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

January 19, 2021

Chief Cheryl Smith
Jena Band of Choctaw Indians
551 Tuskahina
Trout, Louisiana 71371

Dear Chief Smith:

On December 17, 2020, the U.S. Environmental Protection Agency approved a request by the State of Florida to assume a Clean Water Act (CWA) Section 404 Permitting Program. This program became effective on December 22, 2020. Under this program, the State of Florida assumed CWA 404 permitting for the discharge of dredged or fill material into certain waters located in the State of Florida; however, the State did not assume permitting authority over any waters located in Indian country, as defined at 18 U.S.C. 1151. In Indian country, the U.S. Army Corps of Engineers remains the permitting entity. For additional information regarding EPA's approval of the State of Florida's request, please see the EPA's website at: https://www.epa.gov/publicnotices/notice-epas-approval-floridas-clean-water-act-section-404-assumption-request.

As part of EPA's process in evaluating Florida's request, we completed consultation under Section 106 of the National Historic Preservation Act and entered into a final Programmatic Agreement (PA) with the Advisory Council on Historic Preservation (ACHP), Florida Division of Historical Resources-State Historic Preservation Officer (Florida SHPO), and the Florida Department of Environmental Protection (FDEP). The PA, along with other assumption documents including an Operating Agreement between FDEP and the Florida SHPO, set forth the process for consideration of potential impacts on historic properties in connection with FDEP's administration of the assumed permitting program, which, again, applies only to waters located outside of Indian country. These agreements include opportunities for tribes to raise issues related to their historical interests to both Florida and to EPA for waters located within the boundaries of the State of Florida but not in Indian country. In these documents, the State of Florida has committed to consulting with the tribes on assumed Section 404 permit applications and, should a dispute arise, the PA contains a federal review process that includes consultation with tribes, where appropriate, as well as consultation with the ACHP.

We would like to make you aware of the procedures outlined in the PA, and are therefore providing you copies of that document, the Operating Agreement between FDEP and the Florida SHPO, and flow charts that have been developed outlining the process related to permitting. We would be happy to meet with you to discuss the PA and the assumption process.

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 GETTLE

Digitally signed by JEANEANNE GETTLE
Date: 2021.01.19 14:50:03 -05'00'

Jeaneanne M. Gettle, Director
Water Division

Enclosures

1. Section 106 Programmatic Agreement
2. Operating Agreement between FDEP and the Florida SHPO
3. Flowchart on the 404 Permit Process (Individual Permit)
4. Flowchart on the 404 Permit Process (General Permit)
5. Flowchart on the 404 Permit Process (Procedures for Human Remains)

Cc: Alina Shively, Tribal Historic Preservation Officer, Jena Band of Choctaw Indians
Lillie Williamson, Environmental Director, Jena Band of Choctaw Indians