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Sent: Tue, Aug 29, 2017 11:04 am
Subject: Re: FOIA request to GCERC

In response to your Freedom of Information Act (FOIA) request, please find the RESTORE Council's draft Policy on Working Effectively with Indian Tribes: Communication, Collaboration, Coordination, and Consultation dated February 16, 2017 (Tribal Consultation Policy). The Council is releasing all responsive pages in their entirety.

The Tribal Consultation Policy is designed to specify how the Council works with federally recognized Indian Tribes on a government-to-government basis. Please note that although the policy has been reviewed by Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, Caddo Nation, Catawba Indian Nation, Cherokee Nation, Chickasaw Nation, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians of Florida, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Quapaw Tribe of Indians, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Shawnee Tribe, Thlopthlocco Tribal Town, Tunica-Biloxi Indian Tribe, United Keetoowah Band of Cherokee Indians of Oklahoma, Kickapoo Traditional Tribe of Texas, Ysleta del Sur Pueblo Tribes, it has not yet been approved by those tribes or by the Council and so remains a draft policy.

Because you are categorized as an "all other" requester, there are no fees charged for this request.

Please note that you have the right to seek assistance from the Council's FOIA Public Liaison, who is David Gilliland. Please contact Dave at David Gilliland <david.gilliland@restorethegulf.gov> if you have any questions or concerns.

Sincerely,
Buck Sutter
FOIA Officer

**The Gulf Coast Ecosystem Restoration Council
Policy on Working Effectively with Indian
Tribes:
Communication, Collaboration, Coordination,
and Consultation**

*February 16, 2017
Draft*

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The Gulf Coast Ecosystem Restoration Council Policy on Working Effectively with Indian Tribes: Communication, Collaboration, Coordination, and Consultation

I. Policy Statement

This “Tribal Communication, Collaboration, Coordination, and Consultation Policy” (Policy) of the Gulf Coast Ecosystem Restoration Council (Council) establishes the manner in which the Council works with federally recognized tribes (Indian Tribes or Tribes) on a government-to-government basis. This Policy provides a foundation for building durable relationships; addresses issues concerning Tribes including self-government, Tribal trust resources, Tribal treaty and other rights; and enhances, protects and preserves Tribal cultural and environmental resources. Communication, collaboration, coordination, and consultation must be mutually supportive and lead to information exchange, mutual understanding, and informed decision-making. The Council recognizes Tribal self-government and supports Tribal sovereignty and self-determination.

The Council recognizes the unique legal and political relationship between Tribal governments and the Federal government, as established in the Constitution, statutes, treaties, executive orders and federal court decisions. In recognition of that special relationship, and pursuant to Executive Order 13175 (“Consultation and Coordination with Indian Tribe Governments”), the Council establishes this Policy in order to ensure government-to-government engagement and promote enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Tribes or a meaningful and good-faith government-to-government consultation process. This Policy shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide the Tribal consultation process.

The Council recognizes each federally recognized Indian Tribe as a culturally unique Tribal government. Therefore, the Council will collaboratively develop tribe-specific protocols with any requesting federally recognized Indian Tribe. Tribe-specific protocols will complement and be in addition to this Policy statement.

The Council acknowledges that it does not have the authority or responsibility to consult with non-federally recognized tribes on a government-to-government basis. This Policy statement is not intended to, and does not, enlarge or diminish the Council’s legal obligations to federally recognized Indian Tribes, nor does this Policy statement provide an independent cause of action against the Council, any of its members, officers or employees, or any person beyond any existing legal responsibilities.

This Policy is to be construed consistent with federal statutes, regulations, and other

relevant federal legal authorities as well as presidential memoranda and executive orders.

II. Background and Authority

Background

In July 2012, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) established the Council, which is comprised of governors from the States of Alabama, Florida, Louisiana, Mississippi and Texas; and the Secretaries from the U.S. Departments of the Interior, Commerce, the Army, Agriculture, and Homeland Security, as well as the Administrator of the U.S. Environmental Protection Agency.

This Policy complies with the Presidential Memorandum issued November 5, 2009, directing agencies to develop a plan to fully implement Executive Order 13175. Executive Order 13175 specifies that each agency must have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.

The Council provided opportunity for review and communicated, collaborated, coordinated and consulted with Tribes to the greatest extent practicable and permissible in the development of this Policy.

One of the primary goals of this Policy is to fully implement Executive Order 13175, with the ultimate goal of strengthening the communication, collaboration, coordination, consultation, and partnership between Tribal governments and the Council.

Authority

The federal government has a unique legal and political relationship with Indian Tribes, established through and confirmed by the U.S. Constitution, treaties, statutes, executive orders, and judicial decisions. As a federal agency, the Council is adopting this Policy in order to recognize that relationship and to implement Executive Order 13175 and Executive Order 13007 (“Indian Sacred Sites”). Additional authorities include the National Historic Preservation Act (54 U.S.C. § 306108 et seq., formerly 16 U.S.C. § 470), the Archaeological Resources Protection Act (16 U.S.C. § 470aa et seq.), the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq.), and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) to the extent they apply.

III. Definitions

- A.** “Consultation” means an open, timely, meaningful, collaborative and effective communication process that emphasizes trust, respect and shared responsibility. To the extent practicable and permitted by law, communication, collaboration, coordination, and consultation works toward: (1) mutual consensus and begins at the earliest planning stages, before decisions are made and actions are taken, and (2) an active and respectful dialogue concerning actions proposed by the Council that may significantly affect Tribal resources, Tribal rights (including treaty rights) or Tribal interests in “Indian Country” (as defined below).
- B.** “Gulf Coast States” or “States” means the States of Alabama, Florida, Louisiana, Mississippi and Texas.
- C.** “Indian Country” means:
1. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
 2. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state;
 3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same;
 4. All land owned by a Tribe including trust, reservation, fee simple, and allotted lands.
- D.** “Tribal official” means an elected, appointed, or designated official or employee of a Tribe.
- E.** “Tribal resources” or “Tribal trust resources” means those natural resources and properties of traditional or contemporary religious or cultural importance, either on or off Tribal lands, retained by, or reserved by or for, Tribes through federal treaties, statutes, agreements or executive orders.
- F.** “Tribe” or “Indian Tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25

U.S.C. § 479a.

IV. References

- A.** National Historic Preservation Act of 1966, 54 U.S.C. § 306108 et seq. (formerly 16 U.S.C. § 470).
- B.** Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa et seq.
- C.** Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. § 3001 et seq.
- D.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority populations and Low-Income Populations, 16 Feb 1994.
- E.** Executive Order 13007, *Indian Sacred Sites*, 24 May 1996.
- F.** Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, 6 Nov 2000.
- G.** Presidential Memorandum, *Tribal Consultation*, 5 Nov 2009.
- H.** Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), 33 U.S.C. § 1321(t).
- I.** National Environmental Policy Act, 1970, 42 U.S.C. § 4321 et seq.
- J.** Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C. § 479a.
- K.** Freedom of Information Act, 1967, 5 U.S.C. § 552.

V. COUNCIL TRIBAL POLICY GUIDING PRINCIPLES

TRIBAL SOVEREIGNTY – The Council recognizes that Tribal governments are sovereign governments, with the right to set their own priorities, develop and manage Tribal and trust resources, and be involved in federal decisions or activities which have the potential to affect these rights. Tribes retain inherent powers of self-government. The Council recognizes and respects the diversity of Tribes and understands that Tribes are culturally, traditionally, and administratively diverse. In recognition of this diversity and inherent Tribal powers, consultation requests may be initiated by either a Tribe or the Council.

TRUST RESPONSIBILITY – The Council will act in a manner consistent with the federal government’s trust responsibility to Indian Tribes and will work to meet trust obligations, protect trust resources, and obtain Tribal views of trust and treaty responsibilities, if any, related to Council actions. As an independent agency of the federal government, the Council recognizes its own general trust relationship with, and responsibility to, Indian Tribes.

GOVERNMENT-TO-GOVERNMENT RELATIONS – The Council will establish an avenue for Tribal leaders to meet with Council leaders and recognizes that, as governments, Tribes have the right to be treated with respect and dignity, in accordance with principles of self-determination. If the Council becomes aware of organizational impediments limiting the Council’s ability to work with Indian Tribes, the Council will seek to remove or restructure those impediments to the extent authorized by law and consistent with this Policy. The Council engaged with Tribes located within the Gulf Coast States in the development of this Policy and will continue to engage with Tribes to discuss improving communication, collaboration, coordination, and consultation practices and procedures.

To promote Tribal relations, the Council has established the Director of Tribal Relations position, which will serve as the primary point of contact for Tribal issues and concerns between Tribes and Council, to ensure Tribal engagement is developed, maintained and enhanced to the highest level available under the law. The Director of Tribal Relations will work cooperatively and collaboratively across all agencies and states to build a cooperative, collaborative, and integrated approach to issues, programs and services addressing the needs of Tribes, including the conduct of Tribal consultation. The contact information for the Director of Tribal Relations will be maintained under the Tribal page of the Council website (www.restorethegulf.gov) for easy accessibility.

Council interagency agreements with federal Council members for Council-approved RESTORE Act projects and programs will include a provision that requires adherence to Council Tribal Policy throughout the period of performance of such projects and programs.

Council grant awards to State Council members for Council-approved RESTORE Act projects and programs will include provision that requires adherence to Council Tribal Policy throughout the period of performance of such projects and programs.

PRE-DECISIONAL CONSULTATION – The Council will involve Tribes in collaborative processes designed to ensure information exchange, consideration of viewpoints before and during decision making, and utilization of fair and impartial dispute resolution mechanisms. The Council will be clear in identifying, in collaboration with relevant Tribal officials, when consultation is needed and when consultation is taking place.

SELF RELIANCE, CAPACITY BUILDING, AND GROWTH – The Council will search for ways to involve Tribes in programs, projects and other activities that build economic capacity and foster abilities to manage Tribal resources while preserving cultural identities. Partnering with Tribes on studies, projects and programs will be supported and promoted to the extent permitted by law and policy. The Council will incorporate Tribal knowledge for planning purposes and to inform operation activities.

NATURAL AND CULTURAL RESOURCES – The Council recognizes and respects the significance Tribes ascribe to cultural and environmental resources, that cultural and environmental resources are often inseparable, and that certain resources and properties are utilized in traditional and customary religious ceremonies. The Council will act to fulfill obligations to preserve and protect Tribal trust resources to the extent permitted by law. To the extent permitted by law and consistent with the federal government’s trust responsibility to Tribes, the Council will endeavor to protect the location of historic properties, properties of religious and cultural significance, and archaeological resources, in consultation with and when requested by the affected Tribes.

In some instances, Council funding approval for a project of program may be accompanied by environmental compliance documentation pursuant to federal law that includes conditions pertaining to Tribal historic and cultural resources. Such conditions, for example, may require the funding recipient to conduct archaeological surveys prior to implementing a certain activity in order to ensure that any historic and cultural resources are properly addressed. The Council is committed to working with its members to ensure full compliance with any such conditions by effectively conveying them to funding recipients and ultimately to the parties directly responsible for implementation of the given project or program.

Monitoring of these and all compliance activities will be monitored and communicated with Tribes throughout the implementation process and life of the project or program.

Government-to-Government or Sovereign-to-Sovereign agreements will be established consistent with the federal trust responsibility and will uphold protection of any and all historic or cultural properties.

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS – The Council notes the distinction between this Policy, federal environmental laws pertaining to public involvement, and Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). Under this Policy, the Council consults with Tribal governments when agency actions

and decisions may significantly affect Tribal interests. This commitment is separate from, but may be simultaneously executed with, the Council's concurrent obligation to involve the public as required by federal environmental laws. The Council also recognizes the need to be responsive to the environmental justice concerns of non-federally recognized Tribes, individual Tribal members, Tribal community-based/grassroots organizations and other indigenous stakeholders under Executive Order 12898.

EDUCATION, AWARENESS, AND TRAINING – The Council will seek to identify and establish procedures and mechanisms to educate Council staff about working effectively with Tribal governments and understanding Tribal cultures, Tribal sovereignty, Tribal treaty and other rights, federal Indian law, and Tribal engagement under Executive Order 13175. The Council recognizes that each Tribe is unique and has its own guidelines established on how federal agencies and employees communicate and work with the Tribe; therefore, the Council will reach out to Tribes, to the extent practicable, for cultural training opportunities to strengthen cultural knowledge and relationships. Training will seek to enhance mutual understanding of cultural perspectives and administrative requirements between Tribal and federal officials and to promote inter-governmental relationships. Tribal representatives will be encouraged to participate in training along with Council employees.

COMMUNICATIONS, DOCUMENTATION, AND REPORTING – Methods that ensure accountability and reporting are essential to regular and meaningful communication, collaboration, coordination and consultation. The Council will establish procedures to document and report communications with Tribes to ensure it is working effectively with Tribes. The Council will review Tribal policy, procedures and activities to ensure good Tribal relations are maintained and prioritized. On an annual basis, the Council shall prepare a progress report of Tribal engagement activities and submit to the Director of the Office of Management and Budget as required by Presidential Memorandum on Tribal Consultation dated November 5, 2000. The Council will post this report on the Council's website at www.restorethegulf.gov Tribal page and linked to this Policy. Tribal requests for confidentiality of information made during consultation will be respected and accommodated to the extent permitted by law.

VI. Implementation:

The Council will seek and promote cooperation among the six federal agencies and five state members making up the Council, as well as all Council employees. The Council's mission encompasses many complex issues where cooperation and mutual consideration among the federal, State, Tribal, and local governments are essential. To that end, the Council will promote, lead, and ensure that Tribal engagement as set forth in this Policy is understood, promoted and followed.

To the extent practicable, the Council will consult with Tribes (individually or collectively as the parties may determine) at mutually convenient times, and will endeavor to notify Tribes 60 to 90 days prior to any such consultation meetings (unless the Council determines that circumstances necessitate a shorter notification period) in order to allow meaningful input by Tribes. The Council will provide all communications to be discussed during consultation meetings, including dates, times and meeting places.

The Council will treat a request for consultation from a Tribal official in an expedited fashion and provide a written or emailed response confirming receipt of the request in a timely manner.

The Council will provide Tribal officials with a formal, written communication that summarizes the consultation, and responds to the issues and concerns, if any, identified during consultation. The follow-up communications should be transmitted by the Council within 30 days after the consultation. The follow-up communications should also specifically indicate whether the Council accepts the position of one or more Tribes, and/or include an explanation of the Council's position(s).

The Council provided opportunity and communicated, collaborated, coordinated and engaged with Tribes to the greatest extent practicable and permissible in the development of this Policy. In so doing, Tribes were and have been involved with this Policy development from day one and therefore this Policy is mutually agreed upon by the Council and Tribes.

The following Tribes were and are engaged in the development process:

Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, Caddo Nation, Catawba Indian Nation, Cherokee Nation, Chickasaw Nation, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians of Florida, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Quapaw Tribe of Indians, Seminole Nation of Oklahoma, Seminole

Tribe of Florida, Shawnee Tribe, Thlopthlocco Tribal Town, Tunica-Biloxi Indian Tribe, United Keetoowah Band of Cherokee Indians of Oklahoma, Kickapoo Traditional Tribe of Texas, Ysleta del Sur Pueblo.

This Policy is not intended to, and does not, grant, expand, create or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created by this Policy. This Policy shall not be construed to alter, amend, repeal, interpret, or modify Tribal sovereignty or any treaty rights of any Indian Tribe, or to preempt, modify or limit the exercise of any such rights.

This Policy is established to improve Council management of its relations and cooperative activities with Indian Tribes. Notwithstanding anything to the contrary herein nothing in this Policy creates any budgetary obligation or right of action on behalf of any person or entity against the Council for failure to comply with this Policy, or creates any right, substantive or procedural, enforceable by law or in equity by any person or entity against the United States, its agencies, or any person.

Amendments (substantive changes) or revisions (corrections or updates) to this Policy may be developed and issued by the Council after meaningful consultation between the Council and Tribal officials.

This Policy is effective beginning on the date that it is approved and adopted by the Council and will remain in effect until it is withdrawn or amended.

Ben Scaggs
Executive Director (Acting)
Gulf Coast Ecosystem Restoration Council

Date

This Policy is effective beginning on the date that it is approved and adopted by the Tribal Council of the “Tribe’s Name” and will remain in effect until it is withdrawn or amended.

DRAFT

DRAFT

DRAFT

Tribal Leader Name
Tribal Leader Title

Date