Fiscal Year 2017 Summary of Activities Completed Pursuant to the *Memorandum of Agreement Regarding Resolution of Adverse Effects on Historic Properties from the Rosemont Copper Project*

Cultural Resources Report No. 2018-05-005

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Introduction

This report is prepared pursuant to Stipulation VIII. Reporting of the *Memorandum of Agreement* (MOA) *Among the Coronado National Forest, Arizona State Historic Preservation Officer, Advisory Council on Historic Preservation, U.S. Army Corps of Engineers, and the Rosemont Copper Company, Regarding Resolution of Adverse Effects on Historic Properties from the Rosemont Copper Project* (2013). The MOA requires the Forest Service to provide a summary report detailing work undertaken pursuant to its terms and to provide the report to all consulting parties each year within 90 days of the anniversary date of the signing. As prescribed by the MOA, this report summarizes work conducted in accordance with the Federal and Utilities Historic Property Treatment Plans (HPTPs), proposed schedules, and any problems and proposed resolutions.

Since the MOA was signed in 2013 for the Rosemont Copper Project (RCP), none of the mitigation measures required by the HPTPs have been implemented. As stated in Stipulation II. D, "Mitigation measures in the Federal HPTP may begin to be implemented upon the Forest's approval of the final Mine Plan of Operations (MPO) and the issuance of any necessary Archaeological Resources Protection Act (ARPA) permits by the Forest and Clean Water Act Section 404 Permit by the Corps of Engineers (COE)." As of the date of this report, these requirements await completion. Similarly, mitigation measures in the Utilities HPTP may be implemented following Forest Service approval of the final MPO and issuance of the Section 404 Permit by the COE, in addition issuance of a right-of-way by the Arizona State Land Department (ASLD).

The following paragraphs summarize the status of recent and ongoing tasks associated with cultural resources management for the RCP during Forest Service's past Fiscal Year, October 2016 through September 2017.

Final Record of Decision

The Final Environmental Impact Statement (FEIS) and draft ROD were released by the Forest Service on December 13, 2013. The Forest Service signed the final Record of Decision (ROD) for the RCP on June 6, 2017. It outlines the decision to select the Barrel Alternative. Immediately after signing the ROD, phone calls and emails were sent to the 12 tribes and notification letters were sent to cooperating agencies and eligible objectors.

The ROD is not a permit to operate on National Forest lands. The project proponent is required to incorporate the ROD and its requirements in a revised MPO and submit the plan to the Forest for review, develop a reclamation plan, calculate and provide a reclamation bond, and obtain all permits required from the COE under the Clean Water Act.

Mine Plan of Operations

Review of the Mine Plan of Operations is an internal process being completed by the Forest Service. The timeline for final approval of the MPO is not yet determined. The revised MPO was submitted to the Coronado National Forest (CNF) for consideration on June 26, 2017. The draft final MPO includes a Cultural Resources Management Plan, which was reviewed by the Forest Archaeologist, Tribal Relations Specialist, and the Regional Archaeologist. Comments were provided on the current version of the Plan to the Rosemont Project Manager on September 15, 2017. The draft plan included a cultural resources sensitivity training DVD prepared by a consultant, as well as an explanation that the proponent invited tribes to participate in creating the training and they declined to do so at the time. Comments were submitted to the project proponent on September 28, 2017.

ARPA Permit

Shortly after signature of the ROD, representatives of Westland Resources, consultant for the proponent, Hudbay Minerals, Inc., contacted the Forest Service to inquire about issuance of an ARPA permit for the RCP. Topics discussed included the need to abide by the requirements of the MOA prior to implementing mitigation measures in the HPTPs, protocol for contacting the Special Uses Administrator in order to apply for the permit, and the need to tailor the permit request to address the mitigation measures called for in the HPTPs for the RCP. The proponent's consultant contacted the Special Uses Administrator and began discussions regarding the application process.

Burial Plan

The Federal HPTP includes a *Plan for the Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony* (Chapter 8), which constitutes an overarching Burial Plan for the project. The plan incorporates aspects of a NAGPRA *Plan of Action* for Native American remains encountered on Federal land (as a result of data recovery or inadvertent discoveries) as well as a *Burial Agreement* for the treatment of human remains discovered on private or state land. As stated in the Federal HPTP, a copy of the plan must be signed by the Forest Supervisor and attached to the document. The Forest Service's Regional NAGPRA Coordinator will review the plan for sufficiency prior to final signature. For all purposes regarding implementation of NAGPRA, the Forest Supervisor is the Federal agency official of record, and this authority cannot be delegated.

The proponent's consultant, WestLand Resources, submitted a permit application and burial agreement application to the Arizona State Museum. The burial agreement would apply to human remains discovered on private and State lands. ASM does not plan to process the permit until Stipulation II. D of

the MOA is satisfied (i.e., Forest Service approval of the final MPO and Clean Water Act Section 404 Permits issued by the COE).

Notifications to Tribes Regarding Mitigation Measures for Ce:wi Duag TCP

In July 2017, tribal representatives voiced concern to the Forest that the proponent of the RCP sent written correspondence invoking Stipulation IV.C.1 of the MOA, an element of "Treatment and Voluntary Measures for Adverse Effects to Ce:wi Duag TCP." The correspondence requested tribes arrange visits between June 19 and August 18, 2017 and also indicated intent to proceed with data recovery at archaeological sites on private property. Following a requested meeting with Tohono O'odham Nation Chairman Manuel and staff, the Forest Supervisor sent a letter to the proponent stating that no ground disturbing activities were authorized until the final MPO was approved and the Burial Plan was finalized, among other tasks. Following conversations with the Forest Supervisor indicated the proponent mistakenly attempted to prematurely invoke mitigation measures in the MOA. Conversations with representatives of WestLand resources concerning the ARPA permit and Burial Plan confirmed no archaeological data recovery would occur at this time.

Meetings with Tribes and Other Consulting Parties

Several meetings were held with tribes and other consulting parties to discuss the status of the RCP during the past year:

- On November 1, 2016 the Forest Archaeologist spoke with Jim Cogswell from Arizona SHPO, in response to a request for an update on the RCP for Kathryn Leonard, recently appointed SHPO. The discussion highlighted the timeline moving forward was unclear pending the COE decision and other issues, and that movement on cultural resources issues has been very limited during the past year but the HPTPs and MOA were in place. There was agreement that a tremendous amount of work would still need to be done if the project moved forward, pending signature of the ROD and possible litigation.
- On November 4, 2016 the Forest Supervisor and staff met with the Tohono O'odham Nation Chairman, Vice Chairman, and THPO and other staff to provide an update on the status of the RCP.
- On March 21, 2017 the Forest Archaeologist attended the Forest Service Region 3 annual meeting with the Arizona SHPO and staff. An overview of the project status was provided, and SHPO requested periodic updates. Follow-up communications in July and September provided opportunities to discuss letters sent to the tribes by HudBay and planning for the MOA meeting.
- On April 21, 2017 the Deputy Forest Supervisor and staff attended the Four Southern Tribes Cultural Resources Working Group meeting at the San Xavier District. An update was provided on the status of the COE permit and the ROD, and the group discussed planning a meeting for all tribes to attend the following month.
- On May 9, 2017 the Forest Supervisor invited all twelve tribes to a meeting at the Sabino Canyon Visitor Center prior to signing the ROD for the RCP. The tribes continued to express their opposition to the project and thought the decision to sign the ROD was premature as HudBay

had not yet obtained all required permits. In response, the Forest Supervisor stated the "decision is directed by law and policy, however I remain aware of your opposition to this project and respect your strong reverence for animal life, the environment, and each other."

- On August 2, 2017 – The Forest Supervisor and staff met with Tohono O'odham Nation Chairman Manuel, THPO Peter Steere, and Attorney General Laura Bergland. The Chairman requested the meeting to discuss letters sent to the Nation by HudBay, invoking one of the TCP mitigation measures in the MOA. At this meeting, the Nation also requested to review the draft MPO submitted to the forest. The Forest declined to share the draft document, maintaining an internal review process. Follow-up requests from the Nation to review the MPO in September were also received, but the review remains an internal process.
- The Forest Archaeologist and Tribal Relations Specialist attended the Four Southern Tribes Cultural Resource Working Group Meeting on August 18, 2017. The group discussed planning for the upcoming MOA meeting, the HPTPs (some requested the HPTPs be sent again, since personnel have changed and there were multiple versions), and the need to work together to implement the MOA and HPTPs if the work were to proceed.
- On August 28, 2017 the Forest Supervisor, Tribal Relations Specialist and Forest Archeologist traveled to Mescalero, New Mexico to update President Breuninger and staff members on the RCP and other issues.
- On September 15, 2017 the Forest Archaeologist, Rosemont Project Manager, Tribal Relations Specialist, and Minerals Program Manager held a conference call with Chris Parrish of the US Army Corps of Engineers. COE contracted a cultural resources survey of the Sonoita Creek Ranch, a mitigation parcel associated with the 404 permit process. Shortly after, the Forest and other consulting parties received a letter seeking concurrence with the recommendation of no adverse effects to historic properties by October 20, 2017.
- In September 2017, Forest staff arranged to hold a meeting with all consulting parties to discuss the RCP and the MOA and HPTPs. The meeting is scheduled for October 19, 2017 at the Tucson Interagency Fire Center.

Future Schedules

Future schedules for implementing mitigation measures detailed in the MOA and HPTPs remain unclear, pending issuance of the COE permits and approval of the final MPO. As discussed above, the Forest's internal review of the final MPO is ongoing and may be completed by the end of the calendar year. The COE is expected to make a decision on CWA permits within roughly the same time frame, but the timeline could change.

The Forest is reviewing the ARPA permit request from the proponent's consultant, as well as the NAGPRA Plan of Action. These are expected to be finalized this year. ASM indicated they would not review the consultant's permit application until all other permits required by the MOA for the RCP are in place.

Tribes have expressed their concern that any related actions should not be implemented until any litigation associated with the RCP is resolved. Two Notices of Intent (NOI) to file legal arguments against the RCP have been issued. Center for Biological Diversity served a 60-day Notice of Intent to file legal

action on alleged violations of the Endangered Species Act (ESA) by the US Fish and Wildlife Service (USFWS) and the US Forest Service (USFS), which was received by the CNF on or about June 12, 2017. Additionally, the Western Mining Action Project served a 60-day NOI on the USFS on issues relating to the Clean Water Act (CWA), which was received by the CNF on or about August 3, 2017. On September 25, 2017, the CBD filed suit against USFWS and USFS on alleged ESA violations in the United States District Court of Arizona. The COE CWA 404 permit decision is still pending. The Forest will abide by the conditions of any legal rulings issued regarding the project.