



January 8, 2021

Sandra Watts
Acting Regional Forester
Southwestern Region
333 Broadway SE
Albuquerque, NM 87102

Tom Torres
Acting Supervisor
U.S. Forest Service
Tonto National Forest
2324 E. McDowell Road
Phoenix, AZ 85006

Ref: *Resolution Copper Mining Project and Land Exchange*
Tonto National Forest, Pinal County, Arizona
ACHP Project Number: 012344

Dear Ms. Watts and Mr. Torres:

The Advisory Council on Historic Preservation (ACHP) is in receipt of the U.S. Forest Service (USFS), Tonto National Forest's (TNF) December 23, 2020 response to our December 15 letter regarding the proposed Resolution Copper Mining Project and Southeast Arizona Land Exchange. We are currently evaluating the TNF's responses to our recommendations contained in that letter, provided pursuant to 36 CFR § 800.9(a), regarding the USFS's compliance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800) for this undertaking. In order to inform the ACHP's decision whether to sign the proposed Programmatic Agreement (PA), we request the USFS provide additional clarification on the following items:

Meetings with Consulting Parties. We appreciate the TNF's willingness to invite consulting parties to contact the TNF and set up individual meetings to discuss any remaining concerns they may have regarding the PA. We understand that some consulting parties have already requested meetings to discuss the TNF's responses to comments and the Forest's intent to sign the PA. Furthermore, the ACHP is in receipt of a letter from the San Carlos Apache Tribe, delivered to us on January 7, 2021 and copied to numerous USFS personnel, raising additional concerns about the adequacy of the consultation and key provisions within the agreement. Our letter of December 15th had recommended that the USFS hold one more consultation meeting with all parties to address concerns such as these, but USFS has apparently not chosen to do so. In light of these comments from the San Carlos Apache Tribe, we again urge you to conduct such a meeting, or otherwise indicate to us how you intend to address these concerns (letter enclosed).

The ACHP would also appreciate, prior to seeking our signature on the agreement, that USFS provide us with an update of any recent meetings or communications that have occurred with consulting parties, the outcomes of those discussions, and any changes to the agreement that may have resulted from them or

were requested but rejected.

Public Involvement. Following our letter, the ACHP received numerous public inquiries regarding our role in this Section 106 consultation and the status of the PA. It is clear that members of the public have questions about how the USFS' Section 106 review would impact the land transfer and have concerns about how the federal government will take into account the effects of this undertaking on significant historic properties. To respond to the inquiries directed to the ACHP, we issued a public statement on our website (at: <https://www.achp.gov/news/achp-statement-resolution-copper-project-and-southeast-arizona-land-exchange-tonto-national>). The statement includes links to the ACHP's letter, the TNF's response, and the final draft PA that the TNF released, with appendices removed. As noted in our December letter, we recommend that the proposed final draft PA and the TNF's responses to comments be made available to the public to ensure as much transparency as possible in the Section 106 process. The TNF's response to our letter did not speak directly to this recommendation; however, communication with TNF staff indicates that the USFS intends to inform the public of the PA's status through the National Environmental Policy Act process (NEPA) when it releases the Final Environmental Impact Statement (FEIS).

Several consulting parties have indicated concerns regarding the TNF's handling of public involvement; moreover, given the high level of public interest in this consultation and the effect the FEIS' release will have on the timing of the land exchange, we recommend the USFS engage in a more comprehensive and proactive effort to inform the public about the Section 106 process, including sharing the above documentation with the public prior to the release of the FEIS. We recommend utilizing the existing web based platform that USFS has already been using for sharing updates on the undertaking.

Coordination with NEPA. The ACHP would like to highlight the importance of the USFS ensuring proper coordination between its compliance with the NHPA and NEPA as the TNF moves to conclude the Section 106 process. It is our understanding that, at this time, the USFS intends to release the FEIS on January 15, 2021, which will include a copy of the final draft unexecuted PA that was provided to all consulting parties on December 28, 2020. As you know, Section 106 review must be completed prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license. In this situation, the Section 106 review must be completed, meaning the PA would need to be executed, prior to issuance of the Record of Decision (ROD). Given the implications of the FEIS' publication on the timing of the land exchange due to the requirement in the Southeast Arizona Land Exchange and Conservation Act (Section 3003 of Public Law 113-291), we strongly urge USFS to evaluate the sequencing of these two review processes, including the USFS' response to recommendations in this letter and our previous recommendations, and be mindful of the time that may be needed to adequately conclude the Section 106 review for this undertaking.

Leadership Involvement. As part of our previous recommendations, the ACHP highlighted the need for USFS Regional and Washington Office support and involvement in this consultation. While we are appreciative of the TNF's assurance that these efforts are occurring but are "not outwardly visible," we again urge the TNF, as well as the Region, to seek transparent Washington Office involvement as it responds to our concerns and works to conclude the Section 106 process. This is particularly salient as it is our understanding that the FEIS schedule is being decided in consultation among the Chief, Deputy Chief of NFS, the Ecosystem Management Coordinator Director, the Regional Forester, and the Forest Supervisor. Given the interconnected nature of both the Section 106 and NEPA review in this case, we recommend this group be actively and clearly involved in the concluding steps of the Section 106 process.

The ACHP remains committed to assisting the TNF in this consultation and to helping the agency meet its Section 106 compliance responsibilities. In addition to the questions and recommendation we have raised in this and our December 15th letter, please continue to keep us informed as to the status of the above

meetings and the status of the final draft PA and FEIS release. If you or your staff have any questions or require further clarification, please contact Mr. Christopher Daniel, Program Analyst, at 202-517-0223 or via e-mail at cdaniel@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid J. Nelson", with a long horizontal flourish extending to the right.

Reid J. Nelson
Director
Office of Federal Agency Programs

Enclosure