## Resolution Copper Project and Land Exchange Environmental Impact Statement

USDA Forest Service Tonto National Forest Arizona

August 6, 2018

# **Process Memorandum to File**

Cultural Resources Analysis: Assumptions; Methodology Used; Relevant Regulations, Laws, and Guidance; and Key Documents

This document is deliberative and is prepared by the third-party contractor in compliance with the National Environmental Policy Act and other laws, regulations, and policies to document ongoing process and analysis steps. This document does not take the place of any Line Officer's decision space related to this project.

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### **Revision History**

Date	Personnel	Revisions Made
08/06/18	Emily Newell	Process memorandum created
10/29/18	Emily Newell	Revisions to memorandum title, revision history table added, edits to purpose of process memorandum section, references and key documents section added
11/15/18	Emily Newell	Edits to references, applicability table, analysis area
01/14/19	Emily Newell	Ready for project manager review
8/2/19	Emily Newell	Update process memorandum for draft environmental impact statement section
12/30/20	Chris Garrett	Final update for consistency prior to final environmental impact statement release

### Purpose of Process Memorandum

In order to provide a concise and accessible summary of resource impacts, certain detailed information has not been included directly in the environmental impact statement (EIS). The purpose of this process memorandum is to describe additional supporting resource information in detail. The cultural resources section of chapter 3 of the EIS includes brief summaries of the information contained in this process memorandum. This process memorandum covers the following topics:

- Resource analysis area
- Analysis methodology
- Regulations, laws, and guidance
- Key documents and references cited

### Detailed Information Supporting Environmental Impact Statement Analysis

#### **Resource Analysis Area**

There are three distinct analysis areas for this discussion: the direct impacts analysis area, the indirect impacts analysis area, and the atmospheric impacts analysis area. The analysis areas for cultural resources for the general plan of operations (GPO) generally correspond to the Section 106 of the

National Historic Preservation Act of 1966 (NHPA) direct and indirect areas of potential effects (APE), defined by 36 Code of Federal Regulations 800.16(d) as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties."

The APE was developed through consultation with the Arizona State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation, Bureau of Land Management, Arizona State Land Department, affected tribes, and other consulting parties. The APE has been broadened several times throughout the consultation process to now include most of what is known as the "Copper Triangle." It generally consists of a 6-mile buffer around the GPO project area, all tailings facility alternatives, and the Oak Flat Federal Parcel. The buffer has been extended outward in two areas: 7 miles to the east to include the community of Top-of-the-World, and up to 9 miles to the southeast to incorporate additional historic mining areas. As the project analysis progressed, several areas outside the buffer were added to the APE. The historic districts of Globe and Miami were added at the request of the SHPO as discontiguous portions of the APE. Also added were the compensatory mitigation lands required by the U.S. Army Corps of Engineers Clean Water Act Section 404 permit. This expansive APE was designed to capture direct, indirect, and cumulative effects within three zones: (1) physical effects within the project footprint up to the fence lines, the Oak Flat Federal Parcel, and the 404 mitigation parcels; (2) auditory effects within 2 miles of the project footprint and Oak Flat Federal Parcel; and (3) visual/atmospheric/socioeconomic effects within 6 to 9 miles of the project footprint, and the historic districts of Globe and Miami.

#### **Direct Analysis Area**

The direct impacts analysis area for each alternative consists of the complete footprint of all project elements, including the lands leaving Federal management under the land exchange, the recreation mitigation lands, and the 404 mitigation parcels. For the direct analysis area, the analysis assumes that all areas within those boundaries or fence lines would be disturbed. The direct analysis area for the proposed action (GPO and land exchange) is approximately 38,446 acres and consists of the following areas of assumed disturbance, including access roads and other linear infrastructure:

- East Plant Site and subsidence area, including the reroute of Magma Mine Road
   (1,861 acres that is partially within the Oak Flat Federal Parcel and includes private,
   National Forest System, and Arizona State Land Department lands)
- 2,422-acre Oak Flat Federal Parcel of National Forest System land to be exchanged with Resolution Copper
- 940-acre West Plant Site
- 6.96-mile Silver King to Oak Flat transmission line
- 685-acre Magma Arizona Railroad Company (MARRCO) corridor and adjacent project components
- 553-acre filter plant and loadout facility
- Alternatives tailings storage facilities and tailings corridors. Alternatives 2 and 3 have the same locations as the GPO; and Alternative 4 – Silver King, Alternative 5 – Peg Leg, and Alternative 6 – Skunk Camp, which have different locations and overall footprints from the GPO tailings storage facility and tailings corridor

Various permitted archaeological contractors over the past 15 years collected data through Class I records searches (records check at local, State, and Federal levels) and Class III pedestrian surveys (field crews systematically walk the analysis area and record resources). As of August 2020, crews had surveyed the majority of the direct analysis areas for cultural resources. This analysis includes as many of these data as were available. Please note that some survey results are preliminary and may change after the final EIS (FEIS) is published.

#### **Indirect Impacts Analysis Area**

The indirect impacts analysis area consists of a 2-mile buffer around all project and alternative components. The 2-mile buffer is designed to account for impacts on resources not directly tied to ground disturbance and outside the direct analysis area. Potential indirect impacts include inadvertent damage, vandalism, unsanctioned collecting, and impacts caused by vibration from mine construction and operations.

#### **Atmospheric/Socioeconomic Impacts Analysis Area**

The atmospheric/socioeconomic impacts analysis area (including visual and auditory impacts) consists of a 6-mile buffer around all project and alternative components. The atmospheric impacts analysis area encompasses approximately 729,674 acres for all project components under all alternatives. The analysis area for cultural resources is shown in section 3.12 of the FEIS.

#### **Visual Impacts Analysis**

The visual impacts analysis for cultural resources follows the scenic resources analysis for the EIS (see section 3.11 of the FEIS), which is defined by the following buffers around project components:

- 6 miles around tailings facility alternatives
- 2 miles around slurry pipeline corridors, the East Plant Site and subsidence area, the West Plant Site, and transmission lines
- 1 mile on either side of the MARRCO corridor

For the 2-mile buffer around slurry pipeline corridor alternatives, the East Plant Site and subsidence area, the West Plant Site, and transmission lines, and the 1-mile buffer for the MARRCO corridor, it was assumed that those project components could be seen within these buffer areas with no obstructions.

#### **Analysis Methodology**

SWCA Environmental Consultants collected data through Class I records searches (records check at local, State, and Federal levels) and Class III pedestrian surveys (field crews systematically walk the analysis area and record resources). No additional details were identified regarding methodology not included in the draft EIS.

# Regulations, Laws, and Guidance

Mine operations are subject to a wide range of Federal, State, and local requirements. Table 1 provides a summary of cultural resources laws, regulations, policies, and plans at the Federal, State, and local level.

Table 1. Relevant Laws, Regulations, Policies, and Plans

Laws, Ordinances, Regulations and Standards	Description	Applicability
NHPA (16 United States Code [U.S.C.] 470x-6)	Created policies for the preservation of historic properties throughout the nation, put in place the Section 106 review process (see below), and established the National Register of Historic Places (NRHP), Advisory Council on Historic Preservation, and the SHPOs/Tribal Historic Preservation Officers.	Adverse impacts to historic properties will be avoided, minimized, or mitigated through the Section 106 of the NHPA process.  Surveys have identified eligible properties.
Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470mm)	Designed to protect archaeological resources on Federal and Indian lands and establishes procedures for permitting archeological work on Federal or Indian lands in order to curtail unauthorized collection.	Cultural resources surveys performed on U.S. Forest Service (Forest Service) lands within the analysis area followed procedures outlined by the Archaeological Resources Protection Act.
American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996)	Protects Native American access to sacred sites.	The Chl'chil Bildagoteel Historic District is located within the direct analysis area and is an NRHP-listed traditional cultural property and its boundaries contain sacred places.
Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001–3013)	"Gives ownership and control" of Native American human remains and associated objects excavated on Federal and Indian lands to Native Americans.	Excavation of human remains and associated objects may occur.
Executive Order (EO) 13007 (May 24, 1996), "Indian Sacred Sites"	Designed to protect, when practical, access to Native American sacred sites on Federal land.	The Chl'chil Bildagoteel Historic District is located within the direct analysis area on Forest Service land and is an NRHP-listed traditional cultural property and its boundaries contain sacred places.
EO 13175 (November 6, 2000), "Consultation and Coordination with Indian Tribal Governments"	Encourages the strengthening of government-to-government relations between the United States Government and Indian Tribal Governments.	Mitigation of adverse impacts under the National Environmental Policy Act (NEPA) that do not fall under Section 106 will also be developed in consultation with the Tribes. Additionally, Tribal monitors are assisting with the Class III surveys for the alternative footprints and Oak Flat.
Arizona Antiquities Act of 1960 (Arizona Revised Statutes [ARS] 41-841 through 844)	Protects archaeological and paleontological resources on State lands by requiring authorization prior to excavation or collection on State lands (ARS 41-841) and prohibits defacing of sites or objects on State land (ARS 41-843).	The act stipulates that any institution (in this instance, Resolution Copper) undertaking archaeological work on State or local lands acquire a permit from the Arizona State Museum (ASM) (ARS 41-842) and requires that all discoveries, including human remains and funerary objects, on State land be reported to the ASM (ARS 41-844).

Laws, Ordinances, Regulations and Standards	Description	Applicability
State Historic Preservation Act of 1982 (ARS 41-861 through 41-865)	Created the Arizona Register of Historic Places and requires that the effects on cultural properties be considered at all levels of planning and development by agencies that manage State land. ARS 41-865 also requires that private landowners report human remains or funerary objects found on their lands to the ASM.	Surveys have identified eligible properties.
Tonto National Forest Land and Resource Management Plan	Any proposed ground-disturbing activity must comply with the NHPA and the programmatic agreement (still in progress), as well as the Native American Graves Protection and Repatriation Act and National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties" (Parker and King 1998).	Avoidance and protection are the preferred site management for historic properties; historic properties will be managed to achieve a "No Effect" finding for proposed undertakings, and relocating projects to protect significant resources will be considered.  Management of resources will be coordinated with the SHPO and appropriate tribes to the extent feasible.
American Antiquities Act of 1906 (16 U.S.C. 431–433)	Protects archaeological sites and historic structures on Federal lands by allowing the president to declare them national monuments and establishes a permitting requirement for excavation and collection of objects of antiquity from sites on Federal lands.	Archaeological sites have been recorded within the direct analysis area.
EO 11593 (May 13, 1971), "Protection and Enhancement of the Cultural Environment"	Directs Federal agencies to responsibly manage cultural properties on Federal land for future generations by inventorying properties under their management and establishing procedures for the maintenance and recordation of those properties.	To date, 56 cultural resources surveys, inventories, assessments, or monitoring projects have been completed within the direct analysis area.
Religious Freedom Restoration Act of 1993 (42 U.S.C. 21B)	Designed to prevent the Federal government from placing substantial burden on a person's religious exercise.	Tonto National Forest must continue to allow Native Americans to practice their religious exercise.

Laws, Ordinances, Regulations and Standards	Description	Applicability
Section 106 of the NHPA	Requires Federal agencies to take into account the effects of their undertakings on historic properties. This law is the most relevant to the land exchange and GPO. As defined in the implementing regulations of Section 106, 36 Code of Federal Regulations 800.16(I), historic properties are any district, site, building, structure, or object that is included in or eligible for inclusion in the NRHP under one of four significance criteria: a) association with events that have made a significant contribution to the broad patterns of history; b) association with a significant person in the past; c) embodiment of the distinctive characteristics of a type, period, or method of construction, or represents the work of a master or possess high artistic values; d) the potential to yield information important about the past (National Park Service 1995). The Section 106 process requires that if an undertaking has the potential to adversely affect historic properties, the Federal agency must, in consultation with the SHPO or Tribal Historic Preservation Officer and other interested parties, establish the APE, identify historic properties within the undertaking's APE, assess what, if any, effects the undertaking may have on historic properties in the APE, and attempt to resolve adverse effects through avoidance, minimization, or mitigation of the adverse effects.	The Forest Service is in the process of developing a robust mitigation plan to avoid, minimize, rectify, reduce, or compensate for resource impacts that have been identified during the process of preparing this EIS. Appendix J of the FEIS contains descriptions of mitigation concepts being considered and known to be effective as of publication of the FEIS. Appendix J also contains descriptions of monitoring that would be needed to identify potential impacts and mitigation effectiveness.

### Key Documents and References Cited for Cultural Resources

The following list is meant to highlight key process or analysis documents in the project record. It should not be considered a full list of all documentation considered within this process memorandum or the EIS analysis.

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