

MEMORANDUM OF UNDERSTANDING

Between US Army Corps of Engineers, Memphis District

And

Osage Tribe of Oklahoma

For Consultation and Cooperation

Pursuant to Appropriate Federal, State and Local Statutes and Executive Orders

WHEREAS, the US Army Corps of Engineers, Memphis District and the Osage Nation wish to maintain and expand their Government-to-Government relationship for the purposes of consultation, cooperation, and protection of culturally sensitive information to enhance this relationship as stewards of Federal land and of activities on private land, and, wish also to set down procedures to formalize this relationship, and

WHEREAS, the Government-to-Government relationship is set forth in legal authorities including but not limited to the National Historic Preservation Act, citation (NHPA); the Archeological Resources Protection Act, citation (ARPA); the Native American Graves Protection and Repatriation Act, citation (NAGPRA); the National Environmental Policy Act, citation (NEPA); the American Indian Religious Freedom Act, citation (AIRFA); Presidential Executive Order 13007, Indian Sacred Sites; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13287, Preserve America; state stuff here; and

WHEREAS, the Memphis District has Federal management responsibilities over for lands currently under its jurisdiction, and for lands affected by their activities; and

WHEREAS, the Osage Nation once inhabited lands now under Corps jurisdiction and is forever tied to these lands; and

WHEREAS, the Memphis District and the Osage Nation agree that the Osage possess unique experience and oral history to identify and evaluate historic properties, sacred sites, and traditional cultural properties of importance to them;

NOW, THEREFORE, the Memphis District and the Osage Nation agree that consultation and communication between them shall be as follows:

ROUTINE COMMUNICATIONS

A. While both parties shall continue periodic face-to-face consultation, communication must be insured between such meetings as the need arises as described below.

B. Electronic mail (or facsimile, telephone, snail mail) shall be the preferred method of communication.

C. For issues requiring a timely answer or decision.

1. The party notified must reply within 30 days of receipt of notification.
2. If no answer or decision is received within 30 days, the notifying party shall telephone the other party for an oral response.
3. The notifying party shall work with the other party for an oral or written response for no longer than 15 additional days.
4. If no oral or written response can be obtained, the notifying party shall proceed with its activity.

D. Both parties shall take reasonable measures to insure confidentiality of culturally sensitive data, such as site location. Such measures include:

1. Ensuring all concerned know that site location data is typically non-FOIAble.
2. Placing sensitive data in locked, secured cabinets.
3. Instructing PMs that such information is privileged, and not to be distributed.
4. Marking areas on maps as "off limits" but not labeling area specifically as a sacred site, historic property, or traditional cultural property.

E. The Memphis District and the Osage Nation will share information vital to successful project or program completion. Information shall be provided to the appropriate Corps and Tribal officials. For completion of project or program and involvement of District Engineer and Tribal Chairman, their respective staffs will ensure that they are informed.

F. The Memphis District and the Osage Nation agree that the information on the following subjects is considered superfluous and need not be transmitted to the Tribe:

1. Maintenance activities;
2. Undertakings considered categorical exclusions as per NEPA and ER 200-2-2 that involve no ground disturbing activities; ???
3. Previously surveyed areas for which Section 106 consultation has been completed.
4. Recently disturbed areas, such as parking lots or fill areas

G. The Memphis District and the Osage Nation agree that information on the following subjects must be transmitted to the Tribe in a timely manner:

1. Preliminary information on new programs and projects;
2. Public Notices for Section 10 and 404 permits;
3. Undertakings that would include ground disturbing activities
4. Undertakings that would affect a known historic property, traditional cultural property or sacred site.
5. Draft and Final EA's and EIS's.

H. The District and the Nation will work together to produce a list of townships and/or counties of interest. Once this is in place, information from other counties/townships will not be forwarded to the Tribe. Target date for list and its implementation is 180 days after signing this document.

SPECIAL COMMUNICATIONS

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