TWG: Cultural

Meeting: #3  Date: October 3, 2018  Time: 10 a.m.-12 p.m.

Attendees:
☒ Laura Berglan, Pascua Yaqui Tribe
☒ Lee Decker, Gallagher & Kennedy
☐ Stephen Glass, Gault Group, LLC
☐ Mark Horlings, Maricopa Audubon Society
☒ Robert Linsell, Granite Construction Company, Inc.
☐ Ronald Maldonado, WestLand Resources, Inc
☒ Linda Mayro, Pima County
☒ Susan Montgomery, Attorney representing Inter-Tribal Assoc. of Arizona
☒ Courtney Rose, Pima County
☒ Peter Steere, Tohono O’odham Nation
☒ Mary Ellen Walsh, State Historic Preservation Office
☒ JR Welch, Archaeology Southwest

Staff Support:
☒ David Lelsz, ADEQ
☒ Kelly Cairo, GCI, by Phone

Discussion Items:
• Mary Ellen Walsh has placed a Consultation Process Flow Chart, for State, on the Google Drive
• She created a list of cultural resources applicable laws in a spreadsheet form
• She also created a document with additional federal regulations
• Process change: all meeting notes to go out by e-mail to all work groups
• Stakeholder Meeting feedback
  o Will ADEQ look to Legislature for General Fund for the program?
  o Schedule is problematic
  o Are there gaps in state authority on cultural resources?
• Technical Work Group attorneys may need to confer to on state law to see what is possible
  o 404b1 guidelines discussion to take place between Lee Decker and Susan Montgomery offline (Note: this will/may occur after a report out from Heidi Welborn.)
• Pima County has adopted federal standards and Arizona state laws to do its work
• Pima County is a potential model for Cultural and Historic preservation
• Is the process able to exceed the existing state laws and rules on cultural, biological? Peter Steere reported that the Nation considers cultural and biological resources as a whole.
  o Heidi Welborn, ADEQ, clarified by phone
  o No authority to follow federal law
  o Expectation for the Work Group is to suggest what things might need to be done to implement the program, if possible
  o There was a suggestion that one option is to describe a future process that looks like the current process
• Has Michigan passed a bill to follow federal law as it relates to the 404 program?
• Sue Montgomery noted that there is not a comparable substantive remedy for tribes under the state process if cultural resource laws and requirements (including consultation) are not followed. Heidi Welborn requested this language be included in the white paper.
Housing and Urban Development might be an illustrative example for implementation.

David Lelsz reported that ADEQ received robust feedback at the Tribal Listening Session, including interest in a 404 Tribal Workgroup. This Tribal Workgroup activity would be in addition to existing tribal consultation.

- Sue Montgomery recommended additional communication on progress and timelines to tribes. Additional follow up with ITCA is also anticipated.
- What will the Tribal Work Group do? Will their work continue beyond the Dec. 20 white paper deadline?
- How will Tribal Work Group relate to this Work Group?

David Lelsz provided a brief overview of three tiers of tribal consultation

- ADEQ overall
- 404 Assumption
- Requirements with individual permits

There was a comment that it will be important to understand definitions used for consultation (true consultation vs. notification).

106 Process Flow Chart discussion

- ADOT has taken over the lead on the Federal Highway Department—might serve as a model for state assumption on 404.
- How would tribes know that a project is underway? Sometimes only a letter to the tribes.
- Consultation appears to be a “check the box” process.
- Flow chart—adverse/HPTP effects flow path should have a Tribal Notification.

**Assignments**

- Review Consultation Process Flow Chart/Power Point on the Google Drive
- Review list of applicable laws on Google Drive
- Heidi will ask AGO about current state authority and whether the current authority acts as a ceiling?
- Comment on previous documents 106 flow chart
- Kelly to send a link to Peter and any others who cannot access Google. If this process does not allow access, Kelly to send all documents on the drive to Peter.

**Next Meeting Agenda:**

- Report out from Heidi on questions to AGO
- Review Consultation Process Flow Chart/Power Point on the Google Drive
  - Does it describe the current state as we know it?
  - Does it describe an idealized future state?
- Review list of applicable laws on Google Drive
- Report out from Steve to convey larger concerns regarding consultation with the Permit Process group. Suggestion is to urge them to look at how the consultation process and cultural and historic process fits in part of the overall process.
Laura recommended that next steps include identifying the current process, how to improve the current process, and when and where section 106 consultation should occur.