



**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, NORTHWESTERN DIVISION  
PO BOX 2870  
PORTLAND, OREGON 97208-2870

November 19, 2018

RE: Action No. 2008-00816-MB; Request for an Opinion Regarding the U.S. Army Corps of Engineers Determination of No Adverse Effect to Historic Properties from the Proposed Sonoita Creek Ranch Compensatory Mitigation Site

John M. Fowler  
Executive Director  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001

Dear Mr. Fowler:

This letter is a follow-up to correspondence from the U.S. Army Corps of Engineers ("Corps") dated September 27, 2018 to the Advisory Council on Historic Preservation (Council) regarding an addendum survey and corresponding findings at the Sonoita Creek Ranch property and our determination of no adverse effect to historic properties from the proposed additional activities. The proposed compensatory mitigation at this location is being evaluated as part of the Department of the Army permit application review process for the Rosemont Copper Mine Project (Project).

Rosemont Copper Company (Rosemont) proposes to develop the Project on lands under the administration of the Coronado National Forest (CNF). The Project is located on privately-owned property and 3,328 acres under the administration of the U.S. Forest Service (USFS), which is within the CNF. As such, the USFS was designated as the lead federal agency for compliance with the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), and tribal consultation for the Project. The Corps has participated in the NEPA, NHPA, and tribal consultation processes as a Cooperating Agency and is also a Signatory to the Memorandum of Agreement (MOA) that was executed in 2013 to mitigate adverse effects to historic properties from the Project. Additionally, the Corps has met with concerned tribes and participated in a site visit with tribal leaders.

As part of Project-related compensatory mitigation requirements associated with the Department of the Army (DA) permit application review process, the applicant chose to acquire four parcels of private land within the Santa Cruz River Watershed. Because this location is beyond the limits of the proposed mine site, has been significantly revised since the signing of the MOA, had not been previously subjected to a cultural resources survey, and is directly related to the discharge of fill material, the Corps assumed the role of lead federal agency for compliance with Section 106 of the NHPA.

The core of the proposed mitigation activities consists of the rehabilitation of Sonoita Creek and tributary channels, reestablishment of floodplain benches and uplands that buffer the channel, and pond enhancement for native species. These measures are designed to restore the channel, floodplain, and vegetation to the environmental conditions present prior to impacts from ranching and farming activities at this location. As such, the purpose of the proposed activities is to provide beneficial enhancements to the natural landscape, hydrology, and aquatic resource functions in this reach of Sonoita Creek.

In 2017, the Corps consulted with the Arizona State Historic Preservation Officer (SHPO) and all other consulting parties identified per the MOA regarding our determination of no adverse effect to historic properties from the proposed scope of work at the Sonoita Creek Ranch compensatory mitigation site. The archaeological sites and components recorded in the area of potential effects (APE) and evaluated as part of this consultation include prehistoric, protohistoric, and Early Historic Native American resource procurement/processing and habitation activities, as well as Historic period Euro-American habitation, agriculture, transportation, and utility land-use. The seven archaeological sites determined eligible for inclusion in the National Register of Historic Places (i.e. historic properties) include a former grade of the New Mexico & Arizona Railroad, an abandoned alignment of State Road (SR) 82, a complex of mounded earth features associated with a scatter of historic artifacts, a scatter of historic artifacts associated with structural elements and midden areas, and three protohistoric/historic Sobaipuri sites.

The SHPO concurred with the Corps' determination of no adverse effect to historic properties from the proposed compensatory mitigation activities on September 1, 2017 (Log Number SHPO-2017-1129 [138705]). The Corps also received responses from several other consulting parties that provided either concurrence with the determination of effect or a statement that no historic properties significant to a particular Tribe will be affected by the proposed scope of work. The Corps did receive requests for additional information from the Tohono O'odham Nation ("Nation") and Pima County, and the requested documents, which included the revised Habitat Mitigation and Monitoring Plan, were provided. The Corps did not receive any subsequent objections from the Nation or Pima County to the determination of no adverse effect to historic properties at the Sonoita Creek Ranch compensatory mitigation site, nor from any other consulting party.

Following inventory and consultation related to the main area of potential effects (APE) parcels to support the creek and floodplain rehabilitation, the locations of two proposed fence lines were finalized in accordance with the Biological Opinion from the U.S. Fish and Wildlife Service. These are a wildlife-exclusion fence separating the restored floodplain habitat from State Route 82 to the west and a wildlife-friendly fence along the eastern side of the parcels designed to permit wildlife to enter the restored area while excluding livestock. The final plans for the two fence lines revealed that not all of the proposed areas of new fence construction were surveyed in 2017 by WestLand Resources, Inc. (WestLand).

Rosemont contracted with WestLand to survey the additional fence line construction areas that were not surveyed in 2017. This addendum to the APE totals 65.59 acres and consists of four non-contiguous corridors of varying widths comprised of both private (55.06 acres) and Arizona Department of Transportation- (ADOT-) owned land (10.53 acres). These corridors measure between 845 and 2,758 meters long and are located along and east of State Route 82 between Sonoita and Patagonia, Santa Cruz County, Arizona.

The addendum survey resulted in the identification of new segments of three previously recorded linear sites; the former grade of the New Mexico & Arizona Railroad (AZ EE:4:43(ASM)), an in-use natural gas pipeline exempt from Section 106 review by federal agencies (AZ EE:6:95(ASM)), and the abandoned alignment of State Road (SR) 82 (AZ EE:9:196(ASM)). The three sites are all associated with Euro-American land use for transportation infrastructure and utilities during the Late Historic period. AZ EE:4:43(ASM) and AZ EE:9:196 (ASM) have been determined eligible for inclusion in the National Register of Historic Places (NRHP).

All new fence line construction has been designed to avoid the historic properties. The wildlife-friendly fence crosses the southern end of the extension to Segment 1 of AZ EE:4:43(ASM) that was recorded in 2018. At this location, the fence is already in existence, and the only project activity will be the replacement of the upper and lower barbed wire strands with smooth wire strands. All fence replacement will be carried out by hand, and no vehicles will be driven across the railroad grade.

Regarding indirect effects from the proposed action, Westland's report provided the following:

Rosemont proposes to construct an 8-foot-tall wildlife-exclusion fence made from steel posts and 8-inch steel mesh along the eastern side of the current alignment of State Route 82 and a wildlife-friendly fence made from four wire strands and steel t-posts along the other survey segments. These fences, by their nature, allow light to pass, and will not impede the visibility of any of the NRHP-eligible sites. Thus WestLand recommends that the fence lines will not cause indirect adverse effects to the historic properties in the APE.

The Corps agreed with this assessment regarding indirect effects, as well as the direct effects and avoidance recommendations provided within the addendum report. The SHPO concurred with the Corps' determination of no adverse effect to historic properties from the proposed compensatory mitigation activities on October 23, 2018 (File No. SHPO-2017-1129 (145343)). Other consulting parties have also provided concurrence with the determination of effect.

On October 24, 2018, the Corps received notice from the Nation's Tribal Historic Preservation Officer that he does not concur with the determination of no adverse effect to historic properties, stating that a cultural landscape study is necessary to further evaluate the impacts from the proposed scope of work. In response to subsequent

communications attempting to resolve the dispute, a second correspondence from the Nation dated November 9, 2018 states that "...while there will be no adverse effect on individual cultural sites, there will be an adverse effect on the cultural and natural landscape of the Sonoita Creek project area."

The Corps' initial determination of no adverse effect to historic properties in 2017 was based on the fact that all but the abandoned alignment of SR 82 would be avoided by construction activities at the Sonoita Creek mitigation site. In regard to the abandoned alignment of SR 82, Westland provided the following discussion addressing potential effects from the proposed mitigation activities:

The location and function of this abandoned road segment will not be impacted by project activities. Two features will be impacted, but both are common features (i.e., a culvert and a bank protection) that do not, in themselves, contain the kinds of information that contributes to the NRHP eligibility of the road as a whole. The features have been mapped, described, and documented in this report. Therefore, Westland recommends that burial of the two features associated with this historic property will not alter the characteristics that qualify it for inclusion in the NRHP and thus does not constitute an adverse effect.

The Corps concurred with this assessment.

Regarding indirect effects, none of the historic properties are considered significant for architectural, engineering, or other visual characteristics. Furthermore, the proposed mitigation is designed to restore the Sonoita Creek floodplain to its historical flow regime, which is expected to result in the gradual return of large portions of the APE to a riparian environment similar to that which would have characterized this area throughout most of prehistoric and historic times. Therefore, the Corps determined that there will be no indirect adverse effect to the historic properties in the APE.

In 2017, the Corps requested review and comment on our determination of effect to historic properties from the following Tribes and consulting parties: the Nation; Ak-Chin Indian Community; Fort Sill Apache Tribe; Gila River Indian Community; Hopi Tribe; Mescalero Apache Tribe; Pascua Yaqui Tribe; Salt River-Maricopa Indian Community; San Carlos Apache Tribe; White Mountain Apache Tribe; Yavapai-Apache Nation; Pueblo of Zuni; Coronado National Forest; Arizona State Land Department; Arizona State Museum; Pima County, Santa Cruz County, and the Town of Sahuarita.

The SHPO concurred with the Corps' recommendations of NRHP-eligibility status for the cultural resources identified in the APE and determination of effect on September 1, 2017. The Corps also received concurrence with our determination of effect from several other consulting parties. The Corps did not receive any objections to our determination of effect in 2017. Regarding the addendum survey conducted earlier this year, the discussion as to why the Corps concluded that the proposed additional fence line construction did not alter the determination of no adverse effect to historic properties is provided above. The SHPO concurred with this determination on October

23, 2018. Other consulting parties have also provided concurrence with the determination of effect, and only the Nation provided a letter of non-concurrence.

In response to the Nation's request that a cultural landscape study be conducted to further assess the impacts from the proposed mitigation at Sonoita Creek, the Corps considered the types of historic properties identified in the APE in relation to existing guidance regarding these types of studies/identification. A cultural landscape is defined as "a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values." (National Park Service Preservation Brief 36: *Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes*). In response to the first part of the definition it is noted that the types and various historical contexts represented by the cultural resources identified in the APE are not collectively, or in the majority, associated with a specific historic activity, event, or person. Regarding the latter part of the definition, the determination as to whether a geographic area exhibits "other cultural or aesthetic values" is a difficult one to make based on the broad scope of the statement. Having said that, the APE and surrounding area does not contain natural features or cultural resource types that are only found in that location. In addition to these factors, the purpose of the proposed mitigation is to provide beneficial enhancements to the natural landscape, hydrology, and aquatic resource functions in this reach of Sonoita Creek. Therefore, the Corps finds that additional studies are not necessary to further support the determination of no adverse effect to historic properties.

As a result of this disagreement, the Corps is requesting an opinion from the Council per 36 CFR 800.5(c)(3) and our *Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR Part 800*. In accordance with 36 CFR 800.11, copies of the cultural resource survey reports are enclosed with this letter, as well as the SHPO concurrence letters and other consulting party correspondence regarding the Corps determination of effect at the proposed Sonoita Creek compensatory mitigation site. Per 36 CFR 800.5(c)(3)(i), please provide your opinion within 15 days of receiving this request and applicable documentation.

Sincerely,

HEMLINGER.DARIEN  
.PETER.

Digitally signed by  
HEMLINGER.DARIEN.PETER  
DN: c=US, o=U.S. Government, ou=DoD,  
ou=PKI, ou=USA,  
cn=HEMLINGER.DARIEN.PETER  
Date: 2018.11.19 16:22:51 -08'00'

D. Peter Helmlinger, P.E.  
Brigadier General, USA  
Commanding

## Enclosures

A Cultural Resources Inventory of Approximately 534.5 Acres of the Sonoita Creek Ranch Property Along State Route 82, Northeast of Patagonia, Santa Cruz County, Arizona (August 2017)

Addendum To: A Cultural Resources Inventory of Approximately 534.5 Acres of the Sonoita Creek Ranch Property Along State Route 82, Northeast of Patagonia, Santa Cruz County, Arizona (September 2018)

Consultation Correspondence Package