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

September 2, 2020

Mr. Reid Nelson, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
Suite 803
1100 Pennsylvania Ave., NW
Washington, DC 20004

Subject: Consultation Under the National Historic Preservation Act Regarding the State of Florida's Request to Assume Administration of a CWA Section 404 Program

Dear Mr. Nelson:

On August 20, 2020, the U.S. Environmental Protection Agency Region 4 received a request from the State of Florida to assume the administration of a Clean Water Act Section 404 program (CWA Section 404) for regulating discharges of dredged or fill material into waters of the United States. Pursuant to the CWA Section 404 and implementing regulations (40 C.F.R. Part 233), the EPA is the federal agency charged with approving or denying Florida's request. The EPA has 120 days within which to complete this action (i.e., by December 17, 2020). The EPA has determined that approval of a state program under CWA Section 404 is a federal undertaking and, therefore, is initiating consultation in accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, and the regulations at 36 C.F.R. part 800.

The EPA is inviting the Advisory Council on Historic Preservation (Council), the Florida Department of Environmental Protection (FDEP), the State Historic Preservation Officer (SHPO), and Indian tribes with interests in Florida to participate in the consultation. As part of the consultation, we anticipate developing a Programmatic Agreement, consistent with the Council's regulations at 36 C.F.R. § 800.14. The Programmatic Agreement may include guidance or agreements to clarify permit processes to avoid and minimize impacts to historic properties. The FDEP and the SHPO have developed an Operating Agreement that lays out coordination and review procedures for FDEP's permit program. The EPA envisions that the Programmatic Agreement will build upon the process set forth in the Operating Agreement.

If approved, the State's program will cover discharges of dredged or fill material into waters of the United States assumed by the State pursuant to Section 404(g)(1) but will not include discharges to waters in Indian country. The U.S. Army Corps of Engineers will retain permitting authority for these discharges into waters in Indian country in Florida.

Information regarding this undertaking and Florida's request package can be accessed from the following site:

https://usepa.sharepoint.com/:f:/r/sites/R4/r4_wetlands_stream_regulatory_section/Shared%20Documents/Florida%20Assumption%20EPA%20Internal/Shared%20Package%20Folder?csf=1&web=1. On this site you will find a copy of the FDEP/SHPO Operating Agreement mentioned above.

The EPA will publish notice in the Federal Register of the proposed action for public comment in the near future. We expect that notice to include information regarding the Section 106 consultation process.

The EPA looks forward to consulting with the Council, FDEP, the SHPO, and Indian tribes with interests in Florida on the undertaking. 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 laycock.kelly@epa.gov.

Sincerely,

Jeaneanne M. Gettle, Director
Water Division