

Rosemont Copper Mine

Objection Review

Objection # (s): 0010-BManderscheid; 0017-MStock; 0025-WBunting; 0047-DDowning; 0050-MMorbeck; 0058-NWall; 0091-PimaCounty; 0104-PascuaYaquiTribe; 0115-KChristian

Resource Area(s): Cultural Resources – General (CR-1)

Objection Issue:

- 0058-7: There are other serious issues, for one the fact that parts of the proposed mine include a number of sites sacred to Native Americans—some of them burial grounds. None of the solutions Augusta has proposed—excavate the sites, bury human remains—are likely to happen in any way satisfactory to the Tohono O’Odham nation.
- 0047-2: Tribal Nations cultural landscape will be irrevocably affected by a mine. In fact the Tohono O’odham Nation concerns have not been adequately addressed. The FEIS did not specifically address the destruction of historic properties, including traditional cultural properties, archaeological sites, historical structures, districts, and landscapes..... The FEIS does not address a plan that would assure that none of these features would be disturbed.
- 0050-1: Damage and/or destruction to cultural features resulting in a permanent loss. Adequate discussions of most of my initial comments do not substitute for potential future actions that may compromise cultural entities.
- 0091-25: The County and the District continue to share the concerns of the Tohono O’odham Nation and other concerned Tribes about the sheer scale and extent of destruction to significant ancestral archaeological sites, cultural resources, sacred places and springs, and other culturally and historically important places of Ce:wi Duag, a traditional cultural place of the Tohono O’odham and other tribes. These massive impacts will forever negatively alter the cultural landscape of the Santa Rita Mountains, destroying or permanently damaging sacred places, human burial remains, and impacting the social fabric and traditional practices that are essential to the living culture of the Tohono O’odham. Because cultural resources are nonrenewable, these impacts will cause an enormous loss of scientific knowledge. The County and District object to these impacts occurring on public lands; where, in this case, the Coronado National Forest’s mandate to preserve and protect cultural and natural resources within the Forest appears to be an unwarranted presumption. The economic value of the proposed mine to the people of Pima County is extremely limited, but the short- and long-term costs and permanent losses to the Tohono O’odham Nation and the EuroAmerican community are immense and simply cannot be justified.
- 0104-6: The Pascua Yaqui Tribe remains concerned about the impact of the proposed Rosemont Copper Mine on the damage to historic properties, including traditional

cultural properties, sacred sites, traditional use areas, archeological sites, historical structures, districts, and landscapes as well as areas that were not recorded.

- 0115-5: Not to mention the destruction of Native American sacred sites, which could never be restored – despite any “agreements”.
- 0025-7: Although the CNF has consulted with the “affiliated federally recognized tribes,” none of these tribes have executed memoranda of understanding with the Federal government regarding nor agreed to the CNF’s Historic Preservation Treatment Plan or the Plan of Action.
- 0010-7: There is a cultural significance of the oak trees for the Tohono O’odham Indian tribe.
- 0017-2: There are so many possible harmful effects of the mine that are dealt with to an uncertain or inadequate degree: 1. "severe, irreversible, and irretrievable" effects on historic and prehistoric properties.

Remedy Supplied by Objector (if any):

0050-1: Rosemont Copper must be watched carefully via a legal mechanism to comply with the MOA/HPTP /POA. Full transparency with sharing of Rosemont Copper's actions related to cultural resources must be communicated in writing to tribal authorities and made available to other citizens during all phases of the project. A revised Rosemont Copper business plan must emphasize this commitment during and at the end of the proposed project - or at any time the project fails. If this does not happen, Rosemont Copper's project should be terminated.

0104-6: Select the No Action Alternative.

0115-5: Mine must be denied.

Law, Regulation and/or Policy: Council on Environmental Quality (CEQ) Regulations at 40 CFR 1500-1508; National Historic Preservation Act; E.O. 13007

Review Team Member Response:

The objection issues do not have merit. The majority of issues were previously addressed in the FEIS, Volume 6, Appendix G, Summary of Response to Comments on the DEIS [PR 047511_7, p. G-57-58].

Response to objection issue 0058-7

The Forest Service recognizes that there will be adverse impacts to sacred sites and human remains important to the Tohono O’odham Nation. These concerns are addressed in the FEIS [PR 047511_7, p. G-57]. Mitigation of adverse effects and monitoring are discussed in the Summary of Responses [PR 047511_7, p. G-57] with references to consultation on the Historic Properties Treatment Plans [PR 047915 and 047938] and the Memorandum of Agreement [PR 046313]. The impacts to sacred sites and human remains are also addressed in the DROD [PR 047504, p. 19]. The selected action results in substantially less impacts to cultural resources than the Barrel Trail and Scholefield-McCleary Alternatives [PR 047504, p. 19]. The mitigation of

impacts to the cultural resources including sacred sites and human remains is included, as the Historic Properties Treatment Plan is a general stipulation of mitigation in the DROD [PR 047504, p. 30].

Response to objection issue 0047-2

Impacts to Tribal cultural landscapes are recognized as a cultural resources issue in the FEIS [PR 047511_4, pp. 1016-1036] and the Ethnographic report [PR 045395, pp. v, 78, and 87]. It is recognized that cultural landscapes as a whole will be adversely affected [PR 047511_4, pp. 1041-1042, 1134]. The Historic Properties Treatment Plans [PR 047915 and 047938] take a cultural landscape viewpoint. This research design for historic properties and resources focuses on cultural landscapes [PR 047915, p. 73]. Impacts to Ce:wi Duag are recognized in the DROD [PR 047504, pp. 18-19].

Mitigation of adverse effects to the cultural landscape is addressed in the draft final Historic Properties Treatment Plans [PR 047915 and 047938]. The same mitigations are also presented in the FEIS as follows, mitigation treatment of Ce:wi Duag, a TCP is addressed in the FEIS [PR 047511_6, p. D-8]. These mitigations incorporate opportunities for plant and mineral collection, visits to springs and seeps for blessing, and access to Forest land within the perimeter fence for medicinal, ceremonial, and traditional uses [PR 047511_6, p. D-9]. In the FEIS, the cultural landscape is mitigated by treatments such as scheduled tribal visits and interpretive displays [PR 047511_6, p. D-9].

The response to the destruction of and impacts to TCPs, sites, and structures are stated in the FEIS, Appendix G [PR 047511_7, p. G-57]. Per a non-disturbing plan, the Forest Service cannot categorically prohibit mining as presented in the FEIS [PR 047511_7, p. G-57].

Response to objection issue 0050-1

This objection was previously addressed in the Response to Comments on the DEIS [PR 047511_7, p. G-57].

The permanent loss of cultural features and the mitigation of future actions are adequately addressed in the FEIS, Appendix G [PR 047511_7, p. G-57], the Memorandum of Agreement [PR 046313], and the Historic Properties Treatment Plans [PR 047915 and 047938].

Response to objection issue 0091-25

Response to the permanent loss of or adverse effects to cultural resources and features, sacred sites, human remains, and Ce:wi Duag along with the mitigation of effects are addressed in the FEIS, Appendix G [PR 047511_7, pp. G-57-58], the Memorandum of Agreement [PR 046313], and the Historic Properties Treatment Plans [PR 047915 and 047938]. The Forest Service may reasonably regulate mining, but cannot categorically prohibit mining under the mining laws as presented in the Summary of Responses to Comments on the DEIS [PR 047511_7, p. G-57]. In addition, the selected action results in substantially less impacts to cultural resources than the Barrel Trail and Scholefield-McCleary Alternatives [PR 047504, p. 19].

Response to objection issue 0104-6

Response to the adverse effects to cultural resources and the mitigation of effects are addressed in the FEIS, Appendix G [PR 047511_7, p. G-57] through the Memorandum of Agreement [PR 046313] and the Historic Properties Treatment Plans [PR 047915 and 047938]. As indicated in the Summary of Responses to Comments on the DEIS [PR 047511_7, pp. G-57- 58] the FEIS and supporting documents provided a detailed assessment of the full range of cultural resources subject to adverse effects, all field surveys were conducted by qualified archeologists, and non-archaeological sites were identified during tribal consultation and ethnographic research. Mitigation of impacts to cultural resources is addressed in the Historic Properties Treatment Plans [PR 047915 and 047938] the Memorandum of Agreement [PR 046313], and is a general stipulation of mitigation in the DROD [PR 047504, p. 30].

Response to objection issue 0115-5

The FEIS discloses that the effects to cultural resources will be severe, irreversible, and irretrievable [PR 047511_4, p. 1036]. The DROD also acknowledges the loss of cultural resources [PR 047504, pp 18-19]. The draft Memorandum of Agreement and Historic Properties Treatment Plans, designed to minimize the effects to cultural resources to the extent possible, were sent to the affiliated Tribes for review and comment [PR 046313, 047915, 047938, 046336, PR 047511_6, pp. E7-8]. The MOA was fully executed and signed by all required signatories including the Arizona State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation, and the invited signatory, signifying that the Agreement complies with the National Historic Preservation Act [PR 047511_6, pp. D-1 to D-27, PR 046516, PR 046313]. Tribes were invited to sign the Memorandum of Agreement as concurring parties [PR 046843]. The HPTPs are designed to mitigate or minimize adverse effects to cultural resources including TCPs [PR 047938, 031714].

Effects to Tribal communities are discussed in the FEIS [PR 047511_4, pp. 1036-1037]. The DROD and FEIS discuss effects to Tribal communities under *Issue 6a: Historic Properties and Issue 6C: Sacred Sites* [PR 047504, p. 7; PR 047511_2, pp. 21-22]. Further details are provided in the FEIS [PR 047511_4, pp. 1039].

Response to objection issue 0025-7

A Memorandum of Agreement (prepared under Section 106 of the National Historic Preservation Act) is provided in the FEIS, Appendix D [PR 047511_6 and PR 046313]. According to the DROD [PR 047504, p. 19] the Coronado National Forest consulted with a number of tribes, the Arizona State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP). This resulted in a signed memorandum of agreement [PR 046313] developed in compliance with Section 106 of the National Historic Preservation Act (NHPA) and the 2003 Region 3 First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities with the four SHPOs and the ACHP [PR 045824].

Several regulations require that Federal agencies consult on a government-to-government basis with federally recognized Native American tribes having traditional interests in and/or ties to the

lands potentially affected by a proposed action and alternatives. Federal land management agencies, including the Forest Service, are required to consult with American Indian tribes not only under mandated law but also under the U.S. Government's trust responsibility to tribal nations. The Coronado commenced official consultation with 12 tribes in March 2006 upon notice of Rosemont Copper's intent to file a preliminary MPO. Another letter was sent in March 2008 giving notice that the project was continuing. Details of tribal consultation are summarized in the "Cultural Resources" resource section in Chapter 3 and in appendix E of the FEIS [PR 047504, pp. 54-55; PR 047511_4, pp. 1026-1027; PR 047511_6, pp. E-1 to E-8,].

The draft Memorandum of Agreement and Historic Property Treatment Plan were sent to Tribes for review [PR 046336; PR 047511_6, pp. E7-8]. Tribes were invited to sign the Memorandum of Agreement [PR 046313 and 046843]. The Mescalero Apache signed the Memorandum of Agreement as a concurring party [PR 046313]. According to 36 CFR 800.6 refusal of a concurring party to sign does not invalidate the memorandum of agreement [PR 046313, 047195, and 047938].

Response to objection issue 0010-7

Mitigation is discussed in the FEIS [PR 047511_4, pp. 1049-1052]. Mitigations incorporate opportunities for plant and mineral collection, visits to springs and seeps for blessing, and access to Forest land within the perimeter fence for medicinal, ceremonial, and traditional uses [PR 047511_6, p. D-9]. Impacts to natural resources and traditional resource collection areas are an issue identified in the DROD [PR 047504, pp. 7-8 and 19]. The selected action meets the stated purpose of and need to process Rosemont Copper's MPO while complying with applicable laws and regulations, minimizing adverse impacts to resources and provides for reclamation of surface disturbance. It will protect resources to the extent practicable, it addresses the public's concerns, and it is consistent with applicable Federal laws and regulations. The selected action provides practicable environmental safeguards, including features designed to avoid or reduce environmental impacts; mitigation measures designed to avoid, reduce, or minimize impacts; and a monitoring plan to ensure that resulting impacts comply with applicable laws and regulations and are within the range predicted in the FEIS impacts analysis. Refer to Chapter 2 of the FEIS for a description of the components of the Barrel Alternative (also contained in appendix A of the DROD) and Chapter 3 of the FEIS for a complete description of the environmental impacts predicted for the Barrel Alternative [PR 047504, pp. 10, 18-19, 25].

Specific information about the cultural significance of oak trees is discussed in the FEIS [PR 047511_6, p. 1034]. Additional specific information about the cultural significance on oak trees and acorns is discussed in the Ethnographic Report [PR 047511_6, pp. 66-69] and listed in Table 4.1, Table 4.2, and Table 4.3 of the same report [PR 047511_6, pp. 54, 62, 68].

Response to objection issue 0017-2

Adverse effects to historic and prehistoric properties and the permanent loss of cultural features and the mitigation of future actions are addressed in the FEIS, Appendix G [PR 047511_7, pp. G-57-58].

Mitigation of impacts are discussed in the Historic Properties Treatment Plans [PR 047915 and 047938], the Memorandum of Agreement [PR 046313], and the Summary of Responses to Comments on the DEIS [PR 047511_7, pp. G-57-58]. Impacts to cultural resources are recognized and the mitigation of adverse effects is a general stipulation of the DROD [PR 047504, pp. 7 and 30].

Recommended Remedy by Review Team Member (if any): The remedies suggested by the objectors are not warranted. No remedy is required.

Review Team Member: Diane E. Prather, Heritage Program Manager, Lincoln National Forest, Dan Meza, R3 Tribal Relations Program Manager

Rosemont Copper Mine

Objection Review

Objection # (s): 0069-BKanner; 0083-FICO; 0104-PascuaYaquiTribe; 0117-CienegaWatershedPartnership

Resource Area(s): Cultural Resources - Mitigation (CR-4)

Objection Issue:

- 0104-7: Regarding the disturbance of human remains, USFS discusses the Native American Graves and Repatriation Act (NAGPRA) among other laws and policies. However, compliance with NAGPRA does not at all avoid the impact to affected Tribes when ancestral remains are disturbed. USFS needs to address exactly how Rosemont will avoid, minimize, or mitigate direct or indirect impact to Tribes whose ancestral human remains are disturbed.
- 0117-3: Indirect impacts to cultural resources and sufficient mitigation have only been partially considered.
- 0069-1: The protections and mitigation provided in the MOA are woefully inadequate.
- 0083-16: The FEIS suggests that possibility of "increased irrigation of the Farmers Investment Company's groves" potentially impacting downstream users. (See FEIS p. 1044) This statement is made without any analysis or other information to support this erroneous conclusion and must be removed.

Remedy Supplied by Objector (if any):

0104-7: Select the No Action Alternative

Law, Regulation and/or Policy: National Historic Preservation Act (NHPA), Native American Graves Protection and Repatriation Act (NAGPRA)

Review Team Member Response:

The objection issues do not have merit. The MOA which includes the Historic Properties Treatment Plans with mitigations have been signed by the reviewing officials. Additionally, this objection issue was previously addressed in the Response to Comments on the DEIS [PR 047511_7, pp. G57-58].

Response to objection issue 0104-7

Direct and indirect impacts to Tribes as a result of implementation of NAGPRA is discussed in the FEIS [PR 047511_4, p. 1122], in Table 238 on page 1123, and pages 1124, 1125 in the Environmental Justice section [PR 047511_4, pp. 1123-1125]. Additional information is discussed in the Mitigation Effectiveness for Environmental Justice section [PR 047511_4, p.

1130]. Further discussion is in *Conclusion of Mitigation Effectiveness* in the FEIS [PR 047511_4, p. 1131].

Mitigation, minimizing, and avoiding direct or indirect impacts to human remains are detailed in the Memorandum of Agreement [PR 046313] and attached Historic Properties Treatment Plans to which Rosemont is a signatory [PR 047915 and 047938]. The Memorandum of Agreement was available in the FEIS volume 5 Appendix D. The Historic Properties Treatment Plans [PR 047915 and 047938] include a Plan for the Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (Burial Plan). The Burial Plan sets forth the procedures for identifying, treating, and transferring custody of human remains, funerary objects, and sacred objects discovered during data recovery or project work on Federal or private land within the APE. The Burial Plan incorporates the provisions of both a Plan of Action prepared under NAGPRA, which applies to Federal land, and a burial agreement prepared under Arizona statute, which applies to private land. The Historic Properties Treatment Plans [PR 047915 and 047938] include a Discovery Plan with the procedures for inadvertent discoveries of cultural resources and/or human remains after data recovery investigations have been completed which will require Rosemont to notify the Forest of any such discoveries during the construction or operation of the mine and the Arizona State Museum for discoveries on State and private land. The Historic Properties Treatment Plans [PR 047915 and 047938] also include a Monitoring Plan that describes monitoring training and monitoring procedures (both short and long term) and which identifies historic properties to be avoided and sensitive sites with the potential for human remains.

Response to objection issues 0117-3 and 0069-1

The Memorandum of Agreement [PR 046313] which includes the Historic Properties Treatment Plans [PR 047195 and PR 047938] considered direct and indirect impacts to cultural resources. This Memorandum of Agreement has been reviewed and signed by the proponent, the Forest, the State Historic Preservation Office, and the Advisory Council on Historic Preservation. These signatories have found the protection and mitigation measures to be in compliance with cultural resource laws and the First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities Among New Mexico, Arizona, Texas, and Oklahoma State Historic Preservation Officers and the Advisory Council on Historic Preservation and USDA Forest Service Region 3, dated December 24, 2003 [PR 045824].

Response to objection 0083-16

For clarification, the statement occurs on p. 1045 of the FEIS. The FEIS states that changes in the water table that could affect cultural resources are projected to be very limited, and do not apply [PR 047511_4, p. 1045]. The statement “Investment Company’s groves may have the potential to decrease the amount of water available to the San Xavier district of the Tohono O’odham Nation” [PR 047511_4, p. 1045] does not relate to cultural resources within the Area of Potential Effect (APE). The Farmer’s Investment Company is also discussed throughout the FEIS [PR 047511_4, pp. 764-765, 1010, 1045, 1048, 1127].

Recommended Remedy by Review Team Member (if any):

Reviewer's Response to comment 0083-16: Use the Errata to strike the following statement from the FEIS, page 1045: "Investment Company's groves may have the potential to decrease the amount of water available to the San Xavier district of the Tohono O'odham Nation" [PR 047511_4, p. 1045]. This does not relate to cultural resources within the APE.

In the ROD, add additional discussion of the disproportionate effects to the Tribal Communities in the Environmental Justice section.

Review Team Member: Diane Prather, Heritage Program Manager, Lincoln National Forest, Dan Meza, R3 Tribal Relations Program Manager

Rosemont Copper Mine

Objection Review

Objection # (s): 0084-SSSR; 0100-TohonoOodhamNation; 0104-PascuaYaquiTribe

Resource Area(s): Cultural Resources – Effects (CR-5)

Objection Issues:

- 0084-37: The USFS fails to adequately analyze impacts to cultural resources or adequately mitigate those impacts.
- 0100-4: The FEIS does not adequately address the impacts on eligible Traditional Cultural Properties/Places. The Nation does not believe that the analysis goes far enough to inform the public of how devastating the Project will be to the Nation and its members. This analysis does not analyze the full panoply of effects that this Project will have on tribes. The cumulative impacts of the destruction of the Ce:wi Duag and Huerfano Butte on the cultural integrity of the Nation should be fully examined. When viewed in a vacuum, when added to the incremental losses of other TCPs over the years, the loss of these places is devastating to the Nation. The impact of the loss of these places on future generations should be examined. Cumulative impacts on cultural resources are not properly analyzed. The FEIS does nothing to attempt to analyze or quantify the past destruction of cultural resources in the region. These projects include, but are not limited to Border Patrol and migrant activity, Luke Air Force Base, the ANAMAX excavation, Sierrita Pipeline, and others. The cumulative impacts analysis should consider what impact the additional loss of resources associated with the Project will have on the integrity of tribal cultures.
- 0100-5: The FEIS does not adequately analyze impacts to unique and rare Sobaipuri cultural sites. The FEIS has fails to adequately address the impacts of the destruction of these unique cultural sites.
- 0100-6: The FEIS does not adequately analyze impacts to culturally significant sites that were not recorded by SWCA. Archeological surveys were completed using the framework of the National Historic Preservation Act. However, numerous other culturally significant sites exist within the Project area and are not adequately addressed in the FEIS. These cultural sites significant to the Tohono O'odham Nation and other tribes include springs, medicine plant collection areas, basket-making materials collecting area, vision quest sites, clay collection areas for pottery, soil collection areas for minerals used in paints for ceramics and lithic quarries. These types of sites were not recorded by archaeologists for the Project. The FEIS mentions these types of sites under the heading "Uncertain and Unknown Information." FEIS at 1021 ("[T]here may be locations, such as Native American vision quest sites, that are not recognized by archeologists"). The Forest Service should have attempted to ascertain the number and location of these culturally significant sites in order to fully understand the environmental consequences of the Project, in accordance with 40 C.F.R. § 1502.16. The FEIS then indicates in a footnote that "[f]ield visits were conducted with tribes in an

attempt to collect this information." FEIS at 1021. This is not an accurate statement. While site visits did occur with the Nation, the purpose of these visits were to view the site and understand the impact of the Project on Ce:wi Duag. These site visits were not made under the auspices of providing Forest Service contractors with site-specific information.

- 0100-7: The FEIS does not adequately analyze the Santa Rita Experimental Range. The FEIS and the archeological surveys do not evaluate whether the Santa Rita Experimental Range is a site eligible for the National Register of Historic Places.
- 0100-8: The FEIS does not adequately address the Project's impact on culturally significant plants. The FEIS indicates that 1,790 of those acres will only be "temporarily" removed from public use, but surely the Forest Service understands that the plants surrounding the mine will be forever altered and likely not suitable use. The FEIS mentions but does not analyze, that tribal members will be forced to travel farther to gain access to culturally significant plants. The FEIS does not address what impact contaminants from the mine will have on adjacent culturally significant plant communities.
- 0104-11: USFS states that inherent with a project of this size and magnitude there will be direct and indirect impacts to natural, cultural and social resources on the Coronado National Forest and adjacent lands. Here USFS again merges the interests of all parties together. Tribal Concerns should be separately acknowledged and addressed.
- 0104-12: While USFS recognizes that every (cultural) site is significant, there is a larger issue that is missed. What is important is not just what the impacts are to individual sites. USFS also needs to consider is the impact to the natural world and impact to the area as a whole, including, its water, plants and animals. The water, plants, and animals are what brought and what still bring Tribal people to the Santa Rita Mountains. All of these things contribute the environment of the area as a whole, and are why the Santa Rita Mountains are important as a traditional, religious, and cultural matter.

Remedy Supplied by Objector (if any):

0084-37: Undertake a more comprehensive analysis of indirect impacts of the proposed actions that considers types of potential impacts, sources of those impacts, magnitude of the impacts, and models the degree of such impacts that can be expected. B. A detailed analysis of potential expansion areas of the mine property should be provided. C. There should be a clear statement regarding whether the repatriated remains were analyzed and documented prior to repatriation. D. The research design in Exhibit B requires significant overhaul. E. The cultural overview should include relevant references to historical and archaeological literature or should at least direct readers to the relevant project documents that provide this information. F. The FEIS describes the Helvetia townsite as being within a utility corridor, but the HPTP does not mention this important site. G. "Cowboy culture" and Hispanic traditional use of the area was not addressed in either the FEIS or the HPTP. The FEIS fails to discuss strategies for identifying and locating historic period human burials (FEIS 2013: 1039-1 040). The Mitigation and Monitoring Plan in the FEIS focuses only on prehistoric burials (Volume 5, page B-70). There is no discussion of the consultation process and the determination of likely descendant claimants for historic period burials in the FEIS. I. The treatment plan needs to address how historic properties

identified during ethnographic research or consultation with Indian tribes during the data recovery phase of the project will be handled.

0104-11, 12: Select the No Action Alternative

Law, Regulation and/or Policy: Council on Environmental Quality (CEQ) Regulations at 40 CFR 1500-1508; National Historic Preservation Act (NHPA); E.O. 13007; American Indian Religious Freedom Act

Review Team Member Response:

The objections issues do not have merit. All objection issues were previously addressed in the FEIS, Volume 6, Appendix G, Summary of Response to Comments on the DEIS [PR 047511_7, pp. G57-58]. Supplemental information is provided below.

Response to objection issue 0084-37

The Memorandum of Agreement [PR 046313] which includes the Historic Properties Treatment Plans [PR 047041 and 047938] considered impacts to cultural resources. Mitigation measures for effects are included in the MOA in the Historic Properties Treatment Plans. This Memorandum of Agreement has been reviewed and signed by the proponent, the Forest, the State Historic Preservation Office, and the Advisory Council on Historic Preservation. These signatories have found the protection and mitigation measures to be in compliance with cultural resource laws and the First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities among New Mexico, Arizona, Texas, and Oklahoma State Historic Preservation Officers and the Advisory Council on Historic Preservation and USDA Forest Service Region 3, dated December 24, 2003 [PR 045824].

Response to objection issue 0100-4

The Historic Properties Treatment Plan [PR 047041] considered cumulative impacts to cultural resources. Mitigation including monitoring for cumulative effects is included in the Historic Properties Treatment Plan [PR 047041]. The Memorandum of Agreement and attached treatment plans [PR 046313, 047041, and 047938] have been reviewed and signed by the proponent, the Forest, the State Historic Preservation Office, and the Advisory Council on Historic Preservation.

A discussion on cumulative effects of Ce:we Duag and Huerfano Butte is included in the “Analysis Methodology, Assumptions, Uncertain and Unknown Information, Analysis Area, – Direct and Indirect Effects” sections of the FEIS [PR 047511_4, pp. 1018]. Figure 109 and Figure 110 in that section display the areas analyzed for both direct and indirect effects and for cumulative effects [PR 047511_4, pp. 1019-1020].

As outlined in the introduction to Chapter 3, cumulative impacts of past and present actions are identified and analyzed in the “Affected Environment” part of each resource section, including “Socioeconomics and Environmental Justice” [PR 047511_4, pp. 1122-1125].

Response to objection issue 0100-5

Sobaipuri cultural sites are discussed in the Existing Condition Historic Context section and the Archival and Oral History Investigations and Ethnohistorical Investigations of FEIS [PR 047511_4]. Sobaipuri cultural sites are extensively addressed in the Ethnographic report [PR 045395]. Effects are recognized leading to mitigation plans for the Sobaipuri sites in the Historic Properties Treatment Plans [PR 047041 and 047938].

Response to objection issue 0100-6

Site types not covered by the framework of the National Historic Preservation Act are examined in the Ethnographic report [PR 045395]. Impacts to sacred sites and traditional resource collecting areas are recognized and addressed in the DROD [PR 047504, pp. 7-8].

Direct and indirect impacts to springs, resource collecting areas, and sacred sites are described in Chapter 3 of the FEIS [PR 047511_4, pp. 1040-1043]. Efforts made by the Forest to get information on the project area and culturally significant sites through meetings and site visits held from 2008 through 2011 and are documented in the project record [PR 011473, 011475 – 011478, 011480 – 011483, 011485 – 011489, 011975, 018759, 047442, 046148].

Response to objection issue 0100-7

As discussed in response to comments, determining the eligibility of the entire Santa Rita Experimental Range for the National register of Historic Places, or as a National Historic Site, is beyond the scope of the Forest Service decision to be made [PR 047511_7, p. G-58].

Response to objection issue 0100-8

Plants important to Tribes are examined in the Ethnographic report [PR 045395]. Impacts to traditional resource collecting areas are recognized and addressed in the DROD [PR 047504, pp. 7-8]. Mitigation measures including plant transplanting and Tribal field visits are presented in the DROD [PR 047504, pp. 42-42].

Response to objection issue 0104-11

Tribal concerns are separately acknowledged and addressed in separate sections of the FEIS. See Tribal Consultation [PR 047511_2, p.12], Issue 6: Impact on Cultural Resources [PR 047511_2, pp. 20-22], Cultural Resources [PR 047511_4, pp. 1014-1049], Socioeconomics and Environmental Justice [PR 047511_4, pp. 1093, 1122-1125], Required Disclosures, Short-Term Uses and Long-Term Productivity [PR 047511_4, p. 1134], Required Disclosures, Unavoidable Adverse Effects [PR 047511_4, p. 1142], Tribal Consultation [PR 047511_4, p. 1153], Appendix D, Memorandum of Agreement (prepared under Section 106 of the National Historic Preservation Act) [PR 047511_6] and in Appendix E, Tribal Consultation [PR 047511_6].

Response to objection issue 0104-12

The Area of Potential Effect to cultural resources has been defined and reviewed by the Arizona State Historic Preservation Office and documented in a signed Memorandum of Agreement on historic properties [PR 046313]. Natural resources important to Tribes are identified and discussed in the Ethnographic report [PR 045395]. Effects to traditional resource collection areas are discussed in the FEIS volume 3 [PR 047511_4, pp. 1042-1043] and natural resources throughout the FEIS. The DROD recognizes effects to natural resources and addresses traditional resource collecting areas [PR 047504, pp. 7, 8, 43, and 63]. Native Americans and the ranching, mining, and Mexican American communities use the Rosemont area to collect and process natural resources for food, medicines, firewood, and traditional crafts. Proposed mine activities, from pre-mining through final reclamation and closure, could preclude access to or destroy or degrade these types of resources [PR 047504, p. 8].

Recommended Remedy by Review Team Member (if any): The remedies suggested by the objectors are not warranted. No remedy is required.

Review Team Member: Diane Prather, Heritage Program Manager, Lincoln National Forest, Dan Meza, R3 Tribal Relations Program Manager

Rosemont Copper Mine

Objection Review

Objection (s): 0100-TohonoOodhamNation; 0104-PascuaYaquiTribe

Resource Area(s): Cultural Resources – Legal (CR-7)

Objection Issue:

- 0100-11: The Forest Service did not meaningfully consult with tribes in accordance with the National Historic Preservation Act. The Forest Service initially indicated that the Nation could be a signatory party to the Section 106 Memorandum of Agreement ("Memorandum of Agreement). However, the Forest Service then changed its mind and the Nation was no longer invited to participate as a signatory party to the MOA, despite the fact that the Nation has obligations to fulfill under the MOA. The Forest Service should have provided the Nation an opportunity to "identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." The Forest Service provided too much leverage to Rosemont in the Section 106 process and as a result, the tribal consultation was not meaningful.
- 0100-12: The Forest Service's Section 106 Memorandum of Agreement and Historic Properties Treatment Plan do not comply with the NHPA. The Section 106 tribal consultation process was not "meaningful" and thus the resulting MOA does not comply with NHPA. The Historic Properties Treatments Plans for both the Project and associated transmission line are not yet complete. The Nation has submitted numerous comments on both HPTPs for the Project and awaits the Forest Service's response. The FEIS and draft ROD should not have issued until the issues raised by the Nation on the HPTPs were addressed. Furthermore, the treatment plan is significantly and materially out of date. The documents do not cite the newest material and consequently their lack of familiarity with the newest understandings has resulted in inadequate and inappropriate research questions and data expectations. This invalidates the research design and treatment plan.
- 0100-13: The Forest Service has violated its trust responsibilities in approving the Rosemont Project. There are few undisturbed, remote Sky Island ecosystems left in Southern Arizona. The destruction of the pristine Santa Rita Sky Island ecosystem puts undue pressure on the Nation to preserve its Sky Island ecosystem and its inhabitants. This additional burden placed on the Nation by the federal government does not comport with the federal government's trust responsibility to tribes.

- 0100-14: The FEIS Fails to Fully Analyze the Project's Violations of The Religious Freedom Restoration Act and American Indian Religious Freedom Act. The FEIS does not contain the analysis required under RFRA.
- 0104-5: The FEIS and the DROD do not properly address the impacts on Cultural Resources. The USFS failed to comply with NEPA because the FEIS and DROD do not adequately address the direct, indirect and cumulative impacts of the project. The USFS fails to recognize that the Tribes have a special relationship with the Federal Government. The Tribe has been merged into a larger group with entities that have no such legal and political relationship with the Federal Government. This lack of distinction between a Native American Tribe and other types of communities and individuals is that there is not a thorough analysis of the effects on a Sovereign Tribal Nation based on the cultural and religious beliefs of Tribal Members. Furthermore, the USFS fails to recognize or acknowledge the religious importance of the Santa Rita Mountains to Tribes.
- 0104-10: The Tribes takes issue with the USPS's assertion that the Tribe was properly consulted. A true tribal consultation should be an exchange between governments. Instead, the Tribes were invited to meet at times with the USFS, and comments were given by the Tribes. However, it is unclear how the Tribal input was addressed. Another problem with how the consultations were conducted is that Rosemont was allowed to attend these consultations, although they are clearly not a government. On one occasion there was an explicit request for Rosemont to be excluded from the government to government consultation and the USFS allowed Rosemont to be present anyway. This complete disregard of a Tribe's specific request was not only disrespectful at the very least, but it also runs afoul of Executive Order 13175.
- 0104-8: The USFS asserts that the proposed mine activities could preclude access to or destroy or degrade these types of resources (sacred sites). USFS also discusses how several federal laws direct Federal land management agencies to accommodate access to and use of Native American sacred sites. However, while Executive Order 13007 does address access accommodations, the USFS fails to address Section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.) (NHPA), USFS did create a Section 106 Memorandum of Agreement, notably, none of the Tribes signed it.
- 0104-9: The USFS asserts that Native Americans and the ranching, mining and Mexican American communities use the area to collect resources. Here again, USFS fails to recognize the Tribes as sovereign Nations. The reason that the legal and political status of Tribes is important here is that a word such as "medicine" takes on a completely different meaning in the context of a Native American Tribe. For the Tribe, ignoring the religious connotation of a word such as "medicine" is offensive and therefore the USFS statements and analysis miss the mark. The Pascua Yaqui Tribe has traditionally used and currently uses the resources in the Santa Rita Mountains for traditional medicine. Stakeholder is not an appropriate term to use when referring to the referring to the Tribes, nor is it a sufficient designation of the position that tribes hold vis-a-vis their relationship with the federal government generally and the USFS specifically.
- 0100-16: The FEIS fails to address the United Nations Declaration on the Rights of Indigenous Peoples in connection with the Project.

Remedy Supplied by Objector (if any):

0104-5, 8, 9, and 10: Select the No Action Alternative.

Law, Regulation and/or Policy: National Historic Preservation Act (NHPA); 36 CFR 800; Council on Environmental Quality (CEQ) Regulations at 40 CFR 1500-1508; Executive Order (EO) 13175; EO 13007; United Nations Declaration on the Rights of Indigenous Peoples

Review Team Member Response:Response to objection issues 0100-11, 0100-12, and 0104-10

Several of the objection issues stated that the Forest Service did not meaningfully or purposely consult with the tribes, or that the Forest Service should have provided tribes an opportunity to "identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." This issue was adequately addressed in the response to comments, FEIS, Appendix G [PR 047511_7, p. G-57]. In addition, the FEIS documents more than 100 consultations including more than 30 face-to-face meetings or field trips [PR 047511_6, pp. E-1 to E-8] and the FEIS discusses the tribal consultation in Vol. 4, Chapter 3 [PR 047511_7, pp. 1026-1027]. The draft ROD discussed consultation with tribes [PR 047504, pp. 54-55, 63]. Consultation is on-going. The record demonstrates that there were numerous consultations, the consultation was government-to-government, and it met the intent of NHPA, and EO 13175.

Response to objection issue 0100-11

The objector contends that the Tohono O'Odham was not an invited signatory to the Section 106 Memorandum of Agreement. The tribes were invited to be concurring parties and are listed as such in the MOA [PR 047511_6, pp. D-1 to D-27]. The implementing regulations for the NHPA states that the Agency Official *may* invite tribes that attaches religious and cultural significance to historic properties to be signatories [36 CFR 800.6(c)(2)(ii)]. It is an Agency Official decision, and is not required. According to the regulations, the Agency Official *should* invite any party that assumes a responsibility under a memorandum of agreement to be a signatory [36 CFR 800.6(c)(3)]. This is also an Agency Official decision and is not required, but in this case all consulting parties *that assumed a responsibility under the terms of the MOA* were invited to be signatories. The Tohono O'Odham Nation did not have any responsibilities identified in the final MOA so they were not invited to be a signatory. The regulations also say that the Agency Official *may* invite consulting parties to be concurring parties [36 CFR 800.6(c)(3)]. For this agreement, the Agency Official invited all tribes who were consulting parties to be concurring parties. The failure of the tribe to be designated as a signatory did not violate NHPA.

Response to objection issue 0100-12

This objection issue stated that the MOA and Historic Properties Treatment Plan did not comply with the National Historic Preservation Act. That is incorrect. The consulting parties were

provided opportunities to review and contribute to the MOA and HPTPs, and the MOA was fully executed and signed by all required signatories including the Arizona State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation, and the invited signatory, signifying that the Agreement complies with the National Historic Preservation Act [PR 047511_6, pp. D-1 to D-27, PR 046516, PR 046313]. The HPTPs were sent to all the consulting parties for review [PR 044900, PR 044786, PR 044901, PR 046233, PR 044787, PR 046314, PR 046322, PR 046840, PR 018744, PR 044955, PR 044958, PR 046158, PR 019000, PR 044902, PR 046232, PR 044788, PR 044956, PR 046012, PR 046176, PR 044949, PR 044957, PR 046234, PR 046325]. The draft MOA was sent to the affiliated Tribes for review [PR 046336; PR 047511_6, pp. E-7, E-8]. The required signatories signed the MOA with the final drafts of the HPTPs incorporated into the agreement. The final treatment plans are to be completed prior to the ROD.

The objector correctly points out that the Historic Properties Treatments Plans for both the Project and associated transmission line were not yet complete at the time of his objection. Both of the treatment plans will be completed prior to the DROD being signed.

This objector also felt that the treatment plan is “significantly and materially out of date” and did not cite the newest material on the Sobaipuri by Dr. Seymour and therefore their lack of familiarity with the newest understandings specifically for the Sobaipuri has resulted in inadequate and inappropriate research questions and data expectations. The objector feels that this invalidates the research design and treatment plan. The final treatment for the mine plan is not out of date. It lists more than 250 references, including at least 70 references for reports completed within the last 10 years [PR 047041, pp. 299-321]. The treatment plans were developed by qualified archaeologists, and have gone through several drafts that were circulated to all consulting parties for review and comment. At least 23 documents in the project record under Agency Consultation document the review of the HPTPs [PR 044900, PR 044786, PR 044901, PR 046233, PR 044787, PR 046314, PR 046322, PR 046840, PR 018744, PR 044955, PR 044958, PR 046158, PR 019000, PR 044902, PR 046232, PR 044788, PR 044956, PR 046012, PR 046176, PR 044949, PR 044957, PR 046234, PR 046325]. The final Federal HPTP incorporates many of the recent references by Dr. Seymour that the objector referred to specifically, and the recent research has been added to the Final HPTP [PR 047041, pp. 29, 34, 60, 68, 72]. It was noted in the final HPTP that the tribe requested Dr. Seymour be present at any Sobaipuri excavations [PR 047041, p. 68].

Response to objection issue 0100-13

This objection issue states that the Forest Service has violated its trust responsibilities in approving the Rosemont Project because there are few undisturbed, remote Sky Island ecosystems left in Southern Arizona.

The Forest Service meets its trust responsibilities in part when it complies with its requirements under NEPA to consult with Tribes, consider their issues, and respond to other considerations such as specific TCPs eligible to the National Register of Historic Places. Tribal concerns are separately acknowledged and addressed in several sections of the FEIS. See Tribal Consultation [PR 047511_2, pp. 12-13], Issue 6: Impact on Cultural Resources [PR 047511_2, pp. 20-22], Cultural Resources [PR 047511_4, pp. 1014-1049], Socioeconomics and Environmental Justice

[PR 047511_4, pp. 1093, 1122-1125], Required Disclosures, Short-Term Uses and Long-Term Productivity [PR 047511_4, p. 1134], Required Disclosures, Unavoidable Adverse Effects [PR 047511_4, p. 1142], Tribal Consultation [PR 047511_4, p. 1153], Appendix D, Memorandum of Agreement (prepared under Section 106 of the National Historic Preservation Act) [PR 047511_6, pp. D-1 to D-27] and Appendix E, Tribal Consultation [PR 047511_6, pp. E1 to E8]. In addition also see specific information on the Santa Rita Mountains in the Ethnohistorical Report [PR 045395] and supporting documents project record documents [PR 015594, 047474, 047382, 018768, 018769, 015701, and 046315].

Response to objection issue 0100-14

This objection issue is that the FEIS fails to fully analyze the project's violations of The Religious Freedom Restoration Act and American Indian Religious Freedom Act.

The FEIS notes the Forest Service responsibilities for meeting the American Indian Religious Freedom Act (AIRFA) and the American Indian Religious Freedom Act (RFRA) under Relevant Laws, Regulations, Policies, and Plans [PR 047511_4, pp. 1025, 1125].

The Forest prepared an ethnographic study that fully addresses the religious importance of the Santa Rita Mountains [PR 045395] and a National Register form for evaluating the eligibility of the Santa Rita Mountains as a TCP [PR 018768]. Both of these documents document the religious and cultural importance of the mountain to the tribes. The importance of the Santa Rita Mountains is also discussed in the FEIS [PR 047511_4, pp. 1032-1034, 1040-1042] and in the DROD [PR 047504, pp. 19, 54-55]. Appendix D, Memorandum of Agreement (prepared under Section 106 of the National Historic Preservation Act) acknowledges the tribal consultation that took place and identifies mitigation measures relative to the religious importance of Ce:wi Duag and other sites as well [PR 047511_6, pp. D-1 to D-27]. The DROD identifies mitigation measures for cultural resources that include allowing access to the area by tribal members [PR 047504, pp. 42-43].

Relative to RFRA, in the FEIS, the Purpose of and Need for Action section [PR 047511_2, pp. 6-8] and the Decision Framework [PR 047511_2, pp. 9-11] describe the constrained decision space by Forest Service regulations that govern locatable mineral activities on NFS lands (36 CFR 228 Subpart A) and related laws and regulations promulgated by other agencies. The DROD, [PR 047504, p. 11] describes Decision Space, and page 18 and 19 describe the least burdensome effects to Cultural resources of the alternatives considered [PR 047504, pp. 18-19].

Response to objection issue 0104-5

The objector stated that the FEIS and the DROD do not properly address the impacts on Cultural Resources, claiming that the USFS failed to comply with NEPA because the FEIS and DROD do not adequately address the direct, indirect and cumulative impacts of the project (0104-5). This objection issue was partially addressed in the response to comments in the FEIS [PR 047511_7, p. G-57]. The cultural resource section of the FEIS also demonstrates that the Forest did evaluate direct and indirect effects to cultural resources [PR 047511_4, pp. 1036 to 1043]. Cumulative effects are described in the FEIS [PR 047511_4, pp. 1044-1048]. The project record

demonstrates that the Forest did comply with NEPA and adequately addressed direct, indirect and cumulative effects to cultural resources.

The same objector states that the USFS fails to recognize that the Tribes have a special relationship with the Federal Government and that the Tribes were merged into a larger group with entities that have no such legal and political relationship with the Federal Government. The project record demonstrates that the Forest Service did recognize the special relationship the tribes have with the Federal Government, particularly in the long record of government-to-government consultation. The FEIS documents more than 100 consultations including more than 30 face-to-face meetings or field trips [PR 047511_6, pp. E-1 to E-8] and the FEIS discusses the tribal consultation in Vol. 4, Chapter 3 [PR 047511_4, pp. 1026-1027]. The draft ROD discussed consultation with tribes [PR 047504, pp. 54-55, 63]. The DROD acknowledges the trust responsibilities to the tribes [PR 047504, p. 54] and notes that the Forest Supervisor or his staff met personally with tribal representatives concerning the Rosemont Copper Project. These meetings consisted of field trips, formal consultation meetings, interviews, and presentations to Tribal Councils and other tribal groups [PR 047504, p. 55]. The fact that other consulting parties were present at some of the meetings does not negate the government-to-government relationship with the tribes.

In addition, the objector states that the USFS fails to recognize or acknowledge the religious importance of the Santa Rita Mountains to Tribes. This is not correct. The Forest prepared an ethnographic study that fully addresses the religious importance of the Santa Rita Mountains [PR 045395] and a National Register form for evaluating the eligibility of the Santa Rita Mountains as a TCP [PR 18768]. Both of these documents document the religious and cultural importance of the mountain to the tribes. The importance of the Santa Rita Mountains is also discussed in the FEIS [PR 047511_4, pp. 1032-1034, 1040-1042] and in the DROD [PR 047504, pp. 19, 54-55].

Response to objection issue 0104-8

The objector stated that the USFS fails to address Section 106 of the National Historic Preservation Act. This objection issue was previously addressed in the FEIS response to comments [PR 047511_7, pp. G-57, G-58]. The objector acknowledges that the USFS did create a Section 106 Memorandum of Agreement, but pointed out that none of the Tribes signed it. As shown by the project record, the Forest clearly addressed section 106, and the completion of the section 106 process culminated in a signed Memorandum of Agreement. The SHPO and ACHP signed the agreement, signifying that it complied with NHPA [PR 047511_6, pp. D-1 to D-27]. While only one tribe signed the MOA, there is no requirement for concurring parties to sign the agreement. According to 36 CFR 800, "The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement" [(36 CFR 800.6(c)(3)]. The draft ROD discussed compliance with the National Historic Preservation Act [PR 047504, p. 63]. Also there were more than 20 archaeology reports completed for the project documenting the various cultural resource surveys completed in compliance with section 106 of NHPA [PR 012039, PR 012038, PR 012654, PR 016869, PR 016865, PR 014409, PR 045395, PR 016866, PR 016511, PR 016867, PR 016868, PR 016512, PR 017388, PR 017338, PR 017339, PR 017389, PR 044860, PR 044816, PR 044862, PR 047012, PR 044863]. The Forest fully complied with NHPA.

Response to objection issue 0104-9

This objection issue states that the USFS fails to recognize the Tribes as sovereign Nations. The reason that the legal and political status of Tribes is important here is that a word such as "medicine" takes on a completely different meaning in the context of a Native American Tribe. The objector also states that the term "stakeholder" is not an appropriate term to use when referring to the Tribes, nor is it a sufficient designation of the position that tribes hold vis-a-vis their relationship with the federal government generally and the USFS specifically.

The Forest Service recognizes Tribes as sovereign nations and documents the government-to-government relationship in separate sections of the FEIS. See Tribal Consultation [PR 047511_2 pp. 12-13], Issue 6: Impact on Cultural Resources [PR 047511_2 pp. 20-22], Cultural Resources [PR 047511_4, pp. 1014-1049], Socioeconomics and Environmental Justice [PR 047511_4, pp. 1093, 1122-1125], Required Disclosures, Short-Term Uses and Long-Term Productivity [PR 047511_4, p. 1134], Required Disclosures, Unavoidable Adverse Effects [PR 047511_4, p. 1142], Tribal Consultation [PR 047511_4, p. 1153], Appendix D, Memorandum of Agreement (prepared under Section 106 of the National Historic Preservation Act) [PR 047511_6, pp. D-1 to D-27] and Appendix E, Tribal Consultation [PR 047511_6, pp. E1 to E8].

Response to objection issue 0100-16

The objector stated that the FEIS fails to address the United Nations Declaration on the Rights of Indigenous Peoples in connection with the Project. That is not correct. The FEIS discusses the United Nations Declaration on the Rights of Indigenous Peoples [PR 047511_4, pp. 1124-1125]. The draft ROD also discussed compliance with executive orders regarding environmental justice and tribal consultation and coordination [PR 047504, p. 63].

Recommended Remedy by Review Team Member (if any):

Language should be incorporated into the final ROD that acknowledges the Forest's responsibilities under AIFA and RFFA and the Forest's commitment to allowing access to the area where possible, and to not restrict the Tribes religious practices.

Review Team Member: David Johnson, R3 Heritage Program Leader, Dan Meza, R3 Tribal Relations Program Manager