

**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; 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.

**Prepared by:
Emily Newell
SWCA Environmental Consultants**

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 project manager review.
8/2/19	Emily Newell	Updated process memorandum for draft environmental impact statement.
12/30/20	Chris Garrett	Final update for consistency prior to final environmental impact statement release.
5/11/23	Chris Garrett	Minor updates for consistency with Programmatic Agreement language.

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 Environmental Impact Statement Analysis

Resource Analysis Area

The direct, indirect, and atmospheric analysis areas for tribal values and concerns are the same as for cultural resources, found in section 3.12.2 of the final EIS (FEIS). The direct analysis area for the proposed project is defined by two 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) is approximately 39,272 acres and consists of the following, which includes access roads and other linear infrastructure:

- 1,861-acre East Plant Site and subsidence area, including the reroute of Magma Mine Road
- 2,422-acre Oak Flat Federal Parcel, which is National Forest System land to be exchanged with Resolution Copper
- 953-acre West Plant Site and Silver King Road realignment
- 6.96-mile Silver King to Oak Flat transmission line
- 685-acre Magma Arizona Railroad Company (MARRCO) railroad corridor and adjacent project components
- 553-acre filter plant and loadout facility
- Alternatives 2 to 6 tailings storage facilities and tailings corridors
- Mitigations to reduce recreational impacts and compensatory mitigation associated with a 404 permit

The indirect analysis area consists of a 2-mile buffer around all project and alternative components and 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 and the Section 106 area of potential effects as described in section 3.12 of the FEIS, modified by the addition of a small portion of land south of Picketpost Mountain, a 1-mile extension farther east to the San Carlos Apache Indian Reservation boundary, and an extension to the southeast to encompass Kearny, Arizona, and historical use of that area. The indirect impacts analysis area encompasses approximately 752,229 acres. The analysis area for Tribal values and concerns is shown in figure 3.14.2-1 of the FEIS.

Visual Impact Analysis

The visual impact analysis for Tribal values and concerns follows the scenic resources analysis presented in Newell and Grams (2018). The visual impacts analyzed are within the scenic resources analysis area (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 with their buffers with no obstructions.

Analysis Methodology

No additional details were identified regarding methodology not included in the FEIS.

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 (NHPA) (16 U.S. Code (U.S.C.) 470x–6), as amended, Regulations Implementing Section 106 of the NHPA (36 Code of Federal Regulations (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, Advisory Council on Historic Preservation, and the State Historic Preservation Officers/Tribal Historic Preservation Officers.	As the lead Federal agency for the Resolution Copper Project, the Tonto National Forest consults on a government-to-government basis in concert with other land-managing Federal agencies affected by the project, e.g., the Bureau of Land Management, U.S. Bureau of Reclamation, and U.S. Army Corps of Engineers. The Tonto National Forest 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.
Archaeological Resources Protection Act (16 U.S.C. 470aa–470mm)	Secured the protection of archaeological resources and sites that 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 Tonto National Forest has an obligation to fulfill the protections outlined in the Archaeological Resources Protection Act for sites located on public lands that would be affected by the proposed project.
Executive Order 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 places (TCPs) within or near the proposed Resolution Copper Project footprint.

Laws, Ordinances, Regulations, and Standards	Description	Applicability
American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996)	Protects Native American access to sacred sites.	The <i>Chi'chil Biltagoteel</i> Historic District is located within the direct analysis area and is a National Register of Historic Places-listed TCP, and its boundaries contain sacred places.
Native American Graves Protection and Repatriation Act 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.
Executive Order 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.
Executive Order 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 Tonto National Forest 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 the Tonto National Forest to the Salt River Pima-Maricopa Indian Community and to the Gila River Indian Community.

Laws, Ordinances, Regulations, and Standards	Description	Applicability
U.S. Department of Agriculture 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 project 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.
U.S. Department of Agriculture 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 project 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.
U.S. Forest Service (Forest Service) Manual 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 project 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.
Forest Service 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.

Laws, Ordinances, Regulations, and Standards	Description	Applicability
Tribal Forest Protection Act of 2004 (Public Law 108-278)	Provides the Forest Service with the authority to protect Indian forestland or rangeland.	Indian forestland or rangeland lies within the analysis area.
Healthy Forest Restoration Act (Section 303 of Public Law 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 of or administered by the Indian Tribes lies within the analysis area.
Section 3003, Southeast Arizona Land Exchange and Conservation Act of the National Defense Authorization Act of 2015	Addresses the Resolution Copper Project specifically, directing the Secretary of Agriculture to engage in Tribal consultation regarding the project.	Beginning in 2015 with the first submission of the GPO, the Tonto National Forest 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 on Tribal issues. The Tonto National Forest also consulted the Tribes regarding the management plan for the Apache Leap Special Management Area, as required by Section 3003 of the National Defense Authorization Act.
Tonto National Forest Land Resource Management Plan	Any proposed ground-disturbing activity must comply with the NHPA, as well as the Native American Graves Protection and Repatriation Act 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 State Historic Preservation Officer 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 Tonto National Forest has the obligation to identify and protect animals of special interest to Tribes, including bald and golden eagles.

Laws, Ordinances, Regulations, and Standards	Description	Applicability
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 Tonto National Forest has the obligation to ensure that the existence of animals of special interest to Tribes, including endangered species, is 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 Tonto National Forest 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 humans and their environment; to promote efforts that 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 Tonto National Forest must consider whether the proposed action may significantly affect the quality of the human environment, which includes Tribal values and concerns.

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

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