

# APPENDIX A — RESPONSES TO PUBLIC SCOPING COMMENTS

*This appendix provides our responses to the public comments received during our public scoping process. These comments were used by the Forest Service to identify issues of concern and help the ID Team formulate alternative to the proposed action and mitigation and monitoring measures.*

The scoping process was initiated with the issuance of a Notice of Intent to Prepare an Environmental Assessment and invitation to a public open house on June 9, 2008. Concurrent with the publication of the notice in area newspapers, the scoping letters and invitations were mailed to approximately 135 interested public, including private citizens, non-government organizations and agencies including 18 Tribal officials representing 10 Indian Tribes. Chapter 1 provides a more detailed account of scoping efforts undertaken during this NEPA process. The comment period closed on July 18, 2008; no comments were received after that date.

Within the comment period, thirty-one letters, emails, faxes, or comment forms (collectively referred to as comment letters) were submitted to the TNF. All comment letters were reviewed and individual comments within each letter were identified and categorized for analysis. Table A-1 provides an alphabetical list of all of the commenters, the organization they represent, and the letter number assigned to their comment. Following this table we provide our response to the comments provided in each of these comment letters.

**Table A-1. Alpha List of Commenters, the organization they represent, and their Letter Number**

<b>Name</b>	<b>Organization</b>	<b>Date</b>	<b>Letter Number</b>
AmRhein, Fred	Solid Rock Climbing Gyms of Arizona	6/20/2008	7
		6/25/2008	11
		6/30/2008	16
		6/30/2008	17
Arnst, Diane L.	Arizona Department of Environmental Quality	6/25/2008	10
Bahr, Sandy	Sierra Club, Grand Canyon Chapter	7/18/2008	26
Barber, John		6/22/2008	8
Barrett, Sylvia		7/18/2008	29
Campana, Kathryn 'Sam'	Audubon Society of Arizona	7/18/2008	27
Card, Joan	Arizona Department of Environmental Quality	7/18/2008	24
Cecala, Rick	Queen Creek Coalition	7/18/2008	30
Duerr, Herb		6/25/2008	9
Fibel, Herbert S.		7/12/2008	28
Filsinger, Erik	Queen Creek Coalition	6/4/2008	12
Freeman, Nancy	Groundwater Awareness League	7/17/2008	25
Gutierrez, Hank		6/25/2008	6
Hagen, Harry W.			23
Hatch, Paul	Superior Jr. & Sr. High School	6/18/2008	3
Ingram, Floyd Sr.		6/27/2008	13
Magallanez, Elizabeth		7/2/2008	19
Miller, Rebecca		6/25/2008	4
Munoz, Henry C.		7/3/2008	20
Parker, Jeff J.		6/25/2008	5
Parsons, Scott		6/17/2008	2
Rangel, Manuel		6/27/2008	14
Singh, Madan	State of Arizona, Department of Mines and Mineral Resources	7/2/2008	18
Sparks, Joe P.	Sparks Law Firm, P.C.	6/18/2008	31
Thayer, Ted		6/17/2008	1
White, Linda		6/30/2008	15
Witzeman, Robert A., M.D.	Maricopa Audubon Society	6/26/2008	21
Witzeman, Robert A., M.D.	Maricopa Audubon Society	7/9/2008	22

**Letter: 1 Commenter Thayer, Ted**

**Comment Number: 1** EA not needed to meet 404 provisions; refers to Carlotta "EA"; supports moving forward with the project.

**Response:** As a matter of law and policy the Forest Service must consider its actions using the procedures and requirements established by the National Environmental Policy Act (NEPA). We cannot rely on analysis of other, different projects to authorize new projects. Certainly past projects may inform our analysis but they cannot replace project specific review under NEPA. For additional discussion of the scope of this EA please refer to Section 1.4.

**Comment Number: 2** Supports project and would like to see expedited progress.

**Response:** Thank you for your participation and response to the public notice. Personal preferences and opinions expressed by the public are one of many factors considered by the Forest Service when making decisions. The Forest Service thanks all who took the time and effort to participate in this NEPA process and hopes that they continue to provide input to further our efforts to manage important public resources.

**Letter: 2 Commenter Parsons, Scott**

**Comment Number: 1** Oak Flat is special to the commenter's family; has been using it for recreation; "Find a way to get the copper that leaves this special place for future generations."

**Response:** Thank you for your participation and response to the public notice. Please refer to the response to Letter 1-Comment 2 (1-2) and Section 1.4 of this EA with regard to the scope of our analysis for the Pre-feasibility Activities. Recreation and impacts to recreation were considered in detail in this EA.

**Letter: 3 Commenter Hatch, Paul Principal Superior Jr. & Sr. High School**

**Comment Number: 1** Supports mine and land exchange.

**Response:** Thank you for your participation and response to the public notice. Please refer to the response to 1-2.

**Letter: 4 Commenter Miller, Rebecca**

**Comment Number: 1** There is too much detail in the Plan of Operations regarding cultural sites; requested additional information regarding check dams.

**Response:** The Pre-feasibility Plan of Operations does contain some information associated with the cultural resources. During our review of the Pre-feasibility Plan of Operations, we were careful to ensure that the public version of the document did not contain information regarding the specific location of archaeological sites or any other sensitive cultural resource information.

**Comment Number: 2** Requested additional details regarding sediment and erosion control; "to me the greatest potential impact from this project will be due to lack of care taken for sediment and erosion control measures..."

**Response:** General information regarding sediment and erosion control was provided in the Pre-feasibility Plan of Operations. A mitigation measure has been added that will require RCM to prepare a SWPPP.

**Comment Number: 3** Add reference to SWPPP to Plan of Operations

**Response:** Reference to the SWPPP is provided on page 25 of the proposed Pre-feasibility Plan of Operations.

**Letter: 5 Commenter Parker, Jeff J.**

**Comment Number: 1** Supports project for economic reasons.

**Response:** Thank you for your participation and response to the public notice. Please refer to the response to 1-2.

**Comment Number: 2** Supports land exchange.

**Response:** Any potential land exchange is not considered part of the scope of analysis for this EA. See discussion in Section 1.4 regarding the scope of analysis. A discussion of past, present, and reasonably foreseeable future activities is provided in Section 3.11.

**Letter: 6 Commenter Gutierrez, Hank**

**Comment Number: 1** Supports Plan of Operations.

**Response:** Thank you for your participation and response to the public notice. Please refer to response to 1-2.

Letter: 7 Commenter AmRhein, Fred

Solid Rock Climbing Gyms of Arizona

**Comment Number:** 1 Requests clarification of acronym HRES-3 located at Oak Flat and future intended use at that site.

**Response:** HRES-3 refers to a Resolution groundwater well site. HRES-1 and HRES-2 are located outside of the Oak Flat Withdrawal Area. RCM's proposal includes periodic testing and monitoring of this well. HRES-3 is an existing hydrologic monitoring well located at the site of a Department of Energy (DOE) well constructed in 1990 and is within the Oak Flat Withdrawal Area.

Public Land Order (PLO) 1229 dated September 27, 1955, and published in the Federal Register (20 FR 7336) on October 1, 1955, reserved 18 specifically described areas within National Forests for use of the Forest Service as camp grounds, recreation areas, or for other public purposes. These areas, subject to valid existing rights were "withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral-leasing laws, and reserved for use of the Forest Service, Department of Agriculture, as camp grounds, recreation areas, or for other public purposes as indicated." In 1971 (Federal Register, Vol. 36, No. 187, Saturday, September 25, 1971) PLO 1229 was modified by PLO 5132. PLO 5132 specifically modified PLO 1229 restrictions for Jones Water Forest Camp, Oak Flat Picnic and Campground, Pioneer Pass Picnic Grounds, and Federal Highway 9-K Roadside Zone. For these sites, PLO 5132 allowed "all forms of appropriation under the public land laws applicable to national forest lands, except under the U.S. mining laws." PLO 5132 goes on to state that on October 20, 1971, these lands were "open[ed] to such forms of disposal as may by law be made of national forestlands except appropriation under the U.S. mining laws."

The original DOE well site was constructed as part of a larger national effort to identify long term storage solutions for nuclear waste. According to ADWR records, the DOE well (ADWR Well Registry Number 526592) was drilled to a depth of 936 feet, has a 10-inch diameter, was completed on April 28, 1990, and is owned by the Forest Service. While ultimately another site was selected for development of a nuclear waste repository, the presence of the DOE well provided an opportunity to study groundwater movement in the underlying geological features. A number of papers and theses have been published regarding these studies. The baseline of data provided by these studies is important to future analysis of impacts to the groundwater systems in the region by any future mine development proposals.

HRES-3 is a new well constructed adjacent to the existing DOE well. Construction of HRES-3 was authorized by the Forest Service in an August 2003 amendment of the Exploratory Drilling Plan of Operations No. 01-12-002. This well was constructed in 2004 and is approximately 1,200 feet in depth. HRES-3 was constructed using current well construction technologies that will allow for more detailed and technologically advanced investigations of groundwater. This well was located next to the DOE well to build on the information provided by past studies at the DOE well site. The location of the DOE well constructed in 1990 and HRES-3 constructed in 2004 have formed the basis for the location of other existing hydrologic monitoring wells and future monitoring wells proposed for construction in RCM's proposed Pre-feasibility Plan of Operations.

The operation of the DOE groundwater monitoring well has been ongoing at Oak Flat Campground since it was first constructed in 1990. It has been used and monitored for various hydrologic studies and is being monitored by RCM today. The HRES-3 well has been used for ground water investigations since it was constructed by RCM in 2004. The data collected from these wells will ultimately allow scientists to more effectively understand and evaluate potential hydrologic impacts of any future proposed mine activities in the region, if a sufficiently final and definite proposal for mine development is submitted. The availability of this hydrological information and continuation of data collection at these locations enhances the ability to monitor and predict the impacts of any future mining activity that might be proposed in the vicinity of Oak Flat Campground.

**Comment Number:** 2 Have any plans been submitted for the conveyor tunnel work?

**Response:** There have been no plans submitted to the Forest Service for construction of the conveyor tunnel. The geotechnical drill holes proposed in the Pre-feasibility Plan of Operations would provide RCM with information on whether a tunnel could be feasibly constructed.

Letter: 8 Commenter Barber, John

**Comment Number:** 1 Strongly recommends that the Forest Service accepts plan and issues permits and approvals.

**Response:** Thank you for your participation and response to the public notice. Please refer to the response to 1-2.

**Comment Number:** 2 Recommends approval of the land exchange.

**Response:** Any potential land exchange is not considered part of the scope of analysis for this EA. See discussion in Section 1.4 regarding the scope of analysis. A discussion of past, present, and reasonably foreseeable future activities is provided in Section 3.11.

Letter: 9 Commenter Duerr, Herb

Comment Number: 1 Supports the project; Plan of Operations adequately addresses environmental, social, and economic considerations; work is necessary to determine hydrogeologic details.

Response: Thank you for your participation and response to the public notice. Please refer to the response to 1-2.

Letter: 10 Commenter Arnst, Diane L.

Arizona Department of Environmental  
Quality

Comment Number: 1 The proposed project activities raise concern regarding the effects of particulate matter of 10 parts per million (PM10) distributed by prevailing winds, increased regional haze (visibility), and ozone under the new 8-hour ozone standard of 0.075ppm. Please refer to Arizona Administrative Codes R18-2-604 through -607 and R18-2-804 for particulate matter and refer to [www.azdeq.gov/environ/air/haze/index.html](http://www.azdeq.gov/environ/air/haze/index.html) for Regional Haze in your feasibility study.

Response: A detailed emissions inventory was prepared in response to this comment. See Section 3.1 of this EA for further detail and discussion.

Comment Number: 2 To reduce ozone contamination impact, minimize vehicular activity as much as reasonably possible.

Response: Specific mitigation measures are included in the EA which address this issue.

Letter: 11 Commenter AmRhein, Fred

Solid Rock Climbing Gyms of Arizona

Comment Number: 1 Vehicle access to drill sites through Oak Flat may be a safety issue for recreators; suggests alternative route to access sites.

Response: In response to safety concerns, alternative routes that avoid or limit service-vehicle travel through Oak Flat Campground and the larger Oak Flat Withdrawal Area were identified and considered in this EA. In addition, the development of specific institutional controls, including signage, has been identified as a mitigation measure.

Comment Number: 2 Suggests an alternative access route to the drill sites.

Response: In response to this comment, six alternative routes were identified for consideration in this EA. Four of the routes were eliminated from detailed consideration because of other resource conflicts. Two of the routes have been evaluated in detail in this EA.

Comment Number: 3 Requests clarification on why drilling for the tunnel is being conducted as part of this proposal if the studies are primarily hydrologic and more exploration; currently there is no understanding of how the tunnel could be constructed underneath private property.

Response: Exploration and pre-feasibility studies are the initial stages of a logical and systematic process of mine planning and development. The purpose of these early stages of planning is to delineate the ore body, establish grade and reserves, and to allow collection of baseline data to support development of future detailed mine operating plans. We understand that RCM has proposed geotechnical drilling to obtain information needed to support future investigations that will determine whether tunnel construction is economically and technically feasible. No proposals for actual tunnel construction have been received by the Forest Service.

Comment Number: 4 Concerned about current location of OF-2 drill site at the access point to Euro Dog Canyon; suggests another location to drill that is "more respecting of the recreational climbing in that area."

Response: In response to this comment, the Forest Service has identified an alternative site, North OF-2, for consideration in this EA.

Letter: 12 Commenter Filsinger, Erik

Queen Creek Coalition

Comment Number: 1 Provided information regarding current drafts of a Statement of Understanding between the Queen Creek Coalition and RCM regarding the Legislative Land Exchange.

Response: Any Statement of Understanding between Queen Creek Coalition and RCM pertains to the Legislative Land Exchange and is beyond the scope of the proposed Pre-feasibility Activities. (See Section 1.4 of this EA for further discussion regarding scope of analysis and Section 3.11 regarding past, present, and reasonably foreseeable future activities.)

Letter: 13 Commenter Ingram, Floyd Sr.

Comment Number: 1 "I support mining exploration and development on public lands. I have enjoyed using access roads in the

Tonto that were constructed by previous exploration projects for many years. As a prospector, miner, and Exploration Geologist, these roads have helped me make a living for Myself and My family. These roads have also been great for hunting and recreation."

**Response:** Thank you for your participation and response to the public notice. Please refer to response to 1-2.

**Comment Number: 2** Specifically expressed desire to keep all roads open for public use: "Stop closing roads to the public land and denying access to the public by motor vehicle." Notes that most roads described in the plan are existing roads that are scheduled to be improved. "Let's keep them open!"

**Response:** To the extent that is practicable and safe, roadway activities proposed as part of the Pre-feasibility Plan of Operations would allow continued use by the public. Temporary road access restrictions may occur for short periods of time during construction.

**Letter: 14 Commenter Rangel, Manuel**

**Comment Number: 1** Concerned about placement of drilling rig at OF-2 where "Campground Boulder" climbing/recreation area resides. Please choose alternate location for digging.

**Response:** Please see response to comment 11-4.

**Letter: 15 Commenter White, Linda**

**Comment Number: 1** "I hope that by the Forest Service stepping into the matter of Oak Flat and the RCC [RCM] mining, that our land will be the primary concern as it provides a lot of fulfillment to many that visit the Superior area!"

**Response:** The Forest Service must consider multiple uses of National Forest System Lands in its decision making process. The consideration of Pre-feasibility Plan of Operation impacts to recreational and other users of Oak Flat Campground and the larger Oak Flat Withdrawal Area has been analyzed in this EA and has driven the formulation of alternatives.

**Comment Number: 2** "Devil's Canyon, Apache Leap and the road area is a huge part of the climbing world and provides us climbers with a large percentage of rock for our sport in the Central Arizona region. ... We need protect as much of the land and environment as possible and provide alternative access to area that will no longer have access due to the mining."

**Response:** The EA prepared for the proposed Pre-feasibility Activities considers alternative locations for the OF-2 exploration drill site in direct response to the comments received during public scoping. Access, except for short periods of time during road construction, is not anticipated to be restricted by the Pre-feasibility Activities.

**Letter: 16 Commenter AmRhein, Fred**

**Solid Rock Climbing Gyms of Arizona**

**Comment Number: 1** Concerned about conflicts between recreational users and vehicular traffic associated with mining.

**Response:** A mitigation measure has been developed to address this issue. Please refer to Response to Comment 11-1.

**Comment Number: 2** Safety issues on OF parcel lands; reported incident of near collision; recommend road closures to mine traffic.

**Response:** A mitigation measure has been developed to address this issue. Please refer to Response to Comment 11-1.

**Comment Number: 3** Dust related to mine traffic—concerns related to traffic on OF parcel.

**Response:** Mitigation measures have been developed to address this issue. Please refer to Responses to Comments 10-1 and 10-2.

**Comment Number: 4** Noise related to mine traffic—concerns related to traffic on OF parcel.

**Response:** In response to concerns regarding noise, alternative routes that avoid service-vehicle travel through the Oak Flat Withdrawal Area have been considered. An analysis of noise and traffic impacts from operation of the exploration drill sites near the Oak Flat Withdrawal Area is provided in this EA.

**Comment Number: 5** Potential for spills of mine related substances—fuels, etc., associated with traffic crossing the OF parcel.

**Response:** The Pre-Feasibility Plan of Operation discusses the general treatment of fuels and other substances that are regularly used in drilling projects. It also includes a commitment by RCM to prepare a Spill Prevention, Control, and Countermeasures (SPCC) Plan that would detail practices used to prevent releases when transporting, handling and storing hazardous materials prior to the initiation of work. All vehicles used for Pre-Feasibility Activities would be required to comply with all applicable ADOT standards regarding the transportation of fuel oil and other materials required for the implementation of the Pre-feasibility Activities. Compliance with applicable regulations would minimize the potential for spill and discharge of

- pollutants within the Oak Flat Withdrawal Area and on other National Forest System Lands that will be used for these activities. The Forest Service will require a complete SPCC be prepared as a condition of any approval. Specific mitigation measures are included in this EA to address spill prevention measures.
- Comment Number: 6** Citing the example of FR 2458 north of Highway 60, the commenter expresses concern regarding road closures.
- Response:** No permanent road closures are anticipated. Short-term, temporary road restrictions limiting the use of some roads would likely be required during road improvement or movement of drilling equipment during the course of operations as outlined in the Pre-feasibility Plan of Operations.
- Comment Number: 7** Recommends entrance signage for safe alternative access to minimize collision hazards.
- Response:** Specific mitigation relative to signage is included in this EA. Please refer to Response to Comment 11-1, regarding traffic safety within Oak Flat Campground.
- Letter: 17 Commenter AmRhein, Fred Solid Rock Climbing Gyms of Arizona**
- Comment Number: 1** Concerned about the location of OF-2: located near the "Campground Boulder"; commenter recommends a specific site as alternative location for OF-2.
- Response:** An alternative site, North OF-2, has been evaluated. Please refer to Response to Comment 11-4.
- Letter: 18 Commenter Singh, Madan, Director State of Arizona, Department of Mines and Mineral Resources**
- Comment Number: 1** In favor of the Resolution Copper being able to continue its pre-feasibility studies in the Tonto National Forest. The plan as submitted has details of the measures that will be adopted to protect the environment. It would appear to me that this qualifies for a "Finding of No Significant Impact" (FONSI).
- Response:** Thank you for your comment. Please refer to the response to 1-2.
- Letter: 19 Commenter Magallanez, Elizabeth**
- Comment Number: 1** Supports the Pre-feasibility Project. Wants to see the Plan of Operations approved.
- Response:** Thank you for your comment. Please refer to the response to 1-2.
- Comment Number: 2** Opportunity for local residents to work and support their families.
- Response:** Thank you for your comment. Please refer to the response to 1-2.
- Letter: 20 Commenter Munoz, Henry C.**
- Comment Number: 1** Need "a full and complete NEPA study."
- Response:** An EA constitutes and full NEPA study. Please refer to discussion in Sections 1.4 and 1.5 for details regarding the scope and nature of the decision of this EA.
- Comment Number: 2** Concerned that block cave mining will disrupt water supply and result in subsidence.
- Response:** Actual mining of an ore body is not part of the proposed Pre-feasibility Activities and is therefore outside of the scope of this EA. Please refer to the discussion in Section 1.4 for details regarding the scope of analysis. Section 3.11 provides a discussion on past, present, and reasonably foreseeable future activities.
- Letter: 21 Commenter Witzeman, Robert A., M.D. Conservation Chair Maricopa Audubon Society**
- Comment Number: 1** The Forest Service's EA only evaluates the proposed test drilling sites, and excludes the land exchange with RCM, which is considered "piecemealing."
- Response:** Please see the discussion in Section 1.4 for further details regarding the scope of this analysis. Section 3.11 provides additional discussion on past, present, and reasonably foreseeable future activities.
- Comment Number: 2** An EA, followed by an EIS should be completed on the entire operation before there is any disturbance to any portion of land that will be impacted by this project.
- Response:** Based on the analysis in this EA, the Forest Service supervisor would determine whether an EIS would be required. Please see the discussion in Section 1.4 for further details regarding the scope of this analysis and the discussion in Section 1.5 regarding the nature of the decision to be made by the Forest Service. Additional discussion on past, present, and reasonably foreseeable future activities is provided in Section 3.11.

**Comment Number:** 3 Cultural resource studies triggered by the NHPA and EO 13007 and must be a part of the preliminary drilling and road building process.

**Response:** A Class III survey of the Pre-feasibility Activities has been completed in conformance with the NHPA. Pursuant to EO 13007 and the NHPA, information from Native American groups regarding the presence of any sacred sites within the area surveyed for the Pre-feasibility Activities has been requested. The consideration of cultural resources has been and continues to be a critical component of Forest Service management of public lands within the National Forest System. As a matter of practice and regulatory requirement, the Forest Service has required the applicant to conduct a complete archaeological survey of the entire footprint of disturbance, plus a buffer area for the proposed Pre-feasibility Activities. These surveys were instrumental in determining the location of various elements of the Pre-feasibility Plan of Operations. While developing its proposal, RCM worked closely with the Forest Service to relocate certain proposed Pre-feasibility Activities that were near cultural resources to avoid adverse impacts to those resources. Cultural resource protection has been an integral component of the Forest Service's review of the Pre-feasibility Plan of Operations.

Government-to-Government and Tribal consultation in accordance with the requirements of the National Historic Preservation Act were initiated shortly after the Pre-feasibility Plan of Operations was submitted and the Forest Service determined it to be sufficient in detail to initiate review in accordance with the requirements of NEPA. Prior to the public scoping meeting, the Forest Service sent letters inviting Tribal representatives from 10 Tribes to comment on the proposed action and inviting them to attend the scheduled public meeting in Superior Arizona during public scoping. Following this mailing and prior to the public open house, the Forest Service was invited to a meeting with the Western Apache Coalition to present information about the proposed action and answer any questions. On September 11, 2008, a copy of the Class III cultural resources inventory of the proposed Pre-Feasibility Plan of Operations was delivered to Native American groups seeking their comments. The Forest Service specifically requested their input regarding traditional cultural places and practices within the PAA. Tribal consultation is ongoing and will conclude when the Forest Service make its final decision regarding RCM's proposal.

EO 13007 requires that each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of Section 1 of the order. Procedures include, where practicable and appropriate, ensuring reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum, "Government-to-Government Relations with Native American Tribal Governments," dated April 29, 1994. In the context of this executive order, a sacred site "means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site." Consultation to identify sacred sites that might be affected by the proposed action or any alternatives considered to the proposed action has been completed. The proposed action and alternatives do not restrict access, future ceremonial use, or adversely affect the physical integrity of any sacred site identified during consultation.

A number of commenters have stated that Oak Flat is sacred to Native Americans affiliated with Apache cultural traditions. During ongoing consultation, Native American Tribes have not provided information on any specific sacred sites within or near the PAA or any of the alternative sites considered in this EA. With the exception of the immediate footprint of the drill pads, and for the specific areas of the roads that would be improved to provide access for exploration equipment, Native American groups will not be precluded from using Oak Flat Campground and surrounding National Forest System Lands while the Pre-feasibility Activities are underway. Some effect to Tribes' subjective religious experience may occur from the proposed Pre-feasibility Activities, but it is not anticipated that this experience would be substantially burdened. In the context of the Religious Freedom Restoration Act of 1993, a substantial burden would exist for the Tribes if the proposed activities forced them to violate their religious beliefs or if they were penalized for their religious activities (Navajo Nation v. USFS, 2008). Neither of these conditions would arise as a consequence of the proposed drilling activities.

**Comment Number:** 4 The many new roads outlined in the pre-feasibility drilling activities of RCM are troubling.

**Response:** The majority of roads that are proposed for use in the Pre-feasibility Plan of Operations are existing Forest Service System roads and/or are existing user-created roads on National Forest System Lands. Four new road segments are proposed ranging from 0.04 to 0.20 mile in length. The total length of these four new segments is 0.33 mile.

**Comment Number:** 5 The EA has not discussed the biological impacts of the road building and drilling to bird species identified on the American Bird Conservancy/National Audubon Society's WatchList, nor impacts to the water table, or long term future impacts of the mine as a whole. Oak Flat is of ecological significance for the survival of certain WatchListed species.



- Response:** The Biological Assessment and Evaluation prepared for this project considered threatened and endangered bird species, birds protected by the Migratory Bird Treaty Act, and Forest Sensitive Species. All of the WatchListed species identified by the commenter are protected by one or more of these regulations and the impacts of the proposed action and alternatives have been considered in our analysis. Regarding impacts of the mine, that analysis is considered beyond the scope of this EA, please refer to Section 1.4 for additional information.
- Comment Number:** 6 The Oak Flat area is a part of the annual Christmas Count Bird Census by the Maricopa Audubon Society for the past ten years, as a part of the Superior Christmas Bird Count. The area is suitable as an Important Bird Area (IBA)
- Response:** The Pre-feasibility Activities would not preclude access to this area for the annual Christmas Bird Count or the Superior Christmas Bird Count. The Forest Service is not aware of a proposal to formally designate the Oak Flat area as an IBA at this time.
- Comment Number:** 7 The Forest Service's writing of an EA for this project is piecemealing the process, overlooking the Trust Responsibility federal agencies have with Native American tribes and nations, and circumventing EO 13007.
- Response:** The commentor suggests that the Forest Service's EA piecemeals the assessment of the environmental review of the proposed action, is overlooking its Federal Trust Responsibility to Indian Tribes, and is circumventing its responsibility to comply with EO 13007. The Forest Service disagrees regarding piecemealing the analysis and review under NEPA. The scope of the NEPA analysis and the impacts of the proposed action and alternatives have been carefully analyzed to ensure that all connected, cumulative, and similar actions were considered in accordance with CEQ guidelines. Please refer to sections 1.4 and 1.5 of this EA for a detailed review of the scope of the Forest Service's analysis and the framework for its decision in this matter.
- The commentor's suggestion that this type of NEPA review allows the Forest Service to overlook its Federal Trust Responsibility is incorrect. Whether a particular Federal action can be categorically excluded from formal NEPA review, or requires more in-depth analysis through the preparation of an EA or EIS, does not alter the Forest Service's Federal Trust Responsibility. While determination of the proper scope of analysis for a Federal action guides the analysis of project effects and the formulation of alternatives, it does not alter or modify the Forest Service's Trust Responsibility to Indian Tribes. With regard to the Federal Trust Responsibility and this project, the potential effects to Tribal interests have been analyzed, including those interests protected by EO 13007. The Forest Service takes its Federal Trust Responsibility seriously and continues consultation efforts with Native American groups that have expressed an interest in this project, or that may have a cultural affiliation to this area of the TNF. For additional information, please refer to the response to 21-3 regarding ongoing consultation efforts with Native American groups.
- Comment Number:** 8 ESA consultation with the USFWS is warranted by the Forest Service for the federally endangered Arizona Hedgehog Cactus (*Echinocereus triglochidiatus* var. *arizonicus*).
- Response:** A Biological Assessment and Evaluation was completed for the Pre-feasibility Activities wherein the effects of the project on all Federally-listed species, designated critical habitat, and Forest Service sensitive species were evaluated. The Arizona hedgehog cactus was included in this evaluation. A full pedestrian survey of the Pre-feasibility Activity Area and possible alternatives has been conducted. Arizona hedgehog cacti are known to occur in the vicinity of the Pre-feasibility Activity Area, but they do not occur uniformly, nor do they occur at any of the sites proposed for disturbance. Because of the proximity of Arizona hedgehog cacti to some of the Pre-feasibility Activities we determined that the Pre-feasibility Activities may affect but are not likely to adversely affect Arizona hedgehog cactus. Pursuant to this determination, informal consultation with the USFWS was initiated by the Forest Service.
- Comment Number:** 9 The minimal cactus species mitigation offered by RCM of the 266 acre JI Ranch at Top of the World pales in comparison with the thousands of acres in the land exchange.
- Response:** Any potential land exchange is not considered part of the scope of analysis considered in this EA. See the discussion in Section 1.4 for detail regarding the scope of analysis. A discussion of past, present, and reasonably foreseeable future activities is provided in Section 3.11.
- Letter:** 22 **Commenter:** Witzeman, Robert A., Conservation Chair Maricopa Audubon Society M.D.,
- Comment Number:** 1 The proposed action constitutes an undertaking as defined by NHPA and consultations in compliance with the NHPA Section 106 must be an integral part of the decision making process before preparing and circulating draft NEPA documentation.
- Response:** Please refer to the response to 21-3.
- Comment Number:** 2 The EA is being prepared by the Forest Service circumvents applicable laws of the United States.
- Response:** Pursuant to the NEPA, this EA prepared for the proposed Pre-feasibility Activities.

- Comment Number:** 3 Apache Leap is eligible as National Historic Landmark, and Section 110 of the NHPA imparts responsibilities on the Forest Service with regards to preserving Apache Leap and Oak Flat. EO 13007 requires federal land managing agencies "to protect the integrity" of Indian sacred sites.
- Response:** Please refer to response to 21-3.
- Comment Number:** 4 Pursuant to Executive Order 12898, Environmental Justice, the Forest Service must consider the implications and effects of the proposed undertaking on the Apache people. The proposal is causing undue stress and anxiety on the Apache community, who have borne a disproportionate burden of the adverse effects of Forest Service undertakings in the region.
- Response:** The effects of the Pre-feasibility Activities have specifically been considered and addressed in the context of EO 12898 and documented in this EA. The Forest Service has consulted, and will continue to consult, with the Apache people in accordance with EO 12898, EO 13007, NHPA, and NEPA.
- Comment Number:** 5 The Forest Service is violating its trust responsibility to affected Native Americans, The trust responsibility applies to all federal agencies and federal actions outside Indian reservations, and requires that the United States protect the interest of tribes.
- Response:** Please refer to response to Comment 21-3.
- Comment Number:** 6 The Forest Service is piecemealing the process by utilizing an EA, and this is critical due to the great cultural significance that Apache Leap and Oak Flat have to Apache people.
- Response:** Please refer to the response to Comment 21-3.
- Comment Number:** 7 The socio-cultural cumulative impacts of the mine and related activities would be adverse and permanent.
- Response:** The Forest Service has not received a proposal from RCM to develop a mine, and analysis of the socio-cultural impacts of a mine is outside the scope of analysis of this EA. Please see the discussion in Section 1.4 for further detail on the scope of analysis. A discussion of past, present, and reasonably foreseeable future activities is provided Section 3.11.
- Letter:** 23 **Commenter:** Hagen, Harry W.
- Comment Number:** 1 "...[S]tart bringing copper and other minerals out from under the hill." It will provide much needed income for this part of the state of Arizona. "Bringing copper and other metals out from under that hill will put beans on the tables for many hundreds of families."
- Response:** The future potential for development of a copper mine to access the deep copper ore deposit is speculative and beyond the scope of this analysis. Please refer to the response to 1-2 regarding expressions of personal preference and Section 1.4 for further detail on the scope of analysis. A discussion on past, present, and reasonably foreseeable future activities is provided in Section 3.11.
- Letter:** 24 **Commenter:** Card, Joan **Director:** Arizona Department of Environmental Quality
- Comment Number:** 1 Stormwater discharges associated with construction activities which disturb one acre or more must obtain a permit for said discharges under the Arizona Pollutant Discharge Elimination System (AZPDES) program. A Stormwater Pollution Prevention Plan (SWPPP) must be prepared and implemented during construction.
- Response:** The Pre-feasibility Plan of Operations submitted by RCM makes specific reference to preparing and implementing a SWPPP. RCM would obtain a permit under the AZPDES program. As mitigation measures, RCM will be required to provide the Forest Service with a SWPPP and copies of all applicable water quality permits prior to any ground disturbing activity.
- Comment Number:** 2 Queen Creek has been identified as an "impaired water" regarding the surface water quality standard for copper. Queen Creek's classification as an impaired water may affect other water quality permits, i.e., Clean Water Act (CWA) Section 401 Certification and AZPDES De Minimus General Permit (DGP).
- Response:** Please see response to comment 24-1. If a Section 404 permit is required under the Clean Water Act, a CWA Section 401 Certification will be obtained from ADEQ.
- Comment Number:** 3 Project activities which will occur inside the ordinary high water mark of any water of the U.S. may require a CWA Section 404 permit. If a CWA Section 404 permit is required, a CWA Section 401 certification will be required.
- Response:** Please see response to comments 24-1 and 24-2.
- Comment Number:** 4 Certain activities that will result in a discharge to surface waters will require coverage under the AZPDES permitting program, and depending on the activity, location and volume of discharge, an individual AZPDES may be required. Alternatively, activities which result in de minimus discharges will require

authorization under the AZPDES DGP.

**Response:** Please see response to comments 24-1 and 24-2.

**Comment Number:** 5 Activities which may result in the discharge of pollutants to the aquifer will require an area-wide individual Aquifer Protection Permit (APP). ADEQ is currently processing applications for the individual APP for the proposed mine.

**Response:** Please see response to comment 24-1. There are no pending applications from RCM for a proposed mine on National Forest System Lands.

**Comment Number:** 6 The EA should indicate that an Arizona Department of Water Resources (ADWR) Notice of Intent to Drill (NOI) should be obtained prior to installing any wells.

**Response:** A mitigation measure has been added to ensure this.

**Comment Number:** 7 There are inconsistencies in the Plan of Operations for the shallow and deep hydrogeology testing and monitoring wells, between what is shown on the figures and what is described in the text regarding how the wells will be constructed. The figures and text should be consistent and accurate.

**Response:** Comment noted. In the final Pre-feasibility Plan of Operations this discrepancy will be clarified.

**Comment Number:** 8 The Plan of Operations indicates that excavated pits at each drilling site would contain water, drill cuttings, and potentially mud generated during drilling activities, and would function to evaporate and/or infiltrate the water generated during drilling. The Plan of Operations states that an ADEQ AZPDES DGP, pursuant to A.A.C. R18-9-B301D, these discharges are also authorized under a 1.04 General APP as long as the drilling and testing operations meet the rule requirements at each drilling location.

**Response:** Comment Noted.

**Comment Number:** 9 EA should note that any monitoring well that is abandoned must be abandoned in accordance with ADWR abandonment regulations.

**Response:** As noted in the Pre-feasibility Plan of Operations and this EA, all monitoring and exploration drill sites will be closed and abandoned in accordance with applicable ADWR abandonment regulations. A mitigation measure has been added to ensure this.

**Letter:** 25 **Commenter:** Freeman, Nancy **Executive Director:** Groundwater Awareness League

**Comment Number:** 1 It was ironic that I was advised to not cut the trees in Oak Flat for a campfire, while Forest Service, Bureau of Interior, and a congressman were considering turning over those trees to a mining company to destroy.

**Response:** Comment noted. The proposed Legislative Land Exchange is not considered part of the scope of analysis considered in this EA. Please refer to Section 1.4 for additional discussion regarding the scope of our analysis in this EA as it relates to the Legislative Land Exchange. A discussion of past, present, and reasonably foreseeable future activities is provided Section 3.11.

**Comment Number:** 2 Why does RCM need to turn public lands into private lands? Could it be that RCM wants to turn the public land into a waste facility, or that they want to avoid public scrutiny when the trees die as a result of their proposed activities in the Oak Flat area?

**Response:** The Legislative Land Exchange is not a Forest Service activity and is considered outside of the scope of this EA. Please see Section 1.4 for a discussion of the scope of analysis for the EA, particularly as it relates to the Legislative Land Exchange. A discussion of past, present, and reasonably foreseeable future activities is provided Section 3.11.

**Comment Number:** 3 The proposed dewatering of Shaft 9 by RCM could also draw water from the general region.

**Response:** RCM's dewatering of Shaft No. 9 is considered outside of the scope of this EA. Please refer to Chapter 1.4 for discussion of the scope of analysis for this EA, particularly with reference to the dewatering of Shaft No. 9 and other actions being considered or implemented by RCM on their private lands. A discussion on past, present, and reasonably foreseeable future activities is provided in Section 3.11.

**Comment Number:** 4 PLO 1229 is still in force today as it was in 1955, and protects the Oak Flat region from mining. This order should be respected and protect Oak Flat region from exploration activities.

**Response:** The Oak Flat Withdrawal Area was withdrawn from mineral entry in 1955 by PLO 1229. PLO 5132 modified the language of PLO 1229 to allow "...all forms of appropriation under public land laws applicable to national forest lands, except under the U.S. mining laws." PLO 5132 goes on to state that these lands were "...open(ed) to such forms of disposal as may be made of national forestlands except appropriation under U.S. mining laws." PLO 1229 and 5132 refer to a specific, legally-defined area. These PLOs did not provide for, nor did they create a buffer that precludes or modifies otherwise lawful uses of public lands in the region adjacent to the Oak Flat Withdrawal Area. The impacts of the Pre-feasibility Activities on recreational uses of the Oak Flat Withdrawal Area have been carefully and thoroughly considered and

- evaluated in this EA.
- Comment Number:** 5 RCM has never conducted mining activities, and is in a partnership with two mining companies with the worst environmental record worldwide, including the U.S.
- Response:** Comment noted.
- Comment Number:** 6 RCM has demonstrated previously they have no interest and/or knowledge of Arizona water laws by proposing in 2007 to discharge water from the Magma Mine Shaft 9 into a stream that flows behind Boyce Thompson Arboretum State Park.
- Response:** Comment noted.
- Comment Number:** 7 RCM has stated they will not mine without control of the surface, which includes Oak Flat Campground.
- Response:** Any future land exchange and/or construction and operation of a mine are considered outside of the scope of analysis of this EA. Please refer to Section 1.4 for further detail regarding our scope of analysis.
- Comment Number:** 8 RCM has a total of 89 wells in the vicinity of Oak Flat, which would surely provide them with enough information without further disturbance of the land.
- Response:** The logical progress of mining activities includes exploration and pre-feasibility stages. The purpose of these stages is to delineate the ore body, establish grade and reserves, and to allow collection of baseline data to support future detailed mine operating plans. Pursuant to their rights under the U.S. Mining Laws, RCM has proposed additional drilling to collect groundwater, geotechnical, and geologic information about the targeted ore body that they have indicated will support their Pre-feasibility studies.
- Comment Number:** 9 A May 29, 2008 Rio Tinto media release indicated that they know how much copper is in the deposit.
- Response:** Two commenters expressed an opinion that, based upon recent press releases and public statements by RCM representatives, there was more than sufficient information available to develop a plan to mine the targeted deep copper ore body near Superior. As recently as September 17, 2008, Mr. David Salisbury, President of RCM, stated in the Copper Country News that "sufficient drilling has been completed on the deep copper deposit in Superior to report an inferred resource of 1.34 billion tons of ore." However, this statement does not support the commenter's statement that there is sufficient data to proceed with preparation of a mine proposal for mine development.
- An inferred resource is based upon a rather limited amount of quantifiable exploration information and is considered geologically speculative from an economic perspective. The U.S. Geologic Survey identifies three identified resource levels. These levels relate to the certainty and completeness of the geologic evidence available to estimate the location, grade, quality, and quantity of the resource. The three primary subdivisions are "Measured," "Indicated" and "Inferred." These subdivisions reflect differential degrees of geologic certainty. "Inferred" is the least certain of these categories and "Measured" is the most certain. Inferred resource is defined by the Forest Service as estimates based on an assumed continuity beyond Measured and/or Indicated resources, for which there is geologic evidence. Inferred resources may or may not be supported by samples or measurements. Based on this recent public statement, RCM is indicating that it lacks sufficient information to make fully informed decisions about the feasibility of recovering copper ore from the deep deposit near Superior, but based upon the evidence available to RCM today, it is willing to invest a substantial amount of money to secure this information. The Forest Service will not substitute its judgment for RCM's in regard to the level of exploration and geotechnical and hydrologic information required to determine the feasibility of future mine development activities.
- The stages of a mine project include exploration, pre-feasibility studies, feasibility studies and environmental permitting. This mining process starts with the discovery of an ore body. To determine if the ore body can be technically and economically mined requires the implementation of a series of distinct stages of planning and development. The first step in this process is exploration. During exploration, existence of an ore body is determined followed by preliminary estimates of its extent, location, and value. This information is used by the mining company to initiate pre-feasibility studies.
- During pre-feasibility studies, the mining company determines the preliminary economics of the ore body, identifies potential risks, and establishes where further work and studies are required. This information is used to determine if additional financial investments are warranted. Once pre-feasibility investigations are completed, feasibility studies are initiated. Feasibility studies identify a conceptual project and determine costs. A feasibility study determines, with a greater degree of certainty than the pre-feasibility phase, whether the project is viable. It also more precisely identifies the technical, and financial risks associated with project development. At this point, the mining company makes a final determination whether to proceed with mine development. The detailed studies completed during this stage of mine planning include determination of the economically recoverable portion of the ore deposit, detailed metallurgical studies to determine ore recoverability, engineering design, determination of process and infrastructure costs, and finance and equity requirements.
- If the feasibility study determines that recovering the ore body is economically and technically feasible, mine development may begin once all appropriate environmental permits are obtained. Various types of environmental permits may be needed at any project stage, for example NEPA compliance to authorize pre-

feasibility investigations on federal land. Pursuing environmental permitting for construction of a new mine should begin once sufficient information is gathered during planning which defines the mine plan with some certainty. This would typically occur near the end of the pre-feasibility study phase of a mine project and extend well into the feasibility phase of mine planning.

- Comment Number:** 10 Boreholes would cause a tripping and/or falling danger to animals and humans in the area. There are statutes in Arizona limiting the amount of disturbed land on potential mining sites, including exploration operations.
- Response:** Wildlife and safety issues have been considered in the EA. All boreholes would be drilled, maintained, and immediately abandoned in accordance with Arizona state regulations. We are unaware of any state statutes limiting mining disturbance on federal lands. The Arizona Mine Reclamation Law applies to private lands only. The State land statutes governing mining operations on State lands, do not apply to mining exploration activities on Federal lands.
- Comment Number:** 11 Doubt exists regarding the availability of water for RCM's needs. RCM plans to mine for 66 years, using 33,000 acre feet/year, which equates to 1,980,000 acre feet, enough to sustain the population of Tucson for 10 years. Eventually, RCM would have to pump groundwater from the old Magma well field north of Florence, within the Phoenix Active Management Area to sustain operations.
- Response:** The Forest Service has not received any proposal from RCM to develop a mine, and speculation about water use, potential impacts of water use, and applicable management authorities to secure water for speculative mine operations is considered outside of the scope of analysis for this EA. Please see Section 1.4 for a more detailed discussion of the scope of analysis in accordance with the requirements of NEPA. A discussion on past, present, and reasonably foreseeable future activities is provided in Section 3.11.
- Comment Number:** 12 Any exploration activity that will disturb public land should be postponed until the following has occurred:
1. PLO 1229 has been withdrawn
  2. The land exchange has been finalized by the U.S. Congress
  3. Shaft #9 has been accomplished and the effects of this action have been determined
  4. An archeological-cultural survey should be required on lands involved in a land exchange, or NEPA process, or any proposed disturbance by mining.
- Response:** The Forest Service is required to evaluate exploration proposals submitted pursuant to U.S. mining laws and cannot defer these actions pending resolution of other, unconnected actions. Please refer to Section 1.4 of this EA for additional discussion of the scope of this NEPA analysis. Regarding item 1: PLO 1229 and related PLO 5132 do not provide a larger regional level of protection for National Forest System Lands outside the legally defined Oak Flat Withdrawal Area. PLO 5132, which modified the withdrawal originally established by PLO 1229, specifically allows "...all forms of appropriation under the public land laws applicable to national forest lands, except under the U.S. mining laws." The effects of proposed Pre-feasibility Activities on the Oak Flat Withdrawal Area, specifically on the recreational uses, have been evaluated in this EA. Regarding item 2: The Legislative Land Exchange is speculative and is not included in our review of the activities proposed in the Pre-feasibility Plan of Operations. The Forest Service is precluded by regulation and law from delaying review of the Pre-feasibility Plan of Operations pending the approval of a speculative, legislative action. Please see Section 1.4 for a more detailed description of the scope of analysis. Regarding item 3: Please see Section 1.4 for a more detailed description of the scope of analysis and Section 3.11 regarding past, present, and reasonably foreseeable future activities. Regarding item 4: A Class III survey of the Pre-feasibility Activities has been completed in conformance with NHPA.
- Letter:** 26 **Commenter:** Bahr, Sandy **Chapter Director:** Sierra Club, Grand Canyon Chapter
- Comment Number:** 1 We have a significant interest in this proposed mine, and are concerned about the significant negative and unmitigable impacts it will have on the air, land, wildlife, and water and the loss of recreational opportunities associated with it.
- Response:** Development of a mine is not considered part of the scope of review of this EA; please see Section 1.4 of this EA for a more detailed description of the scope of analysis. This EA has considered impacts of the Pre-feasibility Activities relative to air, land, wildlife, water, and recreational opportunities in Oak Flat Campground and larger Oak Flat Withdrawal Area.
- Comment Number:** 2 Oak Flat campground has been protected from mining by Executive Order. The focus of the Plan of Operations should be on mining this area without Oak Flat, and using different methods of mining.
- Response:** A proposal for mine development has not been submitted by RCM to the Forest Service and is considered outside the scope of analysis for this EA. Please see Section 1.4 for a more detailed description of the scope of analysis and Section 3.11 for more discussion on past, present, and reasonably foreseeable future activities.
- Comment Number:** 3 Oak Flat Campground has been withdrawn from mining since 1955 under Public Land Order 1229.
- Response:** The effects of the Pre-feasibility Activities on the Oak Flat Withdrawal Area, specifically on the recreational

uses of those lands have been evaluated in the EA. Public Land Order (PLO) 1229 dated September 27, 1955, and published in the Federal Register (20 FR 7336) on October 1, 1955, reserved 18 specifically described areas within National Forests for use of the Forest Service as camp grounds, recreation areas, or for other public purposes. These areas, subject to valid existing rights were "withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral-leasing laws, and reserved for use of the Forest Service, Department of Agriculture, as camp grounds, recreation areas, or for other public purposes as indicated." In 1971 (Federal Register, Vol. 36. No. 187, Saturday, September 25, 1971) PLO 1229 was modified by PLO 5132. PLO 5132 specifically modified PLO 1229 restrictions for Jones Water Forest Camp, Oak Flat Picnic and Campground, Pioneer Pass Picnic Grounds, and Federal Highway 9-K Roadside Zone. For these sites, PLO 5132 allowed "all forms of appropriation under the public land laws applicable to national forest lands, except under the U.S. mining laws." PLO 5132 goes on to state that on October 20, 1971, these lands were "open[ed] to such forms of disposal as may by law be made of national forestlands except appropriation under the U.S. mining laws."

**Comment Number:** 4 Per the National Environmental Policy Act of 1969, as amended, the Forest Service must look at both a reasonable range of alternatives and examine the impacts including current, future, and cumulative effects of the proposal. The special, unique, and spiritual importance of Oak Flat, Apache Leap, and Devils Canyon complex of lands warrant an Environmental Impact Statement (EIS).

**Response:** Pursuant to NEPA and the Forest Service's implementing regulations at 36 C.F.R. Part 228, the direct, indirect, and cumulative effects analyses were conducted on a reasonable range of project alternatives. Please see Section 1.5 for further details of the nature of the decision. A discussion of past, present, and reasonably foreseeable future activities is provided Section 3.11.

**Comment Number:** 5 The Forest Service should review this proposal carefully and thoroughly, as mining-related disturbance features currently exist adjacent to the withdrawn areas, and additional disturbances exist within about a mile from the campgrounds. RCM is attempting an end run around the withdrawn land which violates the spirit of the withdrawal. RCM is seeking to circumvent environmental and cultural laws by coordinating with Congress for title to Oak Flat land rather than working within Forest Service regulations for a mine proposal. This should be a focus of the EIS and grounds for throwing out the Plan of Operations in its entirety. If the Plan of Operations is approved, the Forest Service should ensure there are no mining activities in the withdrawn area.

**Response:** Pursuant to NEPA and the Forest Service's implementing regulations at 36 C.F.R. Part 228, the scope of the NEPA analysis and the impacts of the proposed action were carefully considered and include analysis of the direct, indirect, and cumulative effects the no action, proposed action, and alternatives to the proposed action. A discussion of the Oak Flat Withdrawal Area, its history, and purpose are provided in response to 26-3. A land exchange is considered speculative and is considered to be outside the scope of analysis for this EA. (Please see further discussion in Section 1.4). Please see Section 1.5 for further information on the decision framework.

**Comment Number:** 6 The Plan of Operations is deficient in several areas, and we request that scoping remain open until the following documents can be provided to the public:

1. A cultural resources report;
2. Biological and ecological studies of the area;
3. Water resource and hydrological studies of the area; and
4. A better and fuller independent analysis of reclamation bonding costs and adequacy.

**Response:** The February 2008 draft of the Pre-feasibility Plan of Operations was sufficient to initiate review under the National Environmental Policy Act. Based upon public comments received during public scoping efforts, the results of the studies completed to support this EA, and our analysis of the project summarized in this EA, the Forest Supervisor will select a preferred alternative. Based upon that determination, RCM will be required to prepare a Pre-feasibility Plan of Operations that conforms to the findings of this EA and applicable Forest Service regulation. Public involvement in the NEPA process includes both scoping on the proposed action and commenting on the EA. The comments provided during public scoping have informed the scope of the studies completed for this EA. Analysis of reclamation bond estimations are conducted in accordance with the Forest Service's "Training Guide for Reclamation Bond Estimation and Administration" dated April 2004.

**Comment Number:** 7 Five exploration drill holes are proposed in the Plan of Operations, which raise significant concerns relative to recreational values of Oak Flat, in particular vehicular and pedestrian traffic related to the Oak Flat Campground and surrounding area. Hiking, climbing, bird watching, and camping among other recreational activities occur in Oak Flat, and drilling operations at OF-1 and OF-3 appear to have a significant impact on recreation. Concerns include safety of those recreating in the area, dust from heavy equipment and vehicles, noise from drilling rigs and other heavy equipment used in road widening.

**Response:** Public safety and the impacts of the proposed activities to recreational users of the Oak Flat Withdrawal Area have been considered in this EA. Specifically, noise and visual impact studies to assess the effects of the proposed drill sites on recreational users of the Oak Flat Campground have been conducted. A traffic

analysis was conducted which evaluated the potential impacts of RCM's use of roadways within Oak Flat Campground and evaluated two alternative access routes. The impacts of the proposed action on air quality have been evaluated and specifically consider fugitive dust emissions in the assessment. RCM will not be widening any roads within the Oak Flat Campground or within the Oak Flat Withdrawal Area as part of its Pre-feasibility Plan of Operations.

- Comment Number:** 8 The proposed OF-2 drill site will negatively affect public recreation, as access will be restricted near a popular bouldering site and camping as well as limiting camping opportunities.
- Response:** An alternative site, North OF-2, was evaluated.
- Comment Number:** 9 How will Forest Service ensure that Resolution will not violate the withdrawn area with directional drilling at sites OF-1, OF-2, and OF-3? Will the directional drilling go under Oak Flat? How will the public be able to oversee the US Forest Service to make sure it is protecting the boundaries of the withdrawn areas?
- Response:** RCM has stated to the Forest Service that they would not drill under the Oak Flat Withdrawal Area. A mitigation and monitoring measure has been added that would require RCM to complete a Cadastral Survey of the boundary of the Oak Flat Withdrawal Area to ensure that adjacent drill sites be located outside the withdrawal boundaries. This mitigation measure would also require RCM to provide the Forest Service with exploration drill hole information of sufficient detail to document that directional drilling activities do not extend under the Oak Flat Withdrawal Area.
- Comment Number:** 10 It appears that monitoring well HRES-3 would occur within the withdrawn area. Any mining related activities within the withdrawn area is contrary to the PLO .
- Response:** HRES-3 is within the Oak Flat Withdrawal Area. Please refer to response to 7-1 for additional discussion.
- Comment Number:** 11 Six shallow groundwater monitoring wells would be drilled on Forest Service lands, which would require road alterations.
- Response:** All of the shallow groundwater monitoring wells are located along existing roads, and some minor improvements are proposed. Any required road improvements will be completed in accordance with the EA and the approved Pre-feasibility Plan of Operations. Chapter 2 of this EA provides additional detail regarding the proposed road improvements that would be implemented to facilitate access to the drill sites.
- Comment Number:** 12 PVT-3 is located right on the edge of Oak Flat. This tunnel borehole is located too close to the withdrawn area, negative impacts are too great, and the likelihood of violating the withdrawal area is also high.
- Response:** PVT-3 is located outside of the Oak Flat Withdrawal Area, between the withdrawal boundary and US 60. It is accessed via existing roads and does not require any new road construction. PVT-3 is one of nine geotechnical boreholes which would be drilled to determine subsurface rock conditions along two possible tunnel alignments. Drilling activities and geotechnical testing at this drill site is expected to take 4 to 5 weeks. The maximum period of occupancy at PVT-3 would be 6 months and drilling would be completed prior to December 2016.
- Comment Number:** 13 The proposed widening of access roads will accommodate access by larger vehicles unrelated to the mine, and open up an area for increased use that could harm the land and people who recreate in these areas, The widening should be evaluated, limits on the widening of roads considered, and provisions to modify and restore widened roads to pre-widened conditions so that they accommodate the same vehicles prior to construction should be developed. Impacts of road widening on wildlife and wildlife habitat should be evaluated, minimized, and mitigated.
- Response:** RCM will not be widening any roads within the Oak Flat Withdrawal Area as part of their proposed Pre-feasibility Plan of Operations. A Biological Assessment and Evaluation has been prepared for the proposed action and alternatives to the proposed action. Reclamation of roads will be conducted in accordance with policy established through the Travel Management Rule process (36 CFR Parts 212, 251, 261 and 295).
- Comment Number:** 14 Any use of, widening, or maintaining of roads within the withdrawn area must have a Special Use Permit and therefore also warrants an EIS.
- Response:** Road improvements within the Oak Flat Withdrawal Area are not proposed by RCM. Vehicle use within the Oak Flat Withdrawal Area would be minimized to the greatest extent practicable. Road use proposed by RCM would be authorized by the Forest Service through the mechanism of the Pre-feasibility Plan of Operations. Based on analyses summarized in this EA, the Forest Supervisor would determine if an EIS is required. Please see Section 1.5 for further details of the nature of the decision.
- Comment Number:** 15 The Plan of Operations does not adequately address impacts to cultural resources. A thorough analysis of the proposed exploration's impacts on the cultural values of the area is needed. The full extent of impact is not known because to date there has been little or no consultation with the tribes by the government or RCM. Full and thorough, good-faith, government-to-government discussions with the affected and interested tribes must be undertaken by the Forest Service.

**Response:** The Pre-feasibility Plan of Operations is not expected to provide the level of detail or information required to comply with the National Historic Preservation Act, EO 13007, or other applicable Federal or State regulations relating to cultural resources. Cultural resource sites were identified during the Class III Survey of the Pre-feasibility Activity Area. To protect these resources, maps in the Pre-feasibility Plan of Operations that were provided to the public purposefully excluded the locations of these sites. The Class III survey report was reviewed and approved by the Forest Service's archaeologist and was provided to interested Native American groups for their review and comment. Additionally, the Forest Service requested that the Tribes identify the presence of any sacred sites in accordance with EO 13007. Please refer to response to 21-3 for a more detailed discussion of the ongoing Government-to-Government consultation efforts and our actions to comply with the NHPA.

**Comment Number:** 16 Scoping should not continue until the Section 106 process has been completed.

**Response:** Scoping is an integral and essential component of the NEPA process with regulation-established, discrete timeframes which allow for focused input. The scoping process required by NEPA is an integral component of NEPA review and should not be stopped while resource studies required to complete NEPA and consultations with interested parties required as a component of NEPA are ongoing. The potential for adverse impacts to cultural resources or sacred sites by implementation of the proposed action or another action alternative is an issue that has been identified for review during scoping efforts. Please refer to response to 21-3 for additional discussion of our ongoing consultation efforts.

**Comment Number:** 17 The Forest Service needs to engage in appropriate consultation pursuant to the NHPA with the Arizona State Historic Preservation Officer, the President's Advisory Council on Historic Preservation, the affected tribes and Tribal members, and interested parties regarding potential and actual impacts to cultural resources.

**Response:** Consultation pursuant to the NHPA has been initiated by the Forest Service, and will continue throughout our review of the proposed action. Please see response to 21-3 for additional discussion regarding Tribal consultations and project compliance with applicable laws, regulations, and executive orders relevant to cultural resources.

**Comment Number:** 18 The Forest Service must follow Executive Order 13007 ("Indian Sacred Sites"), dated May 24, 1996.

**Response:** Pursuant to EO 13007 and the NHPA, information from Native American groups regarding the presence of any sacred sites within the PAA has been requested. Please see response to 21-3 for additional discussion regarding tribal consultations and compliance with applicable laws, regulations, and executive orders relevant to cultural resources.

**Letter:** 27 **Commenter:** Campana, Kathryn 'Sam' **Executive Director** Audubon Society of Arizona

**Comment Number:** 1 Audubon Arizona submitted letter testimony on S.3157, the Southeast Arizona Land Exchange and Conservation Act of 2008, to the Senate Energy and Natural Resources Committee expressing concerns about environmental impacts associated with the proposed mining operation on the areas surrounding Oak Flat.

**Response:** The Forest Service has not received any proposal from RCM to develop a mine. The land exchange is speculative and has no bearing on the review of the proposed Pre-feasibility Activities. Please see the discussion in Section 1.4 regarding the scope of analysis in this EA and Section 3.1.1 for more discussion on past, present, and reasonably foreseeable future activities.

**Comment Number:** 2 The mining operation will require significant discharge of water from the mine site, potentially impacting aquifers and the drainages of Queen Creek and Devils Canyon.

**Response:** Speculation about the potential effects from a mining operation is beyond the scope of analysis in this EA. Please see the discussion in Section 1.4 for more detail. Groundwater monitoring wells developed as part of the Pre-feasibility Plan of Operations will be used for aquifer testing, and relatively minor amounts of water will be pumped during these tests.

**Comment Number:** 3 Geotechnical faulting resulting from the mine may adversely affect water quality and quantity in Devils Canyon riparian area.

**Response:** Speculation about the potential effects from a mining operation is beyond the scope of analysis in the EA. Please see the discussion in Section 1.4 for more detail. Section 3.11 provides additional discussion on past, present, and reasonably foreseeable future activities.

**Comment Number:** 4 Different bird species of concern reside in the Oak Flat area, and include the wintering Lewis' Woodpecker.

**Response:** The Biological Assessment and Evaluation prepared for this project considered threatened and endangered bird species, birds protected by the Migratory Bird Treaty Act, and Forest Sensitive Species.

**Comment Number:** 5 Actions to protect the endangered hedgehog cactus population in the Oak Flat area and should be taken.



**Response:** Please see response to comment 21-8.

**Letter: 28 Commenter Fibel, Herbert S.**

**Comment Number: 1** Existing 4 test drill sites already interfere with "quiet enjoyment of the area" and will "mar and distort the scenic view of this historically off limits to mining public resource."

**Response:** Analyses of potential noise and visual impacts to recreational users in Oak Flat area were conducted. These studies are summarized in Chapter 3 of the EA.

**Comment Number: 2** Any activity by RCC [RCM] that "causes any physical disruption of the area has a sufficiently serious impact to justify the expansion of the Environmental Assessment into a full blown Environmental Impact Statement review."

**Response:** Our analysis of impacts is summarized in this EA. Please refer to Sections 1.4 and 1.5 for additional discussion regarding the scope of our NEPA analysis of the Pre-Feasibility Plan of Operations and the nature of the decision to be made by the Forest Supervisor.

**Letter: 29 Commenter Barrett, Sylvia**

**Comment Number: 1** Questions the need for more drilling sites; understands that RCC [RCM] should have enough information from the more than 85 wells and drill sites in the area; no need to "further ruin the terrain."

**Response:** Please refer to responses to comments 25-8 and 25-9.

**Comment Number: 2** "This land" is part of Public Land Order 1229 which deems this land inviolate to mining.

**Response:** Please see response to 7-1 for a full discussion of PLO 1229 as amended by PLO 5132.

**Comment Number: 3** "Pre-feasibility studies have already been done.... Shouldn't the course of action be "No Action Alternative" until NEPA studies are undertaken? Once NEPA studies are complete and if the land swap goes through, then you can drill to your hearts' content and do it anywhere you like."

**Response:** The Forest Service has not received any proposal from RCM to develop a mine. Please refer to the discussion in Section 1.4 for a more detailed description of the scope of analysis. Section 3.11 provides a discussion of past, present, and reasonably foreseeable future activities.

**Comment Number: 4** "Who previously approved exploration operations? The answer...USDA Forest Service. Was the public ever asked about this? Should they have been? Not really knowing procedures I am very curious as to how this works."

**Response:** Kennecott Exploration Company, RCM's predecessor in interest, first filed a plan of operations to pursue various pre-feasibility study activities on National Forest System Lands in February 2001. Public involvement in this original authorization was described in the original Forest Service decision document authorizing this activity as follows: "Consultation and public involvement was sought for the Resolution Project drilling program during February and March 2001. A letter was mailed to interested parties and agencies on March 2, 2001. Six letters were received in response. Two were supportive of the project and two did not express concern related to the proposed exploration plan. One letter, from the Arizona Game and Fish Department, contained suggestions, which were addressed in the mitigation requirements and modifications to the original Plan of Operations. The remaining letter, from Tribal government, expressed general opposition to mining. Forest Service personnel met with the interested Tribal representative at the project site to address any concerns. In addition, Kennecott representatives have periodically met with local organizations and governments to discuss the company's plan. The Forest Service did not receive any additional inquiries as a result of those meetings."

**Comment Number: 5** QC-04 and MB-03 - on previously disturbed land; didn't RCC get enough information so that further disturbance of these areas is not necessary? "What important structure is QC-04 and MB-03 intersecting and 1100 and 1300 meters?"

**Response:** RCM has indicated that these two drill sites are required to provide information on subsurface structural geology, specifically what is known on the West Boundary Fault. RCM has indicated that this information is necessary to further its evaluation of the feasibility of developing the target ore body.

**Comment Number: 7** Concern regarding the tunnel alignment: "What types of contaminants or material will the conveyor or tunnel be carrying? Isn't this putting the horse before the cart? The land is not theirs ... the land swap is not for sure. So there is no need for ruining the landscape just yet!"

**Response:** RCM has indicated that the purpose of the geotechnical evaluations is to determine if construction of a tunnel conveyor system is technically and economically feasible. Please see Section 1.4 for additional discussion regarding the scope of our NEPA analysis of the Pre-feasibility Plan of Operations.

**Comment Number: 8** Should be no road closures keeping the public off public lands: "What is to stop RCC [RCM] from keeping

- their signage up on a more permanent basis to prevent the public from entering? Who is going to monitor [RCM] every day?" Modifications will scar the land; destruction left behind if land swap does not go through.
- Response:** No permanent road closures are anticipated. Short-term, temporary road restrictions that limit the use of some roads will be likely during road improvements or movement of drilling equipment during the course of operations as outlined in the Pre-feasibility Plan of Operations.
- Comment Number:** 9 "Where is the permitted landfill for the 'excess mud' going to be? How deep are 'mud pits'? If drilling mud is allowed to dry, will it stay on site until reclamation activities take place? If not ... at what point will it be removed?"
- Response:** RCM would collect excess cuttings and drilling muds generated during drilling activities and remove them from National Forest System Lands. These materials would be disposed of in accordance with applicable Arizona law.
- Comment Number:** 10 Define "silt fencing" and "water bar."
- Response:** Silt fencing and water bars are elements of best management activities implemented to control erosion and soil loss during and after construction activities. Silt fence consists of geotextile materials and wood or metal posts. The posts hold the silt fence vertically and a portion of the fence is normally buried to prevent undercutting. Water flows through the geotextile material while the soil is captured on the uphill side. A water bar is a shallow ditch with a berm on the down hill side that is constructed across a sloping road, trail, or utility row. The water bar diverts water flow from the disturbed area to prevent excessive erosion.
- Comment Number:** 11 "If a fire, caused by drilling or the drill operator, gets out of control...who puts it out and who pays to have it put out?"
- Response:** If a fire gets out of control, the Forest Service would respond in accordance with their standard practices and procedures. If the fire is human caused the responsible party would be required to pay the cost of extinguishing the fire. A mitigation measure regarding conformance with the Forest Service Fire Plan has been added.
- Comment Number:** 12 39.2 acres of disturbance is conservative..."Who would RCC contact and how would they get more land? Would it again be a public process? Or would someone in your department just give the "go ahead" since they already had started to drill?"
- Response:** Activities identified by the Forest Service in its decision notice would constitute the full range of Pre-feasibility Activities RCM is authorized to conduct on National Forest System Lands. If a previously unforeseen activity is requested by RCM they would have to modify the approved Pre-feasibility Plan of Operations or submit a new plan for review and approval by the Forest Service in accordance with applicable regulations and the National Environmental Policy Act.
- Comment Number:** 13 Service vehicles adjust speed to avoid creating a dust trail. Define "service vehicle" classification. "Can I as a concerned citizen stop the vehicle if the law is being broken" Or do I just get the license plate # and turn them into to someone? Who would that someone be? What is the punishment for breaking the law?"
- Response:** Service vehicles include standard size pick-up trucks, larger trucks transporting fuel oil for drill rigs and generators, trucks to service the portable toilets, etc. Whether or not concerned citizens can stop a vehicle if they perceive that a law is being violated is a legal question and beyond the scope of this EA or the Forest Service's authority to respond. However, a mitigation measure was developed to address reported safety concerns. RCM will be required to prepare an administrative access control plan. Specific items that would be addressed in the plan include, but may not be limited to: 1) signage, 2) training programs and documentation, 3) performance standards and specific policies to identify problems and terminate offenders, 4) plans for limiting traffic during periods of high-use public events, 5) plans to incorporate traffic safety issues into regular "lunch box" safety meetings on site, 6) provide traffic monitor when and where appropriate, and 7) provide a collection agreement to fund Forest Service oversight of the traffic monitor.
- Comment Number:** 14 Regarding scenic values: "What is considered timely reclamation?"
- Response:** Reclamation is considered timely when initiated at the earliest possible date once activity at any site is complete. Factors taken into consideration include optimal weather conditions for earthwork and seasonal conditions for achieving the most successful revegetation efforts.
- Comment Number:** 15 "How would unoccupied drill sites be covered to prevent wildlife from being trapped?"
- Response:** If a drill site is unoccupied but not yet ready for closure and abandonment, RCM will be required, in accordance with ADWR regulations, to temporarily cap the drill hole to prevent access by wildlife.
- Comment Number:** 16 "There is yet NO LAND SWAP and there is the possibility that they may not get the land swap so shouldn't this project be put on hold until more is known about what is going to happen with this land?"

**Response:** As a matter of law and regulation, the Forest Service must consider the proposed Pre-feasibility Plan of Operations. Please refer to Section 1.4 for further discussion about the Legislative Land Exchange and its relationship to the proposed activities. Section 3.11 provides additional discussion on past, present, and reasonably foreseeable future activities.

**Letter:** 30 **Commenter** Cecala, Rick **Queen Creek Coalition**

**Comment Number:** 1 Regarding drill site OF-2: the location is popular for climbing and camping; location of the "Campground Boulder"; recommend selecting another location to minimize disruption to rock climbing in this area.

**Response:** In response to this concern raised by a number of commenters, a North OF-2 alternative was identified by the Forest Service for consideration as an alternative to the proposed action in this EA.

**Comment Number:** 2 Regarding access to OF-3 and OF-1 through Oak Flat parcel: concerns about volume of traffic and resulting impact on camping and other recreational uses of the Oak Flat parcel; recommend selection of an access route that would be less disruptive of the campground area.

**Response:** The impacts of increased traffic and safety concerns has been considered in this EA. In addition, six alternative access routes for OF-1 and OF-3 were considered and two have been carried forward for detailed analysis in this EA.

**Comment Number:** 3 QCC requests clarification of RCM's legal right to maintain its current and proposed use of HRES-3, the hydrologic monitoring station, located within the withdrawn Oak Flat parcel. From the Plan of Operations it appears that RCM has been, or will be, doing new drilling at this site. This new drilling activity is appurtenant to mining activities and may be inconsistent with Public Land (Law) Orders 1229 and 5132.

**Response:** For more detailed discussion regard the construction and use of HRES-3 within the Oak Flat Withdrawal Area and proposals for ongoing groundwater monitoring at this drill site please refer to the response to comment 7-1.

**Comment Number:** 4 PVT-3 et al: Request clarification on Resolution's legal right to build its proposed 11-mile conveyor tunnel through NF land.

**Response:** The analysis of RCM's legal right to construct a conveyor tunnel under National Forest System Lands is beyond the scope of this EA. The activities considered in this EA is the construction of drill sites and associated road improvements and drilling of geotechnical boreholes to collect data that will be used for engineering and planning studies to determine if a conveyor tunnel is technically and economically feasible. Evaluation of mine development i.e., accessing, mining, and processing the deep copper ore deposit, is beyond the scope of this EA. Please refer to Section 1.4 of this EA for additional discussion regarding our scope of analysis and Section 3.11 for a discussion on past, present, and reasonably foreseeable future activities.

**Comment Number:** 5 PVT 1 et al: Certain numbers have been omitted from the numbering system for proposed drilling sites. The existence and location of additional drilling sites on private land could bear on the necessity for sites proposed on National Forest land. Information should be made available about the nature and existence of PVT1 and 2; H-A, H-D, MB-01 and 02; QC-01, -02, and -03.

**Response:** While we understand that there are additional drill sites on private and State lands that support ongoing pre-feasibility studies by RCM, this does not preclude them from proposing further activities on National Forest System Lands.

**Comment Number:** 6 QC-04 and MB-03 - These geotechnical drill holes are proposed to be located west of and directly below Apache Leap. What information does RCM anticipate collecting from these sites? Are they essential to the pre-feasibility study?

**Response:** Please refer to response to 29-5.

**Letter:** 31 **Commenter** Sparks, Joe P. **Sparks Law Firm, P.C.**

**Comment Number:** 1 "On behalf of the Tribes, this Firm objects to this determination (that an EA is sufficient), and insists that a full Environmental Impact Statement (EIS), which evaluates the synergistic effects of the entire proposed mining operation, is required under these circumstances." Further discussion on NEPA and definition of "connected actions"; pre-feasibility and future actions are "interdependent parts of a larger action."

**Response:** The determination of the appropriateness of an EA vs. an EIS to satisfy NEPA's substantive requirements has not been made. A preliminary determination was made by the Forest Supervisor in our public notice dated June 11, 2008. The final decision with regard to whether or not an EA is sufficient will be made based upon the analysis provided in this EA and the significance criteria provided CEQ regulations. As described in Section 1.5 of this EA, our final determination will be published in our decision notice that will be prepared by the Forest Supervisor following the public comment period for this EA.

**Comment Number:** 2 Objects to "piecemealing" or "segmentation" to divide major Federal action into smaller components to

- avoid preparing a comprehensive EIS.
- Response:** We have carefully considered segmentation in our analysis of the scope of this EA and do not believe that our analysis of the Pre-feasibility Plan of Operations is piecemealing or segmentation of our NEPA responsibilities. Sections 1.4 and 3.11 provide more detailed discussions of our analysis of past, present, and reasonably foreseeable future activities with regard to the proposed pre-feasibility activities.
- Comment Number:** 3 Oak Flat Picnic and Camp Ground is protected under Public Land Order 1229 and its 1971 modification from appropriations under the U.S. Mining Laws. "This logically includes protection from the creation or widening of roads, and the use of such roads to access mining-related activities, including inter alia, the proposed pre-feasibility activities."
- Response:** The actions outlined in the proposed Pre-feasibility Plan of Operations and the alternatives identified during the NEPA process do not consider construction of new roads or widening of existing roads within the Oak Flat Withdrawal Area. The Oak Flat Withdrawal Area was withdrawn from appropriation by PLO 1229 as modified by 5132, except under the U.S. Mining Laws. There is no proposal to enter the Oak Flat Withdrawal Area for purposes of locating a mining claim or any other mineral entry or appropriation. Vehicle traffic within the Oak Flat Withdrawal Area related to mineral exploration on other National Forest System Lands does not constitute a mineral entry or appropriation in violation of the withdrawal.
- Comment Number:** 4 Pre-feasibility activities would affect tribes' free exercise of religion - Oak Flat, Apache Leap, Devils Canyon and related canyons, geologic formations and springs located in the are of proposed activity "are holy, sacred, and consecrated lands.... This area, and nothing within it, should be disturbed. No holes should be drilled. No roads should be built. No surveys, samples, or photographs should be taken. No seismic explosions should be detonated nor testing conducted."
- Response:** A Class III survey of the Pre-feasibility Activities has been completed in conformance with the NHPA. Pursuant to EO 13007 and NHPA, information from Native American groups regarding the presence of any sacred sites within the Pre-feasibility Activity Area has been requested. In the context of EO 13007, a sacred site "means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site." During ongoing consultation, Native American Tribes have not provided information on any specific sacred sites within or near the PAA or any of the alternative sites considered in this EA. The proposed action and alternatives do not restrict access, future ceremonial use, or adversely affect the physical integrity of any sacred site identified during consultation. Please see response to 21-3 for additional discussion regarding Tribal consultation and compliance with applicable laws, regulations, and executive orders relevant to cultural resources.
- Comment Number:** 5 Government to Government consultation is required by Federal law and policy. Tribes have not been afforded sufficient time to respond; scoping letter dated June 6 was not received until July 1, 2008.
- Response:** As discussed at the meeting of the Apache Coalition in Payson on June 23, 2008, we do not understand why the letters sent by the Forest Service to some of the Tribes on June 6, 2008 were not forwarded to your office in a more timely fashion. To help facilitate your receipt of those letters, we forwarded copies of the original June 6 letter to you on June 30, 2008. You will also be directly receiving our letter announcing the opportunity to comment on the Pre-feasibility Plan of Operations.
- Comment Number:** 6 Regarding attachment to the letter: a fax sent to USFWS in response to the AZ hedgehog cactus 5-year status review by the Tribe; raised concerns about the land exchange and block-cave mining process impacting hedgehog habitat within the footprint of the proposed mine.
- Response:** A Biological Assessment and Evaluation was completed for the Pre-feasibility Activities to evaluate the potential effects of the project on Federally-listed species, designated critical habitat, Forest Service sensitive species and birds protected by the Migratory Bird Treaty Act. The Arizona hedgehog cactus was included in this evaluation. A full pedestrian survey of the Pre-feasibility Activities and possible alternatives has been completed. Arizona hedgehog cacti are known to occur in the vicinity of some of the Pre-feasibility Activities, but they do not occur uniformly, nor do they occur within any of the sites proposed for disturbance. We determined that the Pre-feasibility Activities may affect but are not likely to adversely affect Arizona hedgehog cactus. Pursuant to this determination, informal consultation with the USFWS was initiated. The potential adverse effects that may be associated with a Legislative Land Exchange or development of the deep copper ore deposit using block cave mining techniques is beyond the scope of this analysis. Section 1.4 provides a discussion on the scope of analysis of this EA and Section 3.11 provides a discussion on past, present, and reasonably foreseeable future activities.