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

December 16, 2020

The Honorable Marcellus W. Osceola, Jr.
Chairman
Seminole Tribe of Florida
6300 Stirling Roar
Hollywood, FL 33024

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 Osceola:

On August 31, 2020, the U.S. Environmental Protection Agency issued a letter to the Seminole Tribe 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). The EPA's letter also acknowledged a request on August 24, 2020, from Ms. Rachel B. Santana on behalf of the Tribe, requesting consultation on this matter.

On September 2, 2020, EPA also invited the Seminole Tribe 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 3, 2020, EPA received a letter from your office affirming the Tribe's interest to consult under Section 106 of the NHPA. On September 10, 2020, Ms. Santana, on behalf of the Tribe, informed EPA that the Tribe would like to have one combined consultation (combining the Agency's general tribal consultation process with consultation under Section 106 of the NHPA) rather than running both consultations separately.

On September 15, 2020, EPA invited the Seminole Tribe 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 consulting tribes 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.

Following the informational webinar, EPA and the Tribe 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 laycock.kelly@epa.gov.

Sincerely,

Jeaneanne M. Gettle, Director
Water Division

Enclosures:

A. Summary of Communication Between the EPA and Seminole Tribe 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: Kevin M. Cunniff, Director Environmental Resources Management Department,
Seminole Tribe of Florida

Paul Backhouse, Tribal Historic Preservation Office Director
Seminole Tribe of Florida

Enclosure A:

Summary of Communication Between the EPA and the Seminole Tribe of 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

- 8/24/20: Email from an attorney on behalf of the Tribe requesting to consult on Florida Assumption.
- 8/31/20: EPA letter issued to the Tribe inviting tribal consultation on Florida Assumption with a link to access the documents that comprised Florida's request for Assumption.
- 9/2/20: EPA letter issued to the Tribe inviting them to consult under National Historic Preservation Act (NHPA) Section 106 with a link to access the documents that comprised Florida's request for Assumption.
- 9/3/20: Email from the Tribe with notification of their interest to consult on NHPA Section 106.
- 9/10/20: Email from an attorney on behalf of the Tribe requesting one combined consultation and a video conference to discuss consultation on 9/28/20.
- 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.
- 9/28/20: EPA hosted consultation meeting with the Tribe.
- 10/7/20: Email from the Tribe transmitting initial comments regarding the OA and PA.
- 10/15/20: EPA email to the Tribe providing notes from the 9/28/20 meeting.
- 11/2/20: Tribe letter issued to EPA with comments on the State's request for 404 Assumption.
- 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.