

TWG: Cultural and Historic

Meeting: #6 Date: Nov. 15, 2018 Time: 1:30-3:30 p.m.

Attendees:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Laura Berglan, Pascua Yaqui Tribe | <input checked="" type="checkbox"/> Susan Montgomery, Attorney representing Inter-Tribal Assoc. of Arizona |
| <input checked="" type="checkbox"/> Lee Decker, Gallagher & Kennedy | <input checked="" type="checkbox"/> Courtney Rose, Pima County |
| <input checked="" type="checkbox"/> Mark Horlings, Maricopa Audubon Society | <input checked="" type="checkbox"/> Peter Steere, Tohono O'odham Nation |
| <input type="checkbox"/> Kathryn Leonard, SHPO | <input checked="" type="checkbox"/> Mary-Ellen Walsh, State Historic Preservation Office |
| <input type="checkbox"/> Robert Linsell, Granite Construction Company, Inc. | <input checked="" type="checkbox"/> JR Welch, Archaeology Southwest |
| <input checked="" type="checkbox"/> Ronald Maldonado, WestLand Resources, Inc | <input checked="" type="checkbox"/> Alana Hake, Gallagher & Kennedy |
| <input checked="" type="checkbox"/> Linda Mayo, Pima County | |

Staff Support:

- David Lelsz, ADEQ Kelly Cairo, GCI

Discussion Items:

- Any changes to the meeting #5 notes are due by COB November 19.
- Laura reviewed the questions and answers posed to Sallie Diebolt, USCOE.
 - What improvements in the current cultural resources process would you suggest if you were starting from scratch? (Response): Regulatory's role is to follow the law and ensure proposed projects comply with the law. We have a good working relationship with AZ SHPO, which assists going through the process. I don't have any other input on this question.
 - Have you been involved in previous state assumption processes? If so, what has worked well, what has not worked well? (Response): No.
 - Could ADEQ be required to follow federal law, as FHWA requires ADOT to comply with federal processes? (Response): I have no basis or expertise to answer this question.
 - Could the assumption approval be contingent on following a parallel Section 106 process? (Response): I have no basis or expertise to answer this question.
 - Action item: Mary-Ellen to pose these same questions to the federal preservation officer of the EPA.
- Courtney will post the draft current state by COB November 16.
 - Action items: Edits/suggestions should be posted to the "C and H Resources White Paper" between noon Nov. 16 and COB Nov. 19. Courtney will provide an update to the current state by Nov. 27, with edits suggestions due Nov. 28.

Open Discussion

- Action item: Kelly to invite TWG members to view all resources from all TWGs. (Done.)
- Mary-Ellen explained that the State Historic Preservation Act differs from the Arizona Antiquities Act. SHPA is broader and relates to the activities of the State Historic Preservation Office.
- The group agreed that Laura and Mary-Ellen should seek an extension for the white paper. David recommended drafting a current, future and potential gap closure by Dec. 20 with a request to get input from the Tribal TWG, and continue to meet as a working group pending input.
 - Action item: Laura and Mary Ellen to meet with Trevor Baggio regarding this request.

- Mark was concerned about an open-ended deadline, and continued availability beginning in January.
- Status update on Tribal TWG.
 - David explained that ADEQ staff is calling individuals to secure membership. Three of the 22 seats have been officially filled, but don't yet have the full complement of TWG members.
- Schedule
 - David said that the schedule is on the website. Highlights include the majority of TWGs to be completed by Dec. 20. A formal document is due to EPA in 2020.

White Paper

- Sue said that the group should lay out the best possible outcome, even if it is not achievable. The gap closure discussion should provide gap closures where possible. If gap closures are unlikely, this also should be noted, with anticipated resulting outcomes.
- Suggested “best practical desired outcome” and addressing these gaps.
- The group agreed: Goal is to develop a program that is as protective as the current process regarding cultural and historic resources and tribal consultation.
 - Need to define cultural and historic resources.
 - Action item: Courtney to include current definitions of cultural and historic resources in current state.
- Alana pointed out that while the existing federal language cannot be dropped into a state program, the goals should be met. The method of working out those details will be key. Hopefully a more streamlined timeline can be created.
- Ronald explained that maintaining the consultation timelines will be important to the tribes.
- Mark said we are close to describing the current state. Next step is to look at best program we can put together under the current regulations. Believe that tribal consultation as described in the executive order could be as robust as the tribes desire.

Plan for White Paper Recommended Structure (assignments):

- Introduction
 - Include goal statement: Goal is to develop a program that is as protective as the current process regarding cultural and historic resources and tribal consultation.
- Description of current state (including positives and negatives) (Courtney)
- Description of ideal future program under the State/elements (& why is this ideal?) (Sue and Laura)
- Identify and explain the gaps between current state and future state Arizona program (Lee has begun this work)
- Identify and explain gap closure options (including explanations and why they're good options)
 - Brief intro description
 - Table summary of options
 - Separate headings for each option to discuss each fully, including benefits and drawbacks
 - E.g. Option XYZ
 - Description
 - Benefits of Option XYZ (also perhaps compared to other options)
 - Drawbacks/obstacles to each gap option (also perhaps compared to other options)

Other

- David demonstrated the permits in process map. The app works on computers or cell phones. Currently, items in red and orange indicate problems. The map is not a substitute for the required list. David requested scrutiny on absolutely anything that is a part of the app, and that TWG members send the link to anyone they wish for feedback.
 - Action item: David to forward PIP map to TWG members. (Done.)
 - Action item: All to consider how their interests could be better served by the map and legend, and forward any suggestions to David by Nov. 29.

Assignments and Action Items:

- (10/18) Pending approval, Lee to provide consultation research documents to Laura, Susan, Mary-Ellen; then TWG members.
- (11/1) Peter to review the current consultation process document from a tribal point of view and his work on 404 issues for the nation.
- (11/1) Kathryn to report on 106 relationship to permitting process on private land.
- (11/1) Mary-Ellen to forward 40 CFR 233.52d6 to Kathryn for additional review from SHPO Advisory Office.
- (11/1) Kathryn (and staff members) and Linda to coordinate on permitting actions on private land.
- (11/15) Courtney to post current state by COB Nov 16
- (11/15) All to review updated current state by COB Nov 19
- (11/15) Courtney to post updated current state, including current definitions of cultural and historic resources by COB Nov 27
- (11/15) All to review updated current state by COB Nov 28
- (11/15) Mary-Ellen to pose questions identified in discussion to the federal preservation officer of the EPA.
- (11/15) All to consider how their interests could be better served by the PIP map and legend, and forward any suggestions to David by Nov. 29.
- (11/15) All to provide any comments on the previous meeting notes by Nov. 19.

Future Discussion Needed:

- (11/1) How would local jurisdiction interface with state level cultural/historic regulations?

Next Meeting Agenda:

- Review Consultation Process Flow Chart on the Google Drive
 - Does it describe the current state as we know it?
 - Does it describe an idealized future state?
- Next meetings
 - Nov. 29, 1-3 p.m., ADOA, 400 W Congress St., Tucson, Room tba
 - Dec. 14, 10:30 a.m.-12:30 p.m., ADEQ, 1110 W. Washington St., Room 3100B.