosoweka@mcn-nsn.gov <rosoweka@mcn-nsn.gov>; Ian Thompson <ithompson@choctawnation.com>; Lindsey Bilyeu <lbilyeu@choctawnation.com>; Madison D. Currie

<mcurrie@choctawnation.com>
Cc: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Pugh, Katherine <Pugh.Katherine@epa.gov>; Zimmerman, Eve <Zimmerman.Eve@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: proposed NHPA consultation meeting re: the State of Florida's request to assume a 404 program

Hallo: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon!

The EPA plans to host a virtual meeting in two weeks regarding our consultation under Section 106 of the National Historic Preservation Act with respect to the State of Florida's request to assume a Clean Water Act Section 404 program. We specifically intend to discuss a draft Programmatic Agreement that sets forth a process for ensuring protection of cultural and historic resources and welcome input from the consulting parties that are included on this email.

In order to schedule the meeting during a time that maximizes participation, please complete the doodle poll which may be accessed at: https://doodle.com/poll/25swudd67ui89suv?utm_source=poll&utm_medium=link, regarding potential meeting times on November 30, December 1, and December 2. Please respond to the doodle poll regarding your availability by 5:00pm Eastern Standard Time (EST) on Thursday, November 19, and we will follow-up with a meeting invitation. Please note that the proposed meeting times are in EST.

We look forward to the discussion, and please let us know if you have any questions in the meantime.

Tom

==========
Thomas McGill, Chief
Ocean, Wetlands & Streams Protection Branch
U.S. EPA Region 4, Water Division
61 Forsyth Street SW
Atlanta, GA 30303
Mcgill.thomas@epa.gov
404-562-9243

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you have received this message in error, you are hereby notified that we do not consent to any reading, dissemination, distribution or copying of this message. If you have received this communication in error, please notify the sender immediately and destroy the transmitted information. Please note that any view or opinions presented in this email are solely those of the author and do not necessarily represent those of the Choctaw Nation.