

**Resolution Copper Project and Land Exchange
Environmental Impact Statement**

USDA Forest Service
Tonto National Forest
Arizona

August 6, 2018

Process Memorandum to File

Tribal Values and Concerns Resource Analysis: Assumptions, Methodology Used and 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 cited and applicability table
01/14/19	Emily Newell	Ready for PM review
8/2/2019	Emily Newell	Updated process memorandum for Draft EIS

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 Tribal 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 EIS Analysis

Resource Analysis Area

The direct and indirect analysis areas for tribal values and concerns for the GPO and land exchange corresponds to that of cultural resources found in section 3.12.2 of the Draft EIS. The direct analysis area for the proposed project is defined by several factors: the acreage of ground disturbance expected for each mine component described in the General Plan of Operations (GPO) and the acreage of land leaving Federal stewardship as a result of the land exchange. The direct analysis area for the proposed action (GPO and land exchange) totals 40,988 acres and consists of the following, which includes access roads and other linear infrastructure:

- East Plant Site and subsidence zone, including the reroute of Magma Mine Railroad (1,539 acres of which is within the Oak Flat Federal Parcel), which is National Forest System (NFS) and Arizona State Land Department (ASLD) lands;
- 2,422-acre Oak Flat Federal Parcel of NFS land to be given to Resolution Copper Mining, LLC (Resolution Copper);
- 940-acre West Plant Site;

- 6.96-mile Silver King to Oak Flat transmission line;
- 169-acre MARRCO railroad corridor and adjacent project components;
- 553-acre filter plant and loadout facility; and

Alternatives 2–6 tailings storage facilities and tailings corridors: tailings storage facility and tailings corridor for Alternatives 2 and 3 – Near West; 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.

The indirect analysis area consists of a 2-mile buffer around all project and alternative components and contains approximately 320,693 acres. The 2-mile buffer is designed to account for impacts on resources not directly tied to ground disturbance and outside the direct analysis area.

The atmospheric analysis area consists of a 6-mile buffer around all project and alternative components. This distance is consistent with the indirect analysis area for visual impacts (see Section 3.11.2 in the Draft EIS) and is based on Bureau of Land Management (BLM) visual guidance and Forest Service guidance, modified by the addition of a small portion of land south of Picketpost Mountain, the extension another 1 mile farther east to the San Carlos Reservation boundary, and the extension to the southeast to encompass Kearny and historical use of that area. The indirect impacts analysis area encompasses approximately 750,229 acres. See Figure 3.14.2-1 from Section 3.14.2 of the Draft EIS for a map of the analysis area for tribal resources.

Analysis Methodology

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 applicable to resources of interest to Tribes. Table 1 provides a summary of tribal resources laws, regulations, policies, and plans at the Federal, State, and local level.

Table 1. Tribal Resources Laws, Regulations, Policies, and Plans

Laws, Ordinances, Regulations and Standards	Description	Applicability
National Historic Preservation Act of 1966 (16 U.S.C. 470x–6), as amended, Regulations Implementing Section 106 of the National Historic Preservation Act (36 CFR 800), and Regulations Implementing the Curation of Federally Owned and Administered Archaeological Collections (36 CFR 79)	Created policies for the preservation of historic properties throughout the nation, put in place the Section 106 review process, and established the National Register of Historic Places (NRHP), Advisory Council on Historic Preservation (ACHP), and the State Historic Preservation Officers (SHPOs)/Tribal Historic Preservation Officers (THPOs)	As the lead Federal agency for the Resolution Copper Project, the Tonto National Forest (TNF) consults on a government-to-government basis in concert with other land-managing Federal agencies affected by the project, e.g., the BLM, the U.S. Bureau of Reclamation, and the U.S. Army Corps of Engineers. TNF is responsible for documenting the tribal outreach and results of consultations, and for coordinating with the other Federal agencies to ensure that their tribal consultation requirements are also met.

Laws, Ordinances, Regulations and Standards	Description	Applicability
Archeological Resources Protection Act (16 U.S.C. 470aa-470mm)	Secured the protection of archaeological resources and sites which are on public lands and Indian lands, and fostered increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals	The TNF has an obligation to fulfill the protections outlined in the Archeological Resources Protection Act for sites located on public lands that would be affected by the proposed project.
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.	Tribal consultation with the Yavapai and Apache Tribes identified Apache Leap, the Superstition Mountains, Picketpost Mountain, Devil's Canyon, and Oak Flat as sacred landscapes/traditional cultural properties (TCPs) within or near the proposed Resolution Mine footprint.
American Indian Religious Freedom Act (AIRFA) of 1978 (42 U.S.C. 1996)	Protects Native American access to sacred sites	The <i>Chi'chil Bildagoteel</i> Historic District is located within the direct analysis area and is an NRHP-listed TCP and its boundaries contain sacred places.
Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 U.S.C. 3001–3013) and Regulations Implementing the Native American Graves Protection and Repatriation Act (43 CFR 10)	"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.
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	Tribes within the analysis area have the freedom to exercise religious practices.
EO 13007 (May 24, 1996), "Indian Sacred Sites"	Designed to protect, when practical, access to Native American sacred sites on Federal land	The tailings alternatives 2–4 contain active springs that would be buried: Alternatives 2 and 3 contain three springs; Alternative 4 contains two springs within the boundary and another two in the adjacent area. All of the Tribes strongly object to the placement of tailings in this culturally sensitive area.
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	The TNF is in ongoing government-to-government consultations with the Fort McDowell Yavapai Nation, Gila River Indian Community, Hopi Tribe, Mescalero Apache Tribe, Pueblo of Zuni, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and Yavapai Prescott Indian Tribe. The four O'Odham tribes (the Four Southern Tribes Cultural Committee) have delegated consultation with TNF to the Salt River Pima-Maricopa Indian Community and to the Gila River Indian Community.
USDA Departmental Regulations 1340-007 "Policies on American Indians and Alaska Natives"	Comply with and implement the body of regulatory requirements and executive orders that apply to Federal agency tribal consultation and interactions.	Tribal consultation resulted in the request that tribal monitors resurvey those areas to identify TCPs of importance to the four cultural groups with ties to the area (Puebloan, O'Odham, Apache, and Yavapai), to include springs and seeps, plant and mineral resource collecting areas, landscapes and landmarks, caches of regalia and human remains, and sites that may not have been recognized by non-Native archaeologists.

Laws, Ordinances, Regulations and Standards	Description	Applicability
USDA Departmental Regulations 1350-001 Tribal Consultation	Comply with and implement the body of regulatory requirements and executive orders that apply to Federal agency tribal consultation and interactions.	Tribal consultation resulted in the request that tribal monitors resurvey those areas to identify TCPs of importance to the four cultural groups with ties to the area (Puebloan, O'Odham, Apache, and Yavapai), to include springs and seeps, plant and mineral resource collecting areas, landscapes and landmarks, caches of regalia and human remains, and sites that may not have been recognized by non-Native archaeologists.
FSM 1500-2016-1 "External Relations – Including with Tribes"	Comply with and implement the body of regulatory requirements and executive orders that apply to Federal agency tribal consultation and interactions.	Tribal consultation resulted in the request that tribal monitors resurvey those areas to identify TCPs of importance to the four cultural groups with ties to the area (Puebloan, O'Odham, Apache, and Yavapai), to include springs and seeps, plant and mineral resource collecting areas, landscapes and landmarks, caches of regalia and human remains, and sites that may not have been recognized by non-Native archaeologists.
FS Handbook 1509.13-2016-1, Chapter 10 "Consultations with Indian Tribes and Alaska Native Corporations"	Comply with and implement the body of regulatory requirements and executive orders that apply to Federal agency tribal consultation and interactions.	Tribal consultation resulted in the request that tribal monitors resurvey those areas to identify TCPs of importance to the four cultural groups with ties to the area (Puebloan, O'Odham, Apache, and Yavapai), to include springs and seeps, plant and mineral resource collecting areas, landscapes and landmarks, caches of regalia and human remains, and sites that may not have been recognized by non-Native archaeologists.
Tribal Forest Protection Act of 2004 (PL 108-278)	Provides the Forest Service authority to protect Indian forestland or rangeland	Indian forestland or rangeland lies within the analysis area.
Healthy Forest Restoration Act (Section 303 of PL 108-148)	Provides technical, financial, and related assistance to Indian Tribes for the purpose of expanding tribal stewardship capacities and activities through tribal forestry best-management practices and other means at the tribal level to address watershed issues on land under the jurisdiction of or administered by the Indian Tribes.	Watershed under the jurisdiction or administered by the Indian Tribes lies within the analysis area.
Section 3003, Southeast Arizona Land Exchange and Conservation Act of the National Defense Appropriation Act (NDAA) of 2015	Addresses the Resolution Copper Mine specifically, directing the Secretary of Agriculture to engage in tribal consultation regarding the project.	Beginning in 2015 with the first submission of the GPO, TNF consulted 11 tribes regarding the proposed mine, the land exchange, and the development of alternate tailings locations, to identify tribal issues of concern and possible measures to mitigate the adverse effects to tribal issues. The TNF also consulted the tribes regarding the management plan for the Apache Leap Special Management Area as required by Section 3003 of the NDAA.

Laws, Ordinances, Regulations and Standards	Description	Applicability
Tonto National Forest Land and Resource Management Plan	Any proposed ground-disturbing activity must comply with the NHPA and the project's programmatic agreement, as well as NAGPRA, and National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties. Avoidance and protection are the preferred site management for historic properties.	Whenever possible, historic properties are managed to achieve a "No Effect" finding for proposed undertakings by relocating projects to protect significant resources. When this is not possible, the Forest Service institutes measures to mitigate the adverse effects. Management of resources will be coordinated with the SHPO and appropriate tribes to the extent feasible.
Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 688-688d)	Provides for the protection of the bald eagle and the golden eagle by prohibiting the take, possession, sale, purchase, barter, offer to sell, transport, export or import of any bald or golden eagle unless allowed by permit.	The TNF has the obligation to identify and protect animals of special interest to tribes, including bald and golden eagles.
Endangered Species Act (16 U.S.C. 1531-1543)	Requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species.	The TNF has the obligation to ensure the existence of animals of special interest to tribes, including endangered species, are not likely to be jeopardized by the proposed project.
Migratory Bird Treaty Act (16 U.S.C. 703-711)	Prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except as authorized under a valid permit (50 CFR 21.11)	The TNF has the obligation to identify and protect animals of special interest to tribes, including migratory bird species.
National Environmental Policy Act (42 U.S.C. 4321 et seq.)	Encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality	The TNF must consider whether the proposed action may significantly affect the quality of the human environment, which includes tribal values.

Key Documents and References Cited for Tribal Values and Concerns

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.

- Tribal Perspectives reports and field visits, WestLand Resources (2018)
- Section 106 records including meeting notes, Tonto National Forest

Hopkins, M.P., C. Colwell, T.J. Ferguson, and S.L. Hedquist. 2015. *Ethnographic and Ethnohistoric Study of the Superior Area, Arizona*. Prepared for Tonto National Forest and Resolution Copper. Tucson, Arizona: Anthropological Research LLC. September 14.

Nez, N. 2016. *Chi'chil Bildagoteel Historic District, Traditional Cultural Property, National Register of Historic Places*. NPS Form 10-900. Phoenix, Arizona: U.S. Forest Service, Tonto National Forest.

Parker, P.L., and T.F. King. 1998. *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. National Register Bulletin 38. Originally published 1990 (revised 1992), U.S. Department of the Interior, National Park Service, Washington, D.C.