

## **MEMORANDUM OF UNDERSTANDING**

between

**USDA FOREST SERVICE, REGION 3,  
CORONADO NATIONAL FOREST**

and

**STATE OF ARIZONA  
ARIZONA STATE PARKS BOARD  
PHOENIX, ARIZONA**

This **MEMORANDUM OF UNDERSTANDING**, to cooperate in the National Environmental Policy Act process concerning the Rosemont Copper Project, is hereby entered into by and between the USDA Forest Service, Region 3, Coronado National Forest (hereafter, Forest), hereinafter referred to as the Forest Service, and the State of Arizona, Arizona State Parks Board, Phoenix, Arizona, hereinafter referred to as the ASPB.

### **A. PURPOSE**

The purposes of this Memorandum of Understanding (MOU) are to:

1. Provide the framework for a mutually beneficial, cooperative, and productive intergovernmental relationship between the Forest Service and the ASPB with regard to the development of the Forest Service's environmental impact statement for the Rosemont Copper Project.
2. Define the respective roles and responsibilities of the Forest Service and the ASPB as they relate to the process the Forest Service will use in developing an environmental impact statement for the Rosemont Copper Project.
3. Affirm the parties' willingness and agreement to cooperate in the environmental study for the Rosemont Copper Project.
4. Identify the Forest Service as the Lead Federal Agency and the ASPB as a cooperating agency.
5. Affirm that the Forest Service has primary responsibility for National Environmental Policy Act (NEPA) compliance and preparation of the environmental impact statement for the Rosemont Copper Project.
6. Affirm the commitment of the Forest Service to fully consider the views of the ASPB in the development of the environmental impact statement for the Rosemont Copper Project.
7. Establish the parties' agreement and commitment to jointly review the environmental impact statement developed under NEPA for the Rosemont Copper Project.

8. Affirm that the Forest Service has sole and ultimate decision-making authority regarding the use of National Forest System lands for the Rosemont Copper Project.

## **B. BACKGROUND**

The Council on Environmental Quality regulations codified at 40 C.F.R. Parts 1500-1508 apply to the Forest Service. The Forest Service also has its own regulations and policies for implementing NEPA. NEPA requires Federal agencies to prepare an environmental impact statement prior to undertaking a major Federal action significantly affecting the quality of the human environment. NEPA also requires Federal agencies to study, develop, and describe appropriate alternatives to any proposal involving unresolved conflicts concerning alternate uses of available resources. NEPA also requires disclosure of the potential impacts of the proposed action and its alternatives.

The Rosemont Copper Project was generated externally by the Rosemont Copper Company. It is a major Federal action that may significantly affect the quality of the human environment. The proposed project is construction, operation, reclamation, and closure of an open-pit mine. The proposed project also includes associated infrastructure.

As proposed, the project would be located in Pima County, Arizona approximately 30 miles southeast of Tucson, Arizona on approximately 995 acres of private land, 3,670 acres of National Forest System land, 15 acres of land administered by the USDI Bureau of Land Management, and 75 acres of State of Arizona State Trust land. Ore extraction is proposed to be conducted primarily on private lands. Ore processing, waste management, and other support facilities and infrastructure are proposed to be located on the Forest. Project infrastructure is also proposed to be located on land administered by the USDI Bureau of Land Management and the State Trust Lands.

Annual production estimates include 234 million pounds of copper, 4.5 million pounds of molybdenum, and 2.7 million ounces of silver over a period of approximately 20 years. A further summary of the proposed action is provided in the Forest Service's "Notice of Intent to Prepare an Environmental Impact Statement" published in the *Federal Register* on March 13, 2008 (Volume 73, Number 50, pages 13527-13529). The complete proposed action consists of the material provided by the Rosemont Copper Company identified in Forest Supervisor Derby's letter of October 19, 2007, and the 28 items responsive to her request for additional information. An electronic composite of this information has been compiled to facilitate its use. It will be referred to hereafter as the composite Mine Plan of Operation (MPO). The composite MPO is available through links at: <http://www.fs.fed.us/r3/coronado/rosemont/mpo.shtml>.

The General Mining Act of 1872 confers a statutory right to enter upon public lands open to location in pursuit of locatable minerals, and under valid existing mining claims to conduct mining activities, in compliance with Federal and State statutes and regulations. The Multiple-Use Mining Act of 1955 confirms the ability to conduct mining activities on public lands, locate

necessary facilities, and conduct reasonable and incidental uses to mining on public lands, including National Forest System lands. Forest Service mining regulations at 36 C.F.R. Part 228 Subpart A correspondingly recognizes the rights of mining claimants.

Although the Forest Service may reasonably regulate mining activities to protect surface resources, there are statutory and constitutional limits to its discretion when reviewing and approving a mining plan of operations. The Forest Service cannot categorically prohibit mining activity or deny reasonable mineral operations under the mining laws. Although selection of a no-action alternative is outside the discretion of the Forest Service Responsible Official, the impacts of no action will be disclosed in the environmental impact statement. In practice, the Forest Service works with the mining applicant to develop an acceptable, legally-compliant plan of operations as an alternative to be considered during the NEPA process, thereby precluding selection of the no-action alternative.

### **C. MUTUAL BENEFITS AND INTERESTS**

In the interest of mutual benefits and interests, both parties wish to:

1. Develop procedures to ensure that each may efficiently and effectively meet its responsibilities as a public entity.
2. Cooperate to help achieve better outcomes while ensuring each agency's key mandates and legal requirements are adequately and appropriately met.
3. Communicate openly and provide a conduit for the timely exchange of information.
4. Provide a framework to fully consider the physical, biological, social, economic, and cultural impacts of the Rosemont Copper Project as part of their respective and collective planning and decisionmaking processes.
5. Resolve conflicts at the lowest administrative level without having to resort to judicial review.
6. Conduct a periodic review of this MOU for evaluation of its effectiveness.

### **D. FOREST SERVICE RESPONSIBILITIES**

The Forest Service shall:

1. Retain its sole and ultimate decision-making authority regarding the use of National Forest System lands for the Rosemont Copper Project, using the "Rosemont Copper Project Final Environmental Impact Statement," and supporting record as the basis for determining the Final Mine Plan of Operation.

2. Retain its primary responsibility for NEPA compliance including, but not limited to, content of the environmental impact statement, public distribution of the “Rosemont Copper Project Draft Environmental Impact Statement” for review and comment, public distribution of other project materials, management of the comments received on the environmental impact statement, public notice and filing requirements, and arrangements associated with any public meetings to be held.
3. Identify any requirements necessary for compliance with the Land and Resource Management Plan for the Coronado National Forest, 1986, as amended or revised, (hereafter, Forest Plan) or to further amend the Forest Plan as needed.
4. Designate ASPB as a cooperating agency in the environmental impact statement.
5. Share with ASPB data and other information that is relevant to the development of the environmental impact statement and within ASPB’s area of special expertise.
6. Hold, on its own accord or upon request, government-to-government meetings and field reviews with ASPB as determined appropriate, without general public notice or participation.
7. Confer with ASPB on relevant technical studies and reports that may be required for the project.
8. Include, to the extent feasible, sufficient documentation in the environmental impact statement and supporting record to allow use by ASPB to meet its compliance requirements or other responsibilities.
9. Request ASPB review internal working drafts of select portions of the environmental impact statement.
10. Provide ASPB with copies of the internal working drafts of the “Rosemont Copper Project Draft Environmental Impact Statement” and “Rosemont Copper Project Final Environmental Impact Statement” for review prior to printing of such for public distribution, and negotiate a reasonable amount of time for review.
11. Ensure that contributions by the ASPB are considered and appropriately incorporated into the project.
12. Notify ASPB of any public notices made by the Forest Service pertaining to the project.
13. Keep ASPB apprised of the project schedule and provide an updated schedule as it becomes available.
14. Additional responsibilities of the Forest Service in cooperating specifically with ASPB are contained in Attachment 1.

## **E. COOPERATING AGENCY RESPONSIBILITIES**

The ASPB shall:

1. Perform duties of a cooperating agency under NEPA for the Rosemont Copper Project.
2. Participate only in those areas within its area of special expertise, unless otherwise invited by the Forest Service.
3. Provide the Forest Service with responses to data requests to the degree the data are reasonably available within time limits that will meet the project schedule.
4. Share with the Forest Service, data and other information within its area of special expertise that are or may be relevant to the development of the environmental impact statement.
5. Provide the Forest Service with copies of the existing and proposed laws, regulations, and policies within its area of special expertise that are or may be relevant to the project.
6. Explain the relationship of existing and proposed laws, regulations, and policies within its area of special expertise to the project.
7. Make a good faith effort to raise concerns about the project and offer solutions relative to its area of special expertise in a timely and specific manner.
8. Upon request, participate in government-to-government meetings and field reviews with the Forest Service, if feasible.
9. Review and provide written comments on internal working drafts of select portions, as deemed appropriate by the Forest Service, of the environmental impact statement, within a negotiated reasonable amount of time.
  - a. Review is to ensure technical accuracy and conformance with laws, regulations, and policies within ASPB's area of special expertise.
  - b. Review is to provide recommendations for improvement of reviewed internal working draft material where the materials are found to be incomplete, inadequate, or inaccurate.
10. Review and provide written comments on the internal working drafts of the "Rosemont Copper Project Draft Environmental Impact Statement" and "Rosemont Copper Project Final Environmental Impact Statement" prior to the Forest Service printing of such for public distribution, within a negotiated reasonable amount of time.

- a. Review is to ensure technical accuracy and conformance with laws, regulations, and policies within ASPB's area of special expertise.
  - b. Review is to provide recommendations for improvement of reviewed internal working draft material where the materials are found to be incomplete, inadequate, or inaccurate.
11. Provide input to and/or review responses to public comments received on the "Rosemont Copper Project Draft Environmental Impact Statement," at the request of the Forest Service.
  12. Proceed with work as expeditiously as possible to comply with the project schedule.
  13. Provide the Forest Service with as much advance warning as possible should budgetary or program constraints prevent the ASPB from fulfilling its commitments identified in this MOU.
  14. Make the Forest Service aware if, at any point in the process, its needs are not being met.
  15. Additional responsibilities of the ASPB in cooperating with the Forest Service are contained in Attachment 2.

## **F. MUTUAL AGREEMENT AND UNDERSTANDING**

It is mutually agreed and understood by all parties that:

1. **JURISDICTIONS.** This MOU does not affect each agency's jurisdictions that exist as a matter of law.
2. **LEAD AGENCY.** The Forest Service is the Lead Federal Agency, and has the authority through the Forest Supervisor to enter into this MOU.
3. **COOPERATING AGENCY.** ASPB's participation in preparation of the environmental impact statement for the Rosemont Copper Project as a cooperating agency is appropriate because of its technical and professional expertise in surface and groundwater characterization, geology, and water monitoring and management. Additional information as to ASPB's area of special expertise is contained in Attachment 3. ASPB has the authority through Arizona Revised Statute (ARS) §41-511.04 and §41-511.05 to enter into this MOU.
4. **INFORMATION MANAGEMENT.** The Forest Service will share draft and deliberative materials with ADEQ to further accomplish the purposes of this MOU in achieving the previously stated mutual benefits and interest. While the Forest Service seeks to conduct a transparent process, not all shared information may be ripe for disclosure to the public. Sometimes confusion and angst is created by the premature release of information to the public. To minimize this, the Forest Service asks that ASPB does not proactively make

public notice of shared information. However, the Forest Service recognizes that ASPB may receive and process, within its authorities, external requests for information. To reduce external requests for information, the Forest Service intends to post select items of shared information that it deems ripe for public dissemination to the worldwide Internet at [www.RosemontEIS.us](http://www.RosemontEIS.us). Information furnished by ASPB in response to a formal request by the Forest Service under this MOU will become part of the Forest Service's official record and subject to public release pursuant to the Freedom of Information Act and other applicable federal statutes. To allow full and frank discussion of preliminary analysis and recommendations, meetings with cooperating agencies to review draft and deliberative materials will not be open to the public.

5. **PARTICIPATION IN SIMILAR ACTIVITIES.** This instrument in no way restricts the Forest Service or ASPB from participating in similar activities with other public or private agencies, organizations, and individuals. Parties to this MOU may meet separately with any other cooperating agency.
6. **COMMENCEMENT/EXPIRATION/TERMINATION.** This MOU shall be effective upon the signature of the Forest Supervisor and the ASPB signing official, and shall remain in effect until public release of the "Rosemont Copper Project Final Environmental Impact Statement" by the Forest Service. This MOU may be extended or amended upon written request of either party and the subsequent written concurrence of the other. Either party may terminate this MOU following the delivery of a 60-day written notice to the other.

Consistent with information tracked by the Council on Environmental Quality, below are some reasons for terminating a cooperating agency agreement:

- Cooperating agency lacks special expertise and jurisdiction by law.
- Cooperating agency lacks authority to enter into an agreement.
- Cooperating agency lacks agreement with the Lead Agency (e.g.: unable to accept the scope of the analysis or the purpose and need for the proposed action; unable to accept responsibilities and/or milestones for analysis and documentation; unable to develop information/analysis of all reasonable alternatives; unable to prevent release of predecisional information; misrepresents the process or the findings presented in the analysis and documentation).
- Cooperating agency lacks capacity (training or resources) to participate (e.g.: unable to participate during scoping and/or throughout the preparation of the analysis and documentation as necessary to meet process milestones; unable to identify significant issues, eliminate minor issues, identify issues previously studied, or identify conflicts with the objectives of regional, state, and local land use plans, policies, and controls in a timely manner; unable to assist in preparing portions of the review and analysis and to

help resolve significant environmental issues in a timely manner; unable to provide resources to support scheduling and critical milestones).

7. **RESPONSIBILITIES OF PARTIES.** The Forest Service, ASPB, and their respective agencies and offices will oversee the activities set forth herein as individual roles and responsibilities and will utilize their own resources, including the expenditure of funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner. While the parties agree to make reasonable efforts to resolve procedural and substantive disagreements, the Forest Service retains final responsibility for determining the content of the environmental impact statement and its related processes.
8. **PRINCIPAL CONTACTS.** The principal contacts for this instrument are:

**Forest Service**  
**Project Technical Contact**

**ASPB**  
**Project Technical Contact**

>>>> NONE <<<<

>>>> NONE <<<<

**Forest Service**  
**Project Management Contact**

**ASPB**  
**Project Management Contact**

Teresa Ann Ciapusci  
Forest Service Project Manager  
Rosemont Copper Project  
Coronado National Forest  
300 West Congress Street  
Tucson, Arizona 85701  
Phone: 520-388-8350  
FAX: 520-388-8305  
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Dr. Robert Casavant  
Arizona State Parks  
Research & Science Manager  
1300 West Washington  
Phoenix, Arizona 85007 - 2929  
Phone: 520.586.4138 park office  
E-Mail: rcasavant@azstateparks.gov

**Forest Service**  
**Administrative Contact**

**ASPB**  
**Administrative Contact**

Grants and Agreements Specialist  
Coronado National Forest  
300 West Congress Street  
Tucson, Arizona 85701  
Phone: 520-388-8325  
FAX: 520-388-8331  
E-Mail: nnorris@fs.fed.us

>>>> NONE <<<<



At its sole discretion, an above-named party may designate an alternate representative. Each agency's designated authorized representative is authorized to act in its behalf with respect to those matters contained in this MOU. Each agency may change the designation or its authorized representative upon oral notice given to the other, confirmed promptly by written notice.

Each agency may request that additional persons with special expertise attend meetings to present and discuss information. Such attendance must be requested and confirmed by the other party in writing prior to the meeting.

The Forest Service will be the main contact with the project proponent and its consultant(s) and sub-consultant(s) providing support to the project.


ASPB may communicate with the Forest Service's third-party environmental consultant, SWCA Environmental Consultants, only through the Forest Service's Project Management Contact representative or with specific written permission of the Forest Service Project Management Contact.

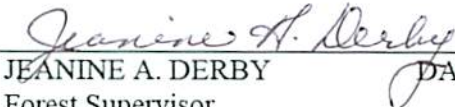
9. **NON-FUND OBLIGATING DOCUMENT.** Nothing in this MOU shall obligate either the Forest Service or ASPB to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the parties will require executions of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
10. **ESTABLISHMENT OF RESPONSIBILITY.** This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
11. **AUTHORIZED REPRESENTATIVES.** By signature below, the cooperator certifies that individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

THE PARTIES HERETO have executed this instrument.

ARIZONA STATE PARKS

USDA FOREST SERVICE

 6/26/09  
JAY REAM                      DATE  
Assistant Director, Arizona State Parks

 7/9/09  
JEANINE A. DERBY                      DATE  
Forest Supervisor

The authority and format of this instrument  
has been reviewed and approved for  
signature.

 7/8/09  
NORENE ~~NORIS~~ **NORRIS**                      DATE  
FS Agreements Coordinator

**Attachment 1**

**Additional Forest Service Responsibilities for Cooperating with ASPB**

>>>> NONE <<<<

**Attachment 2**

**Additional ASPB Responsibilities for Cooperating with Forest Service**

ASPB is subject to and will follow the below-listed provisions of Arizona Revised Statutes, which are not binding on the Forest Service:

1. Pursuant to A.R.S. §38-511 ASPB will abide by the State termination procedures related to conflict of interest.
2. Pursuant to State statute, ASPB will comply with applicable federal and State of Arizona laws relating to equal opportunity and non-discrimination.
3. Pursuant to A.R.S §12-1518, ASPB agrees to engage in alternative dispute resolution procedures authorized by statute, regulation, and court rules.

(Reference Attachment 4 for text of Arizona Revised Statute citations)

**Attachment 3**

**Description of ASPB's Special Expertise**

The ASPB Resource Management Team possesses technical and professional expertise including:

- Knowledge of and work experience with surface and groundwater characterization
- Experience in:
  - Subsurface and economic geology, soils, and fluvial geomorphology studies
  - Mining operations and engineering
  - Geoengineering
  - Geohazards
  - Water monitoring
  - Water management
- Skill and expertise in spatial data analysis and mapping

**Attachment 4**

**References**

*Note: Full text of the below references are available at the cited source. This attachment contains only selected applicable excerpts from the primary references.*

**MOU Section F, Item 3**

(Source: <http://www.azleg.state.az.us>)

**A.R.S. §41-511.04. DUTIES; BOARD; PARTNERSHIP FUND; STATE HISTORIC PRESERVATION OFFICER;**

**DEFINITION**

**A. The board shall:**

3. Investigate lands owned by the state to determine in cooperation with the agency that manages the land which tracts should be set aside and dedicated for use as state parks, monuments or trails.
4. Investigate federally owned lands to determine their desirability for use as state parks, monuments or trails and negotiate with the federal agency having jurisdiction over such lands for the transfer of title to the Arizona state parks board.
5. Investigate privately owned lands to determine their desirability as state parks, monuments or trails and negotiate with private owners for the transfer of title to the Arizona state parks board.
6. Enter into agreements with the United States, other states or local governmental units, private societies or persons for the development and protection of state parks, monuments and trails.
7. Plan, coordinate and administer a state historic preservation program including the program established pursuant to the national historic preservation act of 1966, as amended.
8. Advise, assist and cooperate with federal and state agencies, political subdivisions of this state and other persons in identifying and preserving properties of historic or prehistoric significance.
9. Keep and administer an Arizona register of historic places composed of districts, sites, buildings, structures and objects significant in this state's history, architecture, archaeology, engineering and culture which meet criteria which the board establishes or which are listed on the national register of historic places. Entry on the register requires nomination by the state historic preservation officer and owner notification in accordance with rules which the board adopts.
12. Monitor the performance of state agencies in the management of historic properties as provided in chapter 4.2 of this title.
13. Advise the governor on historic preservation matters.
15. Prepare, maintain and update a comprehensive plan for the development of the outdoor recreation resources of this state.
16. Initiate and carry out studies to determine the recreational needs of this state and the counties, cities and towns.

17. Coordinate recreational plans and developments of federal, state, county, city, town and private agencies.

21. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management and wildfire prevention and suppression as provided by section 37-622, subsection B.

D. The state historic preservation officer shall:

2. Identify and nominate eligible properties to the national register of historic places and the Arizona register of historic places and otherwise administer applications for listing historic properties on the national and state registers.

4. Advise, assist and monitor, as appropriate, federal and state agencies and political subdivisions of this state in carrying out their historic preservation responsibilities and cooperate with federal and state agencies, political subdivisions of this state and other persons to ensure that historic properties and historic private burial sites and historic private cemeteries are taken into consideration at all levels of planning and development.

5. Develop and make available information concerning professional methods and techniques for the preservation of historic properties and historic private burial sites and historic private cemeteries.

6. Make recommendations on the certification, classification and eligibility of historic properties and historic private burial sites and historic private cemeteries for property tax and investment tax incentives.

E. The state historic preservation officer may:

1. Collect and receive information for historic private burial sites and historic private cemeteries from public and private sources and maintain a record of the existence and location of such burial sites and cemeteries located on private or public lands in this state.

F. For the purposes of this section, "historic private burial sites and historic private cemeteries" means a place where burials or interments of human remains first occurred more than fifty years ago, that are not available for burials or interments by the public and are not regulated under title 32, chapter 20, article 6.

**A.R.S. §41-511.05. POWERS; COMPENSATION**

The board may, subject to legislative budgetary control within the limitations of this article:

2. Make such contracts, leases and agreements and incur such obligations as are reasonably necessary or desirable within the general scope of its activities and operations to enable it to perform adequately its duties.

6. ... prepare and publish written material describing the historical significance of ... places of historical or other significance.

11. Delegate to the director, the deputy director or the director's designee any of its powers and duties, whether ministerial or discretionary, which are prescribed by law, except that the board may not delegate its power or duty to make rules.

**MOU Attachment 2**

(Source: <http://www.azleg.state.az.us>)

**A.R.S. §38-511. CANCELLATION OF POLITICAL SUBDIVISION AND STATE CONTRACTS; DEFINITION**

A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.

**A.R.S. §12-1518. STATE AND POLITICAL SUBDIVISIONS; USE OF ARBITRATION**

A. In the discretion of any state agency, board or commission or any political subdivision of this state, the services of the American arbitration association, or any other similar body, may be used as provided by this article. Any agreement to make use of arbitration shall be made either at the time of entering into a contract or by written mutual agreement at a subsequent time prior to the filing of any civil action.

B. Notwithstanding subsection A of this section, a state agency, board or commission shall include an agreement to make use of arbitration in all contracts which are subject to mandatory arbitration pursuant to rules adopted under section 12-133.



C. Notwithstanding subsection A or B of this section, a state agency, board or commission shall include an agreement to make use of arbitration as provided in this article in public works contracts if the amount in controversy is less than one hundred thousand dollars.