APPENDIX O. DRAFT PROGRAMMATIC AGREEMENT REGARDING COMPLIANCE WITH THE NHPA ON THE RESOLUTION COPPER PROJECT AND SOUTHEAST ARIZONA LAND EXCHANGE
1. WHEREAS, Resolution Copper Mining, LLC (Resolution Copper), proposes to conduct mining operations on land administered by the U.S. Department of Agriculture (USDA) Forest Service (Forest Service) Tonto National Forest (TNF), land administered by the Arizona State Land Department (ASLD), and private land near Superior, Pinal County, Arizona, based on a General Plan of Operations (GPO); and

2. WHEREAS, the GPO details Resolution Copper’s proposed mining operations as consisting of five locations: East Plant Site, West Plant Site, Tailings Facility and Tailings Corridor, Magma Arizona Railroad Company (MARRCO) corridor, and Filter Plant and Loadout Facility, with the five locations presented in the GPO estimated to disturb a total of 6,951 acres of TNF, ASLD, and private land within a 13,713-acre project area; and

3. WHEREAS, the GPO includes the mining and processing (concentrator and filter plant/rail loadout) operations, transportation corridors for conveying concentrate and tailings, utility corridors, and a tailings facility; and

4. WHEREAS, TNF and Resolution Copper have developed alternatives for comparative analysis and compliance with the National Environmental Policy Act (NEPA, 42 United States Code [U.S.C.] 4321 et seq.) that may include transportation and utility corridors, tailings storage facilities, and a Filter Plant and Loadout Facility on U.S. Department of the Interior Bureau of Land Management (BLM) Tucson Field Office, TNF, ASLD, and private lands; and

5. WHEREAS, on December 12, 2014, Congress passed the Southeast Arizona Land Exchange and Conservation Act (Section 3003 of Public Law 113-291), which authorizes a land exchange between the U.S. government (U.S. Department of Agriculture and U.S. Department of the Interior) and Resolution Copper. Under the exchange, Resolution Copper will receive 2,422 acres of land known as the Oak Flat Federal Parcel (Selected Lands) managed by the Forest Service in exchange for 5,376 acres of private land (Offered Lands) owned by Resolution Copper consisting of eight parcels: Apache Leap South End Parcel (142 acres) near Superior in Pinal County; Tangle Creek Parcel (148 acres) in Yavapai County; Turkey Creek Parcel (147 acres) in Gila County; Cave Creek parcel (149 acres) near Cave Creek in Maricopa County; East Clear Creek Parcel (640 acres) near Payson in Coconino County; Lower San Pedro River Parcel (3,050 acres) near Mammoth in Pinal County; Appleton Ranch Parcel (940 acres) near Elgin in Santa Cruz County; and Dripping Springs Parcel (160 acres) near Kearny in Gila and Pinal Counties; and

6. WHEREAS, both the land exchange mandated by the Southeast Arizona Land Exchange and Conservation Act and the approval of the GPO submitted by Resolution Copper constitute a Federal undertaking (Undertaking) as defined by 36 Code of Federal Regulations (CFR) 800.16(y) which requires compliance with Section 106 of the National Historic Preservation Act (NHPA); and
7. WHEREAS, the TNF is the lead agency for the Section 106 compliance process; and

8. WHEREAS, the TNF has consulted with the Arizona State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800.6 regarding the resolution of adverse effects and SHPO is a Signatory to this Programmatic Agreement (Agreement); and

9. WHEREAS, the BLM Tucson Field Office is considering issuing Federal authorizations related to the mitigation, construction, operation, maintenance, and reclamation of portions of the proposed Undertaking that must comply with Section 106 of the NHPA and applicable portions of the Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470aa–470mm), the American Indian Religious Freedom Act (42 U.S.C. 1996), and the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3001 et seq.), and the BLM is participating as an Invited Signatory to this Agreement; and

10. WHEREAS, the Arizona State Museum (ASM) has been invited to participate because it has mandated authority and responsibilities under the Arizona Antiquities Act, Arizona Revised Statutes (ARS) 41-841 et seq., that apply to that portion of the Undertaking on State land, and mandated authority and responsibilities under ARS 41-865 that apply to that portion of the Undertaking on private land; and

11. WHEREAS, any testing and data recovery necessitated by the Undertaking, located on State land, must be permitted by the ASM pursuant to ARS 41-842, and ASM is an Invited Signatory to this Agreement; and

12. WHEREAS, the U.S. Army Corps of Engineers (USACE) may be responsible for issuing a Clean Water Act Section 404 permit for the Undertaking, and recognizes the TNF as the lead Federal agency, and is an Invited Signatory to this Agreement under 36 CFR 8002(a)(2) to act on its behalf under Section 106, and

13. WHEREAS, the Undertaking includes State Trust land administered by the ASLD, and the ASLD may use provisions of this Agreement to address the applicable requirements of the Arizona State Historic Preservation Act (ARS 41-861 et seq.) on State land in Arizona, and the ASLD is an Invited Signatory to this Agreement; and

14. WHEREAS, Resolution Copper, as an applicant and consulting party, is entitled to participate in the Section 106 consultation process under 36 CFR 800.2(c)(4) and in the development of this Agreement per 36 CFR 800.6(a)(2), because of its obligations and duties to implement the mitigation measures as required under both the Southeast Arizona Land Exchange Act (Sec. 3003) and the Agreement, and is an Invited Signatory under 36 CFR 800.6(c)(2)(iii); and

15. WHEREAS, the TNF has assumed the lead Federal agency status for government-to-government consultation with Indian Tribes, and has the delegated authority of the Secretary of Agriculture to implement the Southeast Arizona Land Exchange including the mandate to “consult with Resolution Copper and seek to find mutually acceptable measures to—(i) address the concerns of the affected Indian tribes; and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining and related activities on the Federal land conveyed to Resolution Copper under this section. (Sec. 3003(c)(3))”; and

16. WHEREAS, during project initiation in 2008, the Forest Service initiated consultation with the Tribes they regularly consult—the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Hopi Tribe, the Mescalero Apache Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian
Community, the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe; and

17. WHEREAS, additional locations have been proposed for the permanent disposal and management of the mine tailings, including the alternative on BLM land, and BLM routinely consults with four additional Tribes—the Ak-Chin Indian Community, the Fort Sill Apache Tribe, the Pascua Yaqui Tribe, and the Tohono O'odham Nation—that may also have traditional and/or cultural interests within the expanded environmental impact statement (EIS) analysis area; and

18. WHEREAS, the TNF has invited all 15 Tribes to participate as concurring parties in this Agreement, and additional Tribes may be added and/or removed at their request as the consultation progresses and as the project scope and area of potential effects (APE) are finalized; and

19. WHEREAS, TNF has determined due to the scale and complexity of the Undertaking that it will develop a Programmatic Agreement, pursuant to 36 CFR 800.14(b)(1), to address further identification requirements and resolution of adverse effects; and

20. WHEREAS, in accordance with 36 CFR 800.6(a)(1), the TNF notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect finding, provided the specified documentation, and invited the ACHP to participate in consultation (using the ACHP’s e-file notification system on December 7, 2017), and the ACHP has chosen to participate in this Agreement (letter dated December 21, 2017); and

21. WHEREAS, the proposed action and all alternatives encompasses 40,988 acres and multiple land jurisdictions as shown on figure 1 in Appendix A, and consists of the Selected Lands leaving the jurisdiction of the Federal Government (2,422 acres) per Section 3003 of Public Law 113-291, and the project components and all alternatives associated with the Resolution Copper GPO (38,566 acres not including those also within the land exchange); and

22. WHEREAS, the direct APE for ground disturbance will consist of the Oak Flat Federal Parcel and the GPO with the selected tailings alternative; and

23. WHEREAS, the indirect APE consists of a 2-mile buffer around the direct APE and its alternatives with multiple land jurisdictions as shown on figure A.1 in Appendix A; and

24. WHEREAS, the atmospheric APE including visual and auditory effects and the cumulative APE together consist of a 6-mile buffer around the direct APE and its alternatives with multiple land jurisdictions as shown on figure A.1 in Appendix A; and

25. WHEREAS, this project is located within the adjudicated territory of the Salt and Gila River Tribes; however, this landscape is important to many tribes and has been for many generations. It continues to this day to be utilized for cultural and spiritual purposes.

26. WHEREAS, the Forest has consulted regularly with eleven federally-recognized tribes that are culturally affiliated with the lands that stand to be affected. Tribes have had the opportunity to be active in the consultation, review and comment processes of the project. No tribe supports the desecration/destruction of ancestral sites. Places where ancestors have lived are considered alive and sacred. It is a tribal cultural imperative that these places should not be disturbed for any reason. Continued access to the land and all its resources is necessary and should be accommodated for present and future generations. Participation in the design of this destructive activity has caused considerable emotional stress and brings direct harm to the traditional way of life to tribes; however, it is still deemed necessary
to ensure ancestral homes and ancestors receive the most thoughtful and respectful treatment possible.

These eleven tribes represent four cultural groups with ties to the traditional homelands: Akimel O’Odham (Gila River Indian Community, Salt River Pima-Maricopa Indian Community), Puebloan (Hopi Tribe, Pueblo of Zuni), Apache (Mescalero Apache Tribe, San Carlos Apache Tribe, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation), and Yavapai (Fort McDowell Yavapai Nation, Yavapai Apache Nation, Yavapai Prescott Indian Tribe. Consultation has identified two distinct culturally-affiliated treatments of Native American human remains and cultural items, based on whether they are prehistoric or protohistoric/historic in age. These two distinctions will determine specific treatment protocols for ancestral sites and remains.

27. WHEREAS, 721 archaeological sites (both prehistoric and historic), one traditional cultural property (TCPs), and 11 places of traditional religious and cultural significance have been identified to date within the direct APE, with surveys ongoing (see figures in Appendix B for identified historic properties and previous survey report references); and

28. WHEREAS, the TNF, in consultation with the SHPO, has determined that 523 archaeological sites are eligible for the National Register of Historic Places (NRHP) under Criterion D, as well as one TCP that has been listed in the NRHP under Criteria A, B, C, and/or D; and

29. WHEREAS, additional inventory efforts needed to completely identify cultural resources within the direct, atmospheric, and indirect APEs will likely add additional NRHP-eligible historic properties, and TNF will continue to seek concurrence on its determinations of eligibility and effect from the SHPO as further cultural resource inventories are completed for the remainder of the project; and

30. WHEREAS, for portions of the direct APE that have not already been surveyed for cultural resources, the TNF proposes to phase any remaining identification and evaluation needs, pursuant to 36 CFR 188.4(b)(2), I, and complete all inventory in the summer of 2019; and

31. WHEREAS, because 118 archaeological sites in the APE shown in Appendix B are currently unevaluated for listing on the NRHP, and additional cultural resources may be identified as surveys continue; and

32. WHEREAS, the TNF has determined that the Undertaking will result in adverse effects to historic properties including TCPs that have been determined eligible for the NRHP under Criteria A, B, C, and/or D, and has consulted with the SHPO, pursuant to 36 CFR 800, regarding the regulations implementing Section 106 of the NHPA. Adverse effects include, but are not limited to, transfer of historic properties out of federal ownership, physical destruction and/or damage due to ground disturbance, and changes to setting; and

33. WHEREAS, the SHPO is authorized to enter into this Agreement in its role of advising and assisting Federal agencies in carrying out their Federal responsibilities under Sections 101 and 106 of the NHPA, at 36 CFR 800.2(c)(1)(i) and 36 CFR 800.6(b), and to fulfill its state historic preservation responsibilities under ARS 41-511.04(D)(4); and

34. WHEREAS, the TNF is committed to respecting the sensitive and private nature of tribal traditional knowledge; and,

35. WHEREAS, a comprehensive ethnographic and ethnohistoric study regarding places of traditional or cultural importance to Indian Tribes was completed (Hopkins et al. 2015) and the Forest Service has implanted a tribal monitoring program to identify historic properties in the APE; and
36. WHEREAS, the Tribes have stated that the APE is within a landscape important to many Tribes and 
has been for many generations, and continues to this day to be utilized for cultural and spiritual purposes; 
no Tribe supports the desecration/destruction of ancestral sites because places where ancestors have lived 
are considered alive and sacred, it is a tribal cultural imperative that these places should not be disturbed 
for any reason, and continued access to the land and all its resources is necessary and should be 
accommodated for present and future generations; participation in the design of this destructive activity 
has caused considerable emotional stress and brings direct harm to the traditional way of life to Tribes; 
however, it is still deemed necessary to ensure ancestral homes and ancestors receive the most thoughtful 
and respectful treatment possible; and

37. WHEREAS, the Tribes have declared that they consider adverse effects from the Undertaking to be 
unmitigable and, even if they sign this Agreement, they consider the mitigation in the document as being 
insufficient; and

38. WHEREAS, the TNF has used and coordinated the NEPA public participation requirements to assist 
the Federal agencies in satisfying the public involvement requirements under Section 106 pursuant to 
36 CFR 800.2(d)(3) through involving interested parties in the NEPA process, providing project 
information to the public, giving them opportunities to comment on the project through public scoping 
and alternatives meetings, and will continue to disseminate information through public meetings and will 
afford the public opportunities to comment on the EIS throughout the drafting process; and

39. WHEREAS, the Signatories, Invited Signatories, and concurring parties of this Agreement will be 
referred to as Consulting Parties in this Agreement; and

40. WHEREAS, the TNF, in consultation with all Consulting Parties, will explore both traditional and 
alternative mitigation measures that are in the public interest and provide the best use of available funding 
and resources as it seeks to resolve adverse effects to historic properties; and

41. WHEREAS, definitions used in this Agreement are outlined in Appendix C of this document; and

NOW THEREFORE, the TNF, SHPO, and the ACHP agree that this Agreement shall be implemented 
in accordance with the following stipulations to address the effects of the Undertaking on historic 
properties.
STIPULATIONS

The TNF shall ensure that the following stipulations are carried out:

I. ROLES AND RESPONSIBILITIES

A. TONTO NATIONAL FOREST

1. The signatories agree that the TNF is the lead Federal agency for administering and implementing this Agreement with responsibilities that include:

   • consulting and coordinating with the Consulting Parties;
   • carrying out their responsibilities in accordance with applicable laws and authorities ensuring that all Signatories and Invited Signatories fulfill their obligations;
   • making Determinations of NRHP eligibility and Determinations of Effect for cultural resources on TNF land;
   • overseeing all cultural resource management work in coordination with appropriate land-managing agencies including any additional historic properties inventory, and drafting and/or assembling all submissions to the Consulting Parties, including the additional historic properties inventory reports (if needed), historic property treatment plans (HPTPs), and the preliminary and final data recovery reports;
   • seeking SHPO concurrence with agency decisions as required by 36 CFR 800 relating to the treatment of historic properties; and
   • implementing the HPTP(s).

2. The TNF will use the principles in the Forest Service policy, Consultation with Indian Tribes and Alaska Native Corporations (Forest Service Manual 1563.1) to guide its tribal consultation procedures and relationships. The TNF shall, in compliance with Section 3003(c)(3) of the Southeast Arizona Land Exchange Act, engage as the lead agency for the following:

   a. government-to-government consultation with affected Indian Tribes concerning issues of concern to the affected Indian Tribes related to the land exchange.
   b. consultations with Resolution Copper to find mutually acceptable measures that:
      (i) address the concerns of the affected Indian Tribes; and (ii) minimize the adverse effects on properties significant to Indian Tribes resulting from mining and related activities on the Federal land conveyed to Resolution Copper.

B. RESOLUTION COPPER MINING, LLC

1. Per the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA 2015) § 3003, the signatories agree that Resolution Copper “shall agree to pay, without compensation, all costs that are associated with the land exchange and any environmental review document.” As part of the environmental review process, Resolution Copper is financially responsible for all work that is associated with complying with the NHPA and Arizona State Historic Preservation Act (ARS 41-861 et seq. and ARS 41-865).

   a. This includes, but is not limited to: inventories of archaeological sites, historic buildings and structures, and TCPs within the APE; evaluation of all cultural resources for inclusion in the NRHP; determination of the effects of the Undertaking on historic properties in consultation with the SHPO and Consulting Parties; and creation and implementation of the HPTPs and any mitigation measures (i.e., data recovery) for the
historic properties within the APE as agreed to by the signatories to this Agreement through the consultation process.

C. BUREAU OF LAND MANAGEMENT

1. For the purposes of the Undertaking, the BLM shall work in coordination with TNF for both agencies to comply with Section 106 of the NHPA. The BLM retains authority for the management of all resources and historic properties on BLM lands (Alternative 5). The BLM will participate only in those activities related to its jurisdiction or decision-making authorities, unless otherwise invited by the TNF. The BLM’s status as a Cooperating Agency and Invited Signatory to this Agreement does not affect its independent responsibilities under applicable Federal statutes and regulations that may pertain to the agency’s special expertise and/or jurisdictional authorities.

2. If an alternative that does not involve BLM-administered land becomes the selected alternative, the BLM’s responsibilities and involvement in this Agreement shall cease.

D. U.S. ARMY CORPS OF ENGINEERS

1. For purposes of this undertaking, USACE shall work in coordination with TNF to comply with Section 106 of the NHPA. USACE will only participate in those activities within their defined permit area related to Clean Water Act Section 404 permitting per 33 CFR Part 325 Appendix C (1)(g). This also extends to compensatory mitigation activities, yet to be specifically defined, that may be required of the Permittee, Resolution Copper.

2. If an alternative that does not require a Section 404 permit becomes the selected alternative, USACE’s responsibilities and involvement in this Agreement shall cease.

E. ARIZONA STATE LAND DEPARTMENT

1. ASLD, in coordination with the TNF and the SHPO, will be responsible for reviewing all cultural resources work completed on State Trust land, including inventories, determinations of eligibility and effect, HPTPs, and the preliminary and final data recovery reports. ASLD shall work in close coordination with TNF to complete the Section 106 process and ensure compliance with the Arizona State Historic Preservation Act (ARS 41-861 et seq.). The ASLD shall retain responsibility for the management of cultural resources that are located on ASLD land. ASLD will participate only in those activities in those areas related to its jurisdiction or decision-making authorities, unless otherwise invited by the TNF.

F. ARIZONA STATE MUSEUM

1. ASM will be responsible for reviewing proposed and completed archaeological work in accordance with ARS 41-841 et seq., Rules Implementing ARS 15-1631 and 41-841 et seq., ARS 41-865, Rules Implementing ARS 41-865, and ASM policy and procedures.

II. PROFESSIONAL QUALIFICATIONS AND PERMITS

A. For all cultural resource-related activities, Resolution Copper shall ensure that its cultural resources contractors use qualified historic preservation professionals that meet the Secretary of the Interior’s standards (48 Federal Register 44716), as per Section 112(a)(1)(A) of the NHPA and 36 CFR 800.2(a)(1).
B. For cultural resource-related activities on Federal land, Forest Service and/or BLM shall ensure that all agency personnel responsible for historic properties shall meet Professional Qualification Standards as defined by the Office of Personnel Management: Heritage Program Professionals (GS-170 historian, GS-190 anthropologist, and GS-193 archaeologist; see definition in Appendix C). For work on Forest Service land, only Heritage Program Professionals may make management recommendations and review and recommend approval of heritage work done by Forest Service employees, contractors, and volunteers. For work on BLM land, only BLM-designated Heritage Program Specialists make recommendations and review and recommend approval of heritage work done by BLM employees, contractors, and volunteers.

C. For cultural resource-related activities on Federal land, the Forest Service and/or the BLM shall ensure that all necessary permits and permissions are obtained from the appropriate land-managing agency prior to any fieldwork, including ARPA permits for any ground-disturbing work.

D. For all cultural resource-related activities occurring on State land, Resolution Copper shall ensure that its cultural resources contractors obtain an Arizona Antiquities Act Permit from the ASM prior to conducting archaeological activities on State land pursuant to ARS 41-841 et seq. Resolution Copper shall also ensure that its cultural resources contractors obtain a burial agreement from the ASM prior to all ground-disturbing activity on State and private lands pursuant to Rules Implementing ARS 41-844 and 41-865.

E. In recognition of the special expertise of tribal experts concerning properties of traditional religious and/or cultural significance, the standards of 36 CFR 61 will not apply to tribally designated representatives carrying out identification and evaluation efforts for such properties of tribal interest.

III. COORDINATION WITH OTHER FEDERAL REVIEWS

A. Any Federal agency that will provide approvals or assistance for the Undertaking may comply with the agency’s Section 106 responsibilities by agreeing to the terms of this Agreement in writing and sending copies of such written agreement to all the parties of this Agreement.

B. In the event that another Federal agency not initially a party to or subject to this Agreement receives an application for funding/license/permit for the Undertaking as described in this Agreement, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this Agreement and notifying TNF, the SHPO, and the ACHP that it intends to do so. In the event that an above Federal agency’s application for funding/license/permit does not match the undertaking as described in this Agreement, that agency may complete a separate review to fulfill its Section 106 responsibilities or request of the signatories that the Agreement be amended to account for those changes in the undertaking.

IV. AREA OF POTENTIAL EFFECTS

A. Direct effects: The APE for direct effects will include the Selected Lands leaving Federal management under the land exchange and the project areas associated with the GPO. The APE for direct effects during construction, operations, and reclamation and will include all areas likely to be affected by such activities, as well as the Selected Lands (see Appendix A). The direct effects APE associated with the GPO will be modified as necessary to allow for adjustments in construction, operations, and access road placement to avoid, when possible, natural, cultural, or modern features such as outcrops, historic properties, petroglyph sites, and structures. The final acreage and layout of the APE will be dependent on which alternative is selected (see Appendix A).
**Indirect effects:** The APE for indirect effects shall be areas within 2 miles from any project component (including any access routes, facilities, and relocated facilities) or where consultation identifies a need to expand this APE in certain locations (see Appendix A).

**Atmospheric effects:** The APE for atmospheric effects (including visual and auditory) shall be areas within 6 miles from any project component (including any access routes, facilities, and relocated facilities) or the visual horizon, whichever is closer, or where consultation identifies a need to expand this APE in certain locations (see Appendix A).

The APEs may extend beyond the above definitions to encompass properties that have traditional religious and cultural importance, including TCPs or other geographically extensive historic properties such as trails, when effects have been determined through consultation with the SHPO and Consulting Parties to extend beyond this distance.

**B. Cumulative effects:** The APE for cumulative effects shall be the same as that for the direct, atmospheric, and indirect effects combined.

C. The Forest Service shall ensure that any modification of the APE will be done through consultation conducted among the Consulting Parties. The Forest Service shall notify the Signatories to the Agreement of any proposed modifications. Signatories, Invited Signatories, and Consulting Parties shall have 14 calendar days to respond to the proposed changes; if no response is received, the Forest Service will make a good-faith effort to contact the Signatories and, if no response is received, will proceed with the modifications. Modifications to the APE will not require an amendment to the Agreement.

V. TRIBAL CONSULTATION

A. Through government-to-government consultation with Indian Tribes, pursuant to 36 CFR 800.2(c)(2), TNF and other Federal land-managing agencies, as appropriate, have made and will continue to make a good-faith effort to identify properties that have traditional religious and cultural significance to one or more Indian Tribes and to determine whether they are NRHP-eligible historic properties. Tribal comments and concerns will be consolidated for consideration by the respective land-managing agency. All parties to this Agreement will respect any sites of traditional religious and cultural importance (NHPA 101(d)(6)(A)) and confidentiality concerns expressed by Indian Tribes to the extent allowed by law (see Stipulation XIV). The Signatories shall follow the regulations outlined in 36 CFR 800 Subpart B.

B. In compliance with Chapter 10, Consultation with Indian Tribes and Alaska Native Corporations of the Forest Service Handbook titled American Indian and Alaska Native Relations Handbook (FSH 1509.13), the TNF will continue to engage Indian Tribes in government-to-government consultation throughout the duration of the Undertaking through in-person meetings, telephone calls, and on-site field visits. Information and documents will be provided via mail, email, or in person.
C. In general, the TNF Forest Supervisor and Tribal Liaison at a minimum, often accompanied by Forest Service subject experts, offer to travel at least once per year to each Tribe culturally affiliated with TNF land to provide updates on ongoing or proposed projects within the TNF. Additional meetings with the associated cultural groups (Apache, Akimel O’odham, Puebloan, and Yavapai) are scheduled. At least once per year the Forest Service hosts an All Tribes Meeting to discuss the larger actions in this project (for example the Tribal Monitor Program, the HPTP, and this Agreement). The Forest Service consistently consults with Tribes while documents are in draft form and before they are finalized. Consultation with Tribes has repeatedly resulted in activities design (and redesign), document design (and redesign), field visits, and the creation of projects and programs. Examples of actions include sensitive plant monitoring for the magnetotelluric study at Oak Flat, Oak Flat listing to the NRHP, the Superior Area Ethnographic Study, activity component relocation to protect TCPs in the GPO, custom design of the Apache Leap Special Management Area, the identification of alternate mine tailings locations away from TCPs, the creation of the Tribal Monitor Program, archaeological site restoration with Tribes at Oak Flat, and the Emory Oak Restoration Program. Consultation will continue as needed throughout the lifetime of this project.

VI. IDENTIFICATION OF HISTORIC PROPERTIES

A. TNF shall ensure all of the Selected Lands, GPO project areas, and alternatives are surveyed for cultural resources prior to the Record of Decision as directed by Section 3003 of Public Law 113-291. Cultural resources inventory surveys conducted to date are shown in Appendix B. Separate inventories are being conducted with tribal monitors and/or tribal elder consultation to identify cultural resources significant to tribal peoples and TCPs within the Selected Lands, GPO project areas, and alternatives, in addition to the archaeological and historic building/structure inventory.

B. Surveys to date cover the portions of the APE that include the Oak Flat Federal Parcel, GPO project components (East Plant Site, West Plant Site, MARRCO Corridor, and Filter and Loadout Facility), and the proposed tailings locations for Alternatives 2, 3, 4, and 5. Additional survey is in progress for the Alternative 6 tailings location, pipeline routes for Alternatives 5 and 6, main 230-kilovolt power lines for the GPO and power line route for Alternative 6, and any remaining areas not covered in earlier surveys due to project adjustments, and is scheduled to be completed in the summer of 2019.

C. Identification of cultural resources has yet to be completed for the Skunk Camp Tailings location (Alternative 6), pipeline routes for Alternatives 5 and 6, main 230-kilovolt power lines for the GPO and power line route for Alternative 6, and any remaining areas not covered in earlier surveys due to project adjustments. Surveys of Alternative 6 and the pipeline/access routes to Alternatives 5 and 6 will be overseen by the Forest Service and will be completed in the summer of 2019.

D. If additional areas are identified that need cultural resources inventories due to necessary changes in the GPO after the signing of this Agreement, the TNF shall ensure that all inventories will be carried out in conformance with current professional standards and will consist of a 100% survey strategy.

E. The completed historic property inventories have included inventories for TCPs and places of traditional or cultural significance to Indian Tribes through a tribal monitoring program. Trained tribal monitors have worked both with the archaeological survey crews and independently to record places of traditional or cultural significance and identify those that would qualify as TCPs under Section 106 of the NHPA. Additional inventories, such as that for Skunk Camp, will include tribal monitor surveys for TCPs and places of traditional or cultural significance and will be supervised by the Forest Service. Due to the sensitive nature of these surveys, they will be reported on separately from the archaeological findings.
F. Per Federal and State guidelines, the draft inventory report(s) generated through this identification effort will be reviewed and revised in three steps:

1. The draft inventory report(s) will be first reviewed by both the TNF and the other appropriate land-managing agency (BLM or ASLD) for a 30-day comment and review period. Comments will then be incorporated into a revised draft report.

2. Once accepted by the agency’s cultural resource specialist, the revised draft inventory reports and associated documentation will be submitted to all Consulting Parties for a 30-day review and comment period. The TNF will also submit the TNF’s determinations of eligibility and effects to the SHPO along with revised draft report for a 30-day review and comment period.

3. The TNF will consider all comments received during this period, and a draft final inventory report will be produced that will be submitted to the Consulting Parties for a 30-day review period.

   If the TNF does not receive a response from a Consulting Party during these review periods, the TNF will make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party, there is no response, the TNF will proceed to the next step prescribed by this Agreement (Stipulation VIII).

G. A Class I literature review of the 6-mile atmospheric APE for historic properties listed in or eligible for the NRHP under Criteria A, B, and/or C (properties where impacts to setting could alter the characteristics that make the property eligible for the NRHP) was completed in October 2018.

   No ground disturbance is planned outside the direct APE; therefore, properties eligible under Criterion D were not included. The search included records at the Forest Service, BLM, and on the AZSITE online database and identified 14 historic buildings, structures, or districts listed in the NRHP and 37 archaeological sites eligible for the NRHP.

H. A Class I literature review for the indirect APE will be conducted to identify historic properties which may be indirectly affected by the Undertaking. The Class I review will include archaeological sites, historic buildings and structures, historic districts, and TCPs. Information will be sought through records searches and consultation.

I. The Forest Service shall ensure that a single report will be prepared, detailing the results of both the Class I for the atmospheric APE and the Class I for the indirect APE. The report shall include contextual information, property types, and an overview of the effects of the Undertaking. The draft Class I report will be reviewed as set forth in the above Stipulation VI.F.

VII. TRIBAL MONITOR PROGRAM

In consultation with Indian Tribes, the request was heard by the Forest to employ “Tribal Monitors,” to conduct pedestrian survey alongside archaeologists. Tribal Monitors function as traditional cultural specialists who have the ability to identify important resources on the landscape that are both archaeological and non-archaeological. Incorporating tribal members into data-gathering processes maximizes transparency and cooperation between the Forest Service and participating Tribes. In their own words, the Tribal Monitors consider themselves the “eyes and ears” of their communities. The TNF Tribal Monitor Program places an emphasis on providing the opportunity for tribal elders, traditional practitioners, and tribal leaders to visit locations identified by the monitors. Monitors working directly with traditional practitioners helps to ensure sites are being identified correctly and concerns are being discussed and recorded for the report. The Tribal Monitor reports will be reviewed by the agency decision maker to ensure tribal concerns are being considered. The program currently consists of 30 monitors; in response to tribal requests, a third training is scheduled for the summer of 2019.
VIII. EVALUATION OF HISTORIC PROPERTIES

A. The historic properties identified as of June 6, 2019, are listed in Appendix B. In total, 721 archeological sites have been recorded within the Oak Flat Federal Parcel, GPO project components, and the proposed tailings location for Alternatives 2, 3, 4, and 5. Of these, 523 sites have been determined eligible for the NRHP, and 86 sites have been determined not eligible for the NRHP. Another 118 sites are unevaluated against NRHP significance criteria. Two sites are exempt from Section 106 consultation because they are in-use gas pipelines, per the ACHP’s Exemption Regarding Historic Preservation Review Process for Projects Involving Natural Gas Pipelines (Federal Register, Vol. 67, No. 66, April 5, 2002).

B. TNF shall ensure all cultural resources identified during additional Class III inventory and through tribal consultation will be evaluated by the TNF for their eligibility for the NRHP and for project effects in accordance with 36 CFR 800.4(b) and in consultation with the appropriate Consulting Parties. The TNF shall make determinations of eligibility and effect upon completion of all inventory reports in coordination with land-managing agencies when appropriate; the SHPO shall be afforded the opportunity to review and concur on the determinations (see Stipulation VI).

C. If the NRHP eligibility of cultural resources cannot be determined at the time of initial inventory, the TNF will either (a) ensure that an eligibility testing program is conducted according to the provisions outlined in Stipulation IX below, or (b) treat unevaluated cultural resources as eligible for the NRHP. The TNF’s subsequent NRHP determinations in concurrence with the land-managing agency when appropriate will then be submitted to the SHPO for concurrence in accordance with 36 CFR 800.4(b)(2).

D. Should the SHPO disagree with these determinations, the TNF will try to resolve the disagreement informally. If after a reasonable and good-faith effort a resolution cannot be achieved, the TNF shall request a formal determination from the Keeper of the National Register if it is an issue of determination of eligibility, per 36 CFR 63. For disputes regarding determinations of effects, mitigation, or other parts of the Section 106 process other than NRHP-eligibility determinations, the TNF shall request that the ACHP resolve the dispute, per 36 CFR 800.2(b)(2).

E. The TNF has determined that the Undertaking will have an adverse effect on historic properties; however, the TNF, in consultation with the appropriate land-managing agency, will determine on a property-by-property basis if the Undertaking will have an adverse effect on specific historic properties in the GPO with the exception of those in the Oak Flat Federal Parcel. Because the Oak Flat Federal Parcel will be leaving Federal ownership, the Undertaking will have an adverse effect on all historic properties within the parcel.

F. Visual effects to historic properties in the atmospheric APE, and the potential impacts to setting for qualifying historic properties, will be assessed using viewshed modeling of the visibility of project components and factoring qualities such as distance from the project component, intervening landforms and/or human-made constructions, and overall modifications to the visual landscape.

G. If the TNF does not receive a response from a Consulting Party during these review periods, the TNF will make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party, there is no response, the TNF will proceed to the next step prescribed by this Agreement as described in Stipulation IX.
IX. MITIGATION AND TREATMENT PLANS

A. Because of the size and complexity of the Undertaking, mitigation resolution of adverse effects to historic properties will be outlined in several documents.

1. The TNF will prepare an archaeological HPTP with support from Resolution Copper for the Oak Flat Federal Parcel (Selected Lands) prior to the land exchange and the execution of the Agreement. Implementation of this HPTP will begin prior to the land exchange and may still be ongoing after the formal transfer of the Oak Flat Federal Parcel.

2. Separate from the Oak Flat Federal Parcel HPTP, the TNF will prepare, with support from Resolution Copper, an overall archaeological Research Design for the GPO, including the selected tailings alternative in place of a GPO HPTP prior to the execution of the Agreement. Detailed Data Recovery Plans for each GPO component will then be prepared under the GPO Research Design after the Agreement is executed. It is anticipated that treatments and mitigations for the GPO will be implemented after the formal transfer of the Oak Flat Federal Parcel.

3. The TNF will prepare a separate and confidential Mitigation Plan describing the steps needed for the mitigation of the adverse effects to TCPs affected by the Undertaking. Mitigation negotiations are ongoing and because of the sensitive and sacred nature of the resources to Tribes, these negotiations are confidential.

4. If needed, the TNF will prepare additional mitigation plan(s) that describe mitigation measures to address atmospheric (including visual), indirect, and cumulative effects to historic properties, TCPs, and the cultural and natural resources important to the Tribes.

B. Preparation of the Oak Flat HPTP and GPO Research Design with Data Recovery Plans:

1. The Research Design for the GPO will consist of a context and research design that will apply to all areas of the GPO and alternatives. Data Recovery Plans for detailing the plan of work for each GPO project component area will be prepared under the umbrella document of the GPO Research Design.

2. If Alternative 5 (Peg Leg) is selected, the Data Recovery Plan for the tailings alternative area and associated infrastructure will be prepared in direct coordination with the BLM and submitted to SHPO and the Tribes for review and comment.

3. Mitigation in the Oak Flat Federal Parcel HPTP and GPO Data Recovery Plans will include, but is not limited to, data recovery for historic properties that are eligible for the NRHP under Criterion D.

4. The data recovery strategy specified in the Oak Flat Federal Parcel HPTP and the GPO Research Design in conjunction with the Data Recovery Plans will be consistent with the Secretary of the Interior's Standards and Guidelines (48 Federal Register 44716–44742), the ACHP’s Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (64 Federal Register 95:27085–27087), and guidance from the TNF and SHPO.

5. The archaeological strategies specified in the HPTP and the GPO Research Design will be consistent with ARS 41-841 et seq. and ARS 41-865 for work conducted on State and private lands, respectively.

6. The Oak Flat Federal Parcel HPTP and the GPO Research Design in conjunction with the Data Recovery Plans will specify at a minimum:
a. The results of previous research and a research design that discusses the questions to be addressed through data recovery, archival research, analysis and interpretation, with an explanation of their relevance and importance;
b. The process for interfacing the results of eligibility testing and the resultant determinations of eligibility with the relevant data recovery methodology;
c. The results of tribal consultation regarding the incorporation of tribal perspectives into the culture history, research design, data recovery methods, analysis, and interpretation;
d. The properties or portions of properties where data recovery is to be carried out, and any property or portion of property that would be affected by the Undertaking without treatment, and a rationale for dealing with affected properties or portions (e.g., discussion of the sampling strategy, avoidance, etc.);
e. If the data recovery is to be phased (i.e., additional data recovery is required), a discussion of the transition between Phase I and Phase II including time frames for review of preliminary reports and field visits/consultations;
f. The archival, field, and laboratory methods to be used, with an explanation of their relevance to the research questions;
g. Specification of the methods and level of effort to be expended on the treatment of each historic property;
h. The methods to be used in the management and dissemination of the resultant data to the professional community and the public as outlined below in Stipulation IXF, including a proposed schedule for tasks outlined in the GPO, and a schedule for the submittal of draft and final reports (Summary Treatment Report(s) and Full Treatment Report(s)) to Consulting Parties for review and comment;
i. A discussion of permits and personnel qualifications for archaeological crews;
j. A provision for cultural and archaeological sensitivity training for construction personnel, and an outline of topics to be covered in sensitivity trainings, including tribal participation, if possible, in leading the trainings;
k. The proposed disposition and curation of recovered materials and records in accordance with relevant state and Federal laws (36 CFR 79).

C. The Forest Service shall develop a TCP Redress Plan which shall include at a minimum:

1. Tribal perspectives of the Undertaking footprint and the surrounding vicinity;
2. The tribal consultation steps taken by the TNF and results of that consultation including the types of TCPs located in the Undertaking footprint;
3. A discussion of the tribal monitoring program, field methods, and results;
4. A discussion of and commitment to the sensitivity and privacy regarding tribal knowledge, including how sensitive information will not be released to the public, how all public documents will be redacted or written so that sensitive information will not be needed; and how all exchanges of sensitive information to and from the Forest Service will be kept internally;
5. A description of the TCPs in the APE for direct, atmospheric, and indirect effects; however, the TNF will be sensitive to the private nature of tribal knowledge for this section;
6. A description of all mitigation to be conducted to resolve adverse effects to TCPs. Please note that negotiations between the Tribes, the TNF, and Resolution Copper are ongoing. Because the adverse effects of the Undertaking are to a sacred resource, all parties involved in the negotiations have agreed to keep the details confidential;
7. A description of tribal monitoring to be conducted during the construction of mining facilities on Federal, State, and private lands.

D. The Forest Service shall implement a burial plan that corresponds to the requirements of each landholding jurisdiction: a NAGPRA Plan of Action for Federal lands; and an ASM Burial Agreement for state and private lands in accordance with Stipulation XI, and included as an appendix in all documents discussing Section 106 compliance.

E. The Forest Service shall prepare a separate Monitoring and Discovery Plan prior to the land exchange and the issuance of a Notice to Proceed from the Forest Service for the GPO with procedures for monitoring, evaluating, and treating discoveries of unexpected or newly identified nonhuman remains and cultural resources during implementation of the Undertaking, including the consultation process and timelines with appropriate Consulting Parties.

1. If historic properties will be avoided by activities associated with the Undertaking on Federal or State land, but could be threatened after construction by operations, maintenance, and/or decommissioning of the Undertaking, the Monitoring and Discovery Plan will include a program for long-term monitoring of these historic properties on Federal or State land.

2. The Monitoring and Discovery Plan will also include tribal monitoring during construction of mining facilities on private, State, and Federal lands. All discussion of tribal monitoring and resources shall be in a form suitable for public viewing (i.e., for construction and mining personnel).

F. The Forest Service shall develop a strategy for a public education program per ACHP guidelines presented in Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (June 17, 1999) with the goal of disseminating information to the general public about the results (either ongoing or post-data recovery) of the historic properties investigations, completed in coordination with the Tribes and Consulting Parties. This program shall include at a minimum: presentation of data recovery results at a local archaeological conference and a display for Arizona Archaeology Awareness Month activities.

G. Section 106 Mitigation Documents Review

1. Upon receipt of a draft of the documents, the TNF will submit the draft to the SHPO and simultaneously afford all Consulting Parties to this Agreement the opportunity to review and comment. All parties will have 30 calendar days from receipt to review and provide comments to the TNF.

2. If revisions to the documents are needed, all Consulting Parties to this Agreement will have 30 calendar days from receipt to review and comment on the revisions.

3. The TNF will ensure that an in-person meeting is scheduled with the Tribes to discuss their comments, if requested.

4. If the TNF does not receive a response from a Consulting Party during these review periods, the TNF will make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party, there is no response, the TNF assumes there are no comments.

5. Copies of the final documents in electronic and hard copy format will be provided by the TNF to all Consulting Parties to this Agreement.

H. HPTP and GPO Data Recovery Plans Implementation
1. The land-managing agencies will only authorize the proposed archaeological fieldwork or other mitigation strategies after the TNF has approved the HPTP and GPO Data Recovery Plans and the SHPO has concurred.

2. If in-field modifications of the HPTP or GPO Data Recovery Plans are necessary, the TNF shall consult with the appropriate land-managing agency and the SHPO prior to approving the modification. Once the TNF has notified the SHPO of the changes, the SHPO shall have 14 days to comment. Comments will then be addressed by the TNF; if no comments are received within 14 days, the TNF will move forward. Modifications will be discussed and justified in the report(s) of the work.

I. Summary Treatment Report(s)

1. The TNF shall ensure that Summary Treatment Reports summarizing the implementation of the Oak Flat Federal Parcel HPTP and GPO Data Recovery Plans or other treatments are prepared within 30 calendar days after fieldwork or other mitigation strategies are completed. Separate reports may be prepared for archaeological work and non-archaeological mitigation.

2. The Summary Treatment Report for archaeological work will contain at a minimum:
   a. Descriptions and justifications of any changes in field methods from those presented in the HPTP or Data Recovery Plans.
   b. A map of each treated site showing excavated areas, feature locations, areas monitored, and other data as appropriate.
   c. A list of features identified at each site, brief descriptions, extent of investigation, and assessment of function and age.
   d. A summary of the data recovery results, including summary descriptions of recovered artifacts and samples, by class.
   e. A discussion of any suggested changes or refinements to the research questions or analyses identified in the research design that might be warranted based on the preliminary findings and the character of the recovered assemblages.
   f. A schedule for the completion of all analyses and submission of the Full Treatment Report.

3. Summary Treatment Reports for all other mitigation strategies (non-archaeological) will include:
   a. A description of the work conducted in accordance with the treatment plans.
   b. Any deviations from the plans with justifications.
   c. Results of work conducted.

4. The TNF shall submit the draft Summary Treatment Report to the SHPO and simultaneously afford all Consulting Parties to this Agreement the opportunity to review and comment on the report(s) within 20 calendar days of receipt of the report. The TNF will consult with the SHPO and other Consulting Parties to this Agreement to ensure, to the extent the TNF agrees, that any comments are addressed in the final Summary Treatment Report. If any party fails to respond in writing, by telephone, or by email within 20 calendar days, it is assumed that there are no comments.

J. Full Treatment Report(s)

1. Draft Full Treatment Reports will be prepared for each treated project component.
2. The TNF shall ensure that Draft Full Treatment Reports are completed within 1 year of completion of applicable fieldwork, and Final Reports within 2 years of completion of applicable fieldwork or mitigation tasks.

3. The Draft and Full Treatment Report(s) will contain at a minimum:
   a. Discussion of the methods and treatments applied to the historic properties with an assessment of the degree to which these methods and treatments followed the direction provided by the plans and comments to the Summary Treatment Report.
   b. Discussion of any changes in methods from those proposed in the plans.
   c. A topographic plan view map for each treated historic property investigated, depicting all features, treatment areas, and other data as appropriate.
   d. Final descriptions, drawings, and/or photographs for each feature.
   e. Final descriptions and analyses of all recovered data classes.
   f. Final interpretation of each site according to the research contexts identified in the plans.
   g. Overall synthesis of the data recovery and analysis results with an interpretation of perceived patterns.
   h. Interpretation of the project results in a regional context.
   i. If a burial agreement with the ASM has been acquired, all information relevant to compliance with the reporting requirements under the burial agreement.
   j. A schedule for the completion of all curation and repatriation requirements.

4. The TNF will provide the Draft Full Treatment Reports to the SHPO and simultaneously afford all Consulting Parties to this Agreement the opportunity to review and comment on the report(s). SHPO and the other Consulting Parties to this Agreement will have 30 calendar days from receipt of the Draft Full Treatment Report to review and comment.

5. If the TNF does not receive a response from a Consulting Party during these review periods, the TNF will make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party, there is no response, it is assumed there are no comments.

6. TNF will direct Resolution Copper in the completion of the Full Treatment Report to address all comments. Electronic and hard copies of the Full Treatment Report will be provided to TNF and in turn to the SHPO, land-management agencies, and other Consulting Parties to this Agreement. Land-management agencies are responsible for filing this documentation with the curation repository for their collections.

K. Because the treatments may be long term, progress on treatments to mitigate adverse effects will be reported on during the annual report required by this Agreement per Stipulation XVII. A separate stand-alone treatment report for TCPs will not be prepared.

X. OTHER COMPENSATIONS

If during the life of the mine, other compensations not discussed in Stipulation IX are needed to address adverse effects to cultural resources, the Forest Service shall ensure that those compensations are developed and implemented in consultation with the Tribes. The Forest Service shall ensure that tribal concerns are addressed and redressed throughout the life of the project.
XI. TREATMENT OF HUMAN REMAINS AND FUNERARY OBJECTS

Human remains, associated funerary objects, sacred objects, objects of cultural patrimony, objects of tribal patrimony, or formal non-human burials discovered on Federal land will be treated in compliance with NAGPRA, ARPA, and the Forest Service Region 3 policy for the treatment and disposition of Native American human remains and associated funerary objects recovered from Forest Service Southwestern Region lands (Region 3 Supplement 2300-99-3 to Forest Service Manual, Chapter 2360 – Special Interest Areas, Section 2361.29–Recovery, Curation and Public Use, 08/12/1999).

A NAGPRA Plan of Action regarding the treatment and disposition of any human remains, funerary objects, sacred objects, objects of cultural patrimony, objects of tribal patrimony, or formal non-human burials discovered on Federal land will be developed by the TNF or the BLM, according to each agency’s jurisdictional authority (see Appendix D).

Human remains, funerary objects, sacred objects, objects of cultural patrimony, objects of tribal patrimony, or formal non-human burials discovered on State land will be treated in compliance with ARS 41-844, and human remains and funerary objects discovered on private land will be treated in compliance with ARS 41-865 under the jurisdictional authority of the Director of the ASM. For cultural resources work on State or private land, a burial agreement for the treatment and disposition of human remains, funerary objects, sacred objects, objects of cultural patrimony, objects of tribal patrimony, or formal non-human burials must be developed in coordination with ASM.

XII. AUTHORIZATION OF PROJECT ACTIVITY IMPLEMENTATION

A. For activities on Forest Service land, ground-disturbing/GPO activities may be authorized once the TNF, in consultation with the SHPO pursuant to Stipulations VI through VIII, determines that:

1. No historic properties are present within the Undertaking APE at the location of the proposed activity; or

2. Historic properties that are present within the APE at the location of the proposed activity will not be adversely affected; or

3. The HPTP has been implemented for historic properties that are present within the APE at the location of a proposed activity that will be adversely affected, and the Summary Treatment Report documenting compliance with the HPTP has been accepted by the TNF with the understanding that a full report is in preparation. TNF may only authorize activities if such authorization will not preclude the ability to redesign or relocate project activities to avoid adverse effects on historic properties, or to resolve those adverse effects in accordance with the terms of this Agreement.

B. For activities on BLM land, ground-disturbing/GPO activities may be authorized once the TNF and BLM, in consultation with the SHPO, pursuant to Stipulations VI through VIII, determine that:

1. No historic properties are present within the Undertaking APE at the location of the proposed activity; or

2. Historic properties that are present within the APE at the location of the proposed activity will not be adversely affected; or

3. The HPTP has been implemented for historic properties that are present within the APE at the location of a proposed activity that will be adversely affected, and the Summary Treatment Report documenting compliance with the HPTP has been accepted by the TNF and the BLM with the understanding that a full report is in preparation.
C. For activities on ASLD land, ground-disturbing/GPO activities may be authorized once the TNF and ASLD, in consultation with the SHPO pursuant to Stipulations VI through VIII, determine that:

1. No historic properties are present within the Undertaking APE at the location of the proposed activity; or
2. Historic properties that are present within the APE at the location of the proposed activity will not be adversely affected; or
3. The HPTP has been implemented for historic properties that are present within the APE at the location of a proposed activity and will be adversely affected, and the Summary Treatment Report documenting compliance with the HPTP has been accepted by the TNF and the ASLD with the understanding that a full report is in preparation.

D. For activities located on non-federal lands within the USACE’s permit area associated with a Section 404 permit, ground-disturbing/GPO activities may be authorized once the TNF, in consultation with the SHPO pursuant to Stipulations VI through VIII, determines that:

1. No historic properties are present within the Undertaking APE at the location of the proposed activity; or
2. Historic properties that are present within the APE at the location of the proposed activity will not be adversely affected; or
3. The HPTP has been implemented for historic properties that are present within the APE at the location of a proposed activity that will be adversely affected, and the Summary Treatment Report documenting compliance with the HPTP has been accepted by the TNF with the understanding that a full report is in preparation.

XIII. COMMUNICATION AMONG PARTIES TO THE PROGRAMMATIC AGREEMENT

Electronic mail (email) will serve as the preferred official correspondence for all communications regarding this Agreement and its provisions. See Appendix E for a list of contacts and email addresses. Contact information in Appendix E may be updated as needed without an amendment to this Agreement. It is the responsibility of each Consulting Party to immediately inform the TNF of any change in name, email address, or telephone number for any point-of-contact. The TNF will forward this information to all Consulting Parties by email.

XIV. CONFIDENTIALITY

To the maximum extent allowed by Federal and state law, the TNF will maintain confidentiality of sensitive information regarding historic properties that could be damaged through looting or disturbance, and/or to help protect a historic property to which a Tribe attaches religious or cultural significance. However, any documents or records the TNF has in its possession are subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552 et seq.) and its exemptions, as applicable. The TNF shall evaluate whether a FOIA request for records or documents would involve a sensitive historic property, or a historic property to which a Tribe attaches religious or cultural significance, and if such documents contain information that the TNF is authorized to withhold from disclosure by other statutes including Section 304 of the NHPA, and the provisions of the ARPA. If this is the case, TNF will consult with the Keeper of the Register and the ACHP regarding withholding the sensitive information per 36 CFR 800.11(c). If a tribally sensitive property is involved, the TNF will also consult with the relevant Tribe prior to making a determination in response to a FOIA request.
XV. EMERGENCIES

Should an emergency situation occur that represents an immediate threat to life or property, the TNF shall immediately notify the SHPO, Tribes, and land managers (as applicable) as to the situation and the measures taken to respond to the emergency or hazardous condition. Should land managers or Tribes desire to provide technical assistance to the TNF, they shall submit comments within 7 calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

XVI. CURATION

The TNF shall ensure that all records and materials resulting from compliance with Section 106 for the Undertaking are curated at a repository approved by the TNF or participating land-managing agency, and that the facility meets the standards set forth in the 1980 ACHP Handbook and the 1990 Guidelines for 36 CFR 79. In compliance with the Arizona Antiquities Act, the TNF will ensure that all materials recovered from State land and the associated reports will be curated at ASM or another approved repository. Curation costs will be the responsibility of Resolution Copper.

XVII. ANNUAL REVIEW OF PROGRAMMATIC AGREEMENT AND ANNUAL REPORT

A. The Consulting Parties shall evaluate the implementation and operation of this Agreement on an annual basis. There shall be an annual meeting among the Consulting Parties on or near the anniversary date of the execution of this Agreement to review the progress and effectiveness of this Agreement. The TNF is responsible for setting up this meeting, in coordination with all the Consulting Parties.

B. Prior to the annual meeting, the TNF will provide Consulting Parties with an annual report (Annual Report) to review the progress under this Agreement and under the approved HPTP(s). The Annual Report will include:

1. acreage of new historic property/cultural resources surveys and results;
2. status of mitigation activities;
3. monitoring efforts;
4. unanticipated discoveries,
5. ongoing and completed public education activities;
6. any issues that are affecting or may affect the ability of the Federal agencies to continue to meet the terms of this Agreement;
7. any disputes and objections received, and how they were resolved;
8. any additional parties who have become signatories or concurring parties to this Agreement in the past year; and
9. proposed plans for next year’s activities.

C. Consulting Parties will have 30 calendar days to review the Annual Report and provide comments to the TNF, which will then consolidate the comments to develop the agenda for the annual meeting.
D. Within 14 calendar days after the annual meeting, the TNF will summarize the meeting, including proposed action items and how they are to be addressed, in a letter to Consulting Parties. After the meeting, Consulting Parties will have 20 calendar days to review and comment on the meeting notes and, if necessary, provide the TNF with any edits to the meeting notes. If changes are needed, the TNF will produce revised meeting notes within 30 calendar days of receipt of comments and will provide the final notes to the Consulting Parties.

E. Evaluation of the implementation of this Agreement may also include in-person meetings or conference calls among Consulting Parties, and suggestions for possible modifications or amendments to this Agreement. If the TNF does not receive a response from a Consulting Party, the TNF will make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party, there is no response, the TNF will proceed to the next step.

XVIII. POST-REVIEW DISCOVERIES OF CULTURAL RESOURCES

A. The TNF will ensure that procedures regarding post-review discoveries are included as provisions of Resolution Copper’s GPO. The protocol to be followed will also be identified in the Monitoring and Discovery Plan.

B. The TNF will ensure that Resolution Copper immediately halts ground-disturbing activities within a 100-foot-radius of any new discovery of cultural resources, clearly marks the area of discovery, takes steps to ensure that the area is protected and secured, implements additional measures, as appropriate, to protect the discovery from looting and vandalism, and has a professional archaeologist inspect the area and vicinity to determine the extent of the discovery and provide recommendations to TNF regarding NRHP eligibility, effect, and mitigation treatment.

C. The TNF will notify the SHPO, affiliated Tribes, and applicable land managers, within 48 hours of the discovery, and will provide its assessment of the NRHP eligibility of the discovery and measures proposed to resolve adverse effects. The TNF will take into account the SHPO’s, Tribes’, and applicable land manager’s recommendations on eligibility and treatment of the discovery, as tiered off of the Oak Flat Federal Parcel HPTP or the GPO Research Design, and will notify Resolution Copper of any appropriate actions required to resolve adverse effects.

D. If the post-review discovery consists of human remains or funerary objects, the TNF shall follow the procedures outlined in the NAGPRA Plan of Action for discoveries on Federal land or those outlined in the burial plan for discoveries on State or private land per ARS 41-844 and ARS 41-865 (see Stipulation XI). In addition, humans remains and funerary objects shall be treated in accordance with Stipulation XI.

E. The TNF, in coordination with any applicable land manager, may allow construction activities to proceed in the area of discovery after the TNF has determined that implementation of the actions taken to address the discovery pursuant to this Stipulation have been completed.

XIX. AMENDMENTS

A. This Agreement may be amended when such an amendment is agreed to in writing by all Signatories and Invited Signatories. Any Signatory or Invited Signatory may propose an amendment in writing to the TNF. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

B. Copies of the amendment will be provided by the TNF to all parties to this Agreement.
XX. DISPUTE RESOLUTION

Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the TNF shall consult with such party to resolve the objection and shall notify the SHPO and Consulting Parties of the objection. If the TNF determines that such objection cannot be resolved, the TNF will:

A. Forward all documentation relevant to the dispute, including the TNF’s proposed resolution, to the ACHP. The ACHP shall provide the TNF with its opinion on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the TNF shall prepare a written response that takes into account any timely opinion or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. The TNF will then proceed according to its final decision.

B. If the ACHP does not provide comments regarding the dispute within the 30-day time period, the TNF may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, the TNF shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement and provide them and the ACHP with a copy of such written response.

C. The responsibilities of the TNF to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XXI. TERMINATION

A. If any signatory to this Agreement determines that its terms will not or cannot be carried out, the TNF shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation XIX. If, within 30 calendar days (or another time period agreed to by all signatories), an amendment cannot be reached, any signatory may terminate this Agreement upon written notification to the other signatories.

B. Once this Agreement is terminated, and prior to work continuing on the Undertaking, the TNF must either (a) execute an Agreement pursuant to 36 CFR 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. The TNF shall notify the signatories as to the course of action it will pursue.

C. At any point after the execution of this Agreement, and after providing written notice to the Signatories and Invited Signatories, the BLM or the USACE may (a) determine that it no longer has Section 106 responsibilities associated with the Undertaking; or (b) decide to continue complying with its Section 106 responsibilities independently through a separate Agreement per 36 CFR 800.14(b) or, failing that, (c) through its request, consideration, and response to the formal comments of the ACHP per 36 CFR 800.7(c), determine that it will no longer participate in this Agreement. Such a decision by the BLM or USACE will not affect this Agreement with regard to other land managers and/or permitting entities who are Signatories and/or Invited Signatories and will not require an amendment to this Agreement.
D. If the project is suspended or terminated for any reason, in-process mitigation will be completed according to the appropriate plan to the extent applicable. This includes data recovery and mitigation of adverse effects to TCPs. Resolution Copper will be responsible for the costs associated with completion of the mitigation. For data recovery, the Forest Service shall ensure that any in-process data recovery fieldwork is completed and that all analysis, interpretation, reporting, curation of artifacts, and repatriation of remains be completed within 1 year of project suspension or termination. For other mitigation, the Forest Service shall, in consultation with the land-managing agencies, SHPO, and Tribes, develop steps for completion of the mitigation within 1 year of the suspension or termination.

XXII. TRANSFER OF PERMITS TO SUCCESSOR

Any transfer or assignment of the Agreement for the Undertaking to another party will require the assignee or successor to assume all responsibilities of Resolution Copper under this Agreement for mitigation of adverse effects, and any successor or assignee of Resolution Copper is bound to the terms of this Agreement. Any transfer or assignment of the permits for the Undertaking to another party will require the assignee or successor to sign an amendment to this Agreement to become an Invited Signatory at the time of transfer or assignment. All Consulting Parties will be notified if an amendment to reassign the duties of Resolution Copper is proposed.

XXIII. DURATION OF PROGRAMMATIC AGREEMENT

This Agreement shall be in effect for 10 years with the understanding that it will be extended after 10 years. The Forest Service will ensure that an agreement is in place for the duration of the mine.

XXIV. ANTI-DEFICIENCY ACT

The TNF’s obligations under this Agreement are subject to availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. The TNF shall make reasonable and good-faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the TNF’s ability to implement the stipulations of this agreement, the TNF shall consult in accordance with the amendment and termination procedures found at Stipulations XIX and XXI of this Agreement.

XXV. NON-ENDORSEMENT CLAUSE

Nothing in this Agreement should be interpreted to imply that any party endorses the Undertaking. Consulting Parties will not take any action or make any statement that suggests or implies such an endorsement based on signing this Agreement. Per 36 CFR 800.6(c)(2)(iv), the refusal of any party invited to become a signatory or concurring party will not invalidate this Agreement.

XXVI. AUTHORIZING SIGNATURES

In witness hereof, the following authorized representatives of the parties have signed their names on the dates indicated, thereby executing this Agreement. This Agreement may be signed by the Signatories and Invited Signatories using photocopy, facsimile, or counterpart signature pages. TNF will distribute copies of all signed pages to the Signatories, Invited Signatories, and Consulting Parties, once the Agreement is executed. Execution of this Agreement by the TNF, the SHPO, and the ACHP, and implementation of its terms, evidence that the TNF has taken into account the effects of this undertaking on historic properties and has afforded the ACHP an opportunity to comment.
This document is version 5 of the DRAFT Programmatic Agreement and still in review by the Signatories of the document. A copy of the final Programmatic Agreement will be provided in the Final EIS.

APPENDICES

A. Area of Potential Effects
B. Maps
C. Definitions
D. NAGPRA Plan
E. Key Staff Contact Information
F. Programmatic Agreement Process
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SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG THE
USDA FOREST SERVICE TONTO NATIONAL FOREST,
ARIZONA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
REGARDING
COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT
ON THE RESOLUTION COPPER PROJECT
AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

USDA Forest Service, Tonto National Forest

By: _________________________________________

Printed Name: _____________________________________

Title: _________________________________________

Date: _________________________________________

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SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG THE
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ARIZONA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
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AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

Arizona State Historic Preservation Officer

By: _________________________________________

Printed Name: _____________________________________

Title: _________________________________________

Date: _________________________________________
SIGNATORY PAGE

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ON THE RESOLUTION COPPER PROJECT
AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

The Advisory Council on Historic Preservation

By: _________________________________________

Printed Name: _____________________________________

Title: _________________________________________

Date: _________________________________________
INVITED SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
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ON THE RESOLUTION COPPER PROJECT
AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

Resolution Copper Mining, LLC

By: _________________________________________

Date: _________________________________________

INVITED By: ___________________________________

Printed Name: ___________________________________

Title: _________________________________________

Date: _________________________________________
INVITED SIGNATORY PAGE

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AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

Arizona State Land Department

By: _________________________________________

Date: _________________________________________

INVITED By: _________________________________________

Printed Name: _________________________________________

Title: _________________________________________

Date: _________________________________________
INVITED SIGNATORY PAGE

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AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

U.S. Department of the Interior, Bureau of Land Management

By: _________________________________________

Date: _________________________________________

INVITED By: ____________________________________

Printed Name: __________________________________

Title: _________________________________________

Date: _________________________________________
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AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

United States Army Corps of Engineers, Los Angeles District

By: _________________________________________

Date: _________________________________________

INVITED By: _________________________________

Printed Name: _________________________________

Title: _________________________________________

Date: _________________________________________
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AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

Arizona State Museum

By: _______________________________________________

Date: ___________________________________________

INVITED By: _______________________________________

Printed Name: _____________________________________

Title: ____________________________________________

Date: ____________________________________________