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

December 16, 2020

The Honorable Stephanie Bryan
Chair of the Poarch Band of Creek Indians
5811 Jack Springs Road
Atmore, Alabama 36502

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 Chair Bryan:

On August 31, 2020, the U.S. Environmental Protection Agency issued a letter to the Poarch Band of Creek Indians 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, EPA also invited Poarch Band of Creek Indians 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 28, 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 CWA Section 404 program and under Section 106 of the NHPA.

On September 15, 2020, EPA invited the Poarch Band of Creek Indians and other tribes with interests in Florida to participate in an informational webinar that was held on September 22, 2020. 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. Although the Tribe did not participate in the webinar, on September 22, 2020, EPA provided the Tribe with the slide presentation that was given during the webinar. The presentation 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 Section 106 consultation process. The presentation also included information about EPA's plan and proposed processes 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. The presentation also included a request that the tribes identify any issues, gaps and/or concerns they had with the OA which EPA would try to address in the PA.

EPA and the Poarch Band of Creek Indians 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 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 laycock.kelly@epa.gov.

Sincerely,

Jeaneanne M. Gettle, Director
Water Division

Enclosures:

A. Summary of Communication Between the EPA and Poarch Band of Creek Indians 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: Kristi Weatherford, Environmental Director, Poarch Band of Creek Indians

Larry Haikey, Tribal Historic Preservation Officer, Poarch Band of Creek Indians

Enclosure A:

Summary of Communication Between the EPA and the Poarch Band of Creek Indians 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. (Tribe unavailable to participate).
- 9/22/20: EPA email to 8 tribes providing pdf of Webinar slides.
- 9/28/20: Tribe call to EPA with notification of their interest to consult.
- 10/7/20: EPA hosted consultation call.
- 10/7/20: EPA email to Tribe providing Informational Webinar slides and copy of OA.
- 10/22/20: EPA email to Tribe providing notes from 10/7/20 consultation call.
- 10/22/20: Email from Tribe requesting additional consultation meeting.
- 10/30/20: EPA hosted second consultation meeting.
- 11/13/20: EPA email to Tribe providing notes from 10/30/20 meeting.
- 11/25/20: EPA email to consulting parties transmitting draft PA for review and comment.
- 12/2/20: NHPA PA call with all consulting parties
- 12/7/20: Letter from Tribe with comments on draft PA.
- 12/10/20: EPA email to consulting parties transmitting revised PA.
- 12/14/20: EPA hosted call with consulting parties to discuss revisions to PA. The Tribe accepted the invitation but did not participate.