



February 11, 2021

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 Mr. Torres:

On January 26, 2021, the U.S. Forest Service (USFS), Tonto National Forest (TNF) forwarded the final Programmatic Agreement (PA) for the referenced undertaking for the Advisory Council on Historic Preservation's (ACHP) signature. All the other Signatories (USFS, Arizona State Historic Preservation Officer) and Invited Signatories (Bureau of Land Management, US Army Corps of Engineers, Resolution Copper, Salt River Project, Arizona State Land Department, and Arizona State Museum) have already signed the agreement. If the ACHP were to sign the PA, the agreement would be executed. Execution and implementation of the PA would document the USFS' compliance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800) for the proposed Resolution Copper Mining Project and Southeast Arizona Land Exchange.

The ACHP has participated in the Section 106 consultation to seek ways to avoid, minimize, or mitigate adverse effects to historic properties that would result from this undertaking since December 21, 2017. On multiple occasions, in writing and in person, the ACHP provided its recommendations to the TNF that the consultation process should include those parties with an interest in the effects of the land exchange and mining on historic properties, specifically properties of traditional religious and cultural significance to Indian tribes, and that those parties be provided with sufficient information to participate meaningfully in the consultation.

We appreciate USFS's attention to these and other recommendations we have provided, and the steps it has taken to improve its consultation with Indian tribes and others. However, it is clear that the proposed undertaking would destroy significant historic properties, including the highly significant Oak Flat, and the measures in the PA are not sufficient to adequately resolve those adverse effects. The ACHP believes that further consultation in this case would be unproductive and therefore, we are hereby terminating consultation pursuant to 36 CFR § 800.7(a)(4).

In accordance with section 800.7(c), the ACHP will develop and transmit its final comments to the Secretary of Agriculture. Recognizing that the USFS' issuance of the Final Environmental Impact Statement on January 15, 2021 initiated a 60-day clock for transferring the Oak Flat parcel out of federal

ownership (as required by the Southeast Arizona Land Exchange and Conservation Act, 16 U.S.C. § 539p), the ACHP will endeavor to provide its comments by March 5, 2021, short of the 45 day time line afforded to us by the regulations. With this notice of termination, we are also requesting that USDA, TNF, and all consulting parties provide any views on this undertaking and proposed resolution of adverse effects to us as soon as possible. This accelerated timeline will enable the Secretary an opportunity to receive our comments and respond to them prior reaching a final decision on the undertaking, as required by section 800.7(c)(4).

The ACHP remains committed to supporting the USFS in meeting its Section 106 compliance responsibilities. 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,



John M. Fowler
Executive Director