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FS Agreement No. 11-MU-11030514-012
Cooperator Agreement No. MU-8670-11-0002

MEMORANDUM OF UNDERSTANDING
Between The
NATIONAL PARK SERVICE
SAGUARO NATIONAL PARK
And The
USDA, FOREST SERVICE
CORONADO NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the USDI National Park Service, Saguaro National Park, hereinafter referred to as "the Cooperator," and the USDA, Forest Service, Coronado National Forest, hereinafter referred to as the "U.S. Forest Service."

Background: The U.S. Forest Service is responding to a request by Rosemont Copper Company to construct, operate, reclaim, and close an open-pit copper mine, including associated infrastructure. This is a major Federal action that may significantly affect the quality of the human environment.

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

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

Annual production estimates include 234 million pounds of copper, 4.5 million pounds of molybdenum, and 2.7 million ounces of silver over a period of approximately 20 years. A further summary of the proposed action is provided in the U.S. Forest Service's "Notice of Intent to Prepare an Environmental Impact Statement" published in the *Federal Register* on March 13, 2008 (Volume 73, Number 50, pages 13527-13529). The complete proposed action consists of the material provided by the Rosemont Copper Company identified in Forest Supervisor Derby's letter of October 19, 2007, and the 28 items responsive to her request for additional information. An electronic composite of this information has been



compiled to facilitate its use. It will be referred to hereafter as the composite Mine Plan of Operation (MPO). The composite MPO is available through links at:

<http://www.RosemontEIS.us>.

The General Mining Act of 1872 confers a statutory right to enter upon public lands open to location in pursuit of locatable minerals, and under valid existing mining claims to conduct mining activities, in compliance with Federal and State statutes and regulations. The Multiple Use Mining Act of 1955 confirms the ability to conduct mining activities on public lands, locate necessary facilities, and conduct reasonable and incidental uses to mining on public lands, including National Forest System lands. Forest Service mining regulations at 36 C.F.R. Part 228 Subpart A correspondingly recognizes the rights of mining claimants.

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

Title: National Park Service - Rosemont Air Quality

I. PURPOSE:

- A. The purpose of this MOU is to document cooperation between the parties to provide the framework for a mutually beneficial, cooperative, and productive intergovernmental relationship between the U. S. Forest Service and the Cooperator with regard to the development of the U.S. Forest Service's environmental impact statement for the Rosemont Copper Project.
- B. Define the respective roles and responsibilities of the U.S. Forest Service and the Cooperator that relate to the process the U.S. Forest Service will use in developing an environmental impact statement for the Rosemont Copper Project.
- C. Affirm the parties' willingness and agreement to cooperate in the environmental study for the Rosemont Copper Project.
- D. Identify the U.S. Forest Service as the Lead Federal Agency and the Cooperator as a cooperating agency.
- E. Affirm that the U.S. Forest Service has primary responsibility for National Environmental Policy Act (NEPA) compliance and preparation of the environmental impact statement for the Rosemont Copper Project.



- F. Affirm the commitment of the U.S. Forest Service to fully consider the views of the Cooperator in the development of the environmental impact statement for the Rosemont Copper Project.
- G. Establish the parties' agreement and commitment to jointly review the environmental impact statement developed under NEPA for the Rosemont Copper Project in accordance with the following provision.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

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

In consideration of the above premises, the parties agree as follows:

III. THE COOPERATOR SHALL:

- A. Perform duties of a cooperating agency under NEPA for the Rosemont Copper Project.
- B. Participate only in those areas within its area of special expertise, unless otherwise invited by the U.S. Forest Service.
- C. Provide the U.S. Forest Service with responses to data requests to the degree the data are reasonably available within time limits that will meet the project schedule.
- D. Share with the U.S. Forest Service, data and other information within its area of special expertise that are or may be relevant to the development of the environmental impact statement.



- E. Provide the U.S. Forest Service with copies of the existing and proposed laws, regulations, and policies within its area of special expertise that are or may be relevant to the project.
- F. Explain the relationship of existing and proposed laws, regulations, and policies within its area of special expertise to the project.
- G. Make a good faith effort to raise concerns about the project and offer solutions relative to its area of special expertise in a timely and specific manner.
- H. Upon request, participate in government-to-government meetings and field reviews with the U.S. Forest Service, if feasible.
- I. Review and provide written comments on internal working drafts of select portions, as deemed appropriate by the U.S. Forest Service, of the environmental impact statement, within a negotiated reasonable amount of time. Review is to ensure technical accuracy and conformance with laws, regulations, and policies within the Cooperator's area of special expertise and to provide recommendations for improvement of reviewed internal working draft material where the materials are found to be incomplete, inadequate, or inaccurate.
- J. Provide input to and/or review responses to public comments received on the "Rosemont Copper Project Draft Environmental Impact Statement," at the request of the U.S. Forest Service.
- K. Proceed with work as expeditiously as possible to comply with the project schedule.
- L. Provide the U.S. Forest Service with as much advance warning as possible should budgetary or program constraints prevent the ADOT from fulfilling its commitments identified in this MOU.
- M. Make the U.S. Forest Service aware if, at any point in the process, its needs are not being met.
- N. Additional responsibilities of the Cooperator in cooperating with the U.S. Forest Service are contained in Attachment I.

IV. THE U.S. FOREST SERVICE SHALL:

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



- B. Retain its primary responsibility for NEPA compliance including, but not limited to, content of the environmental impact statement, public distribution of the "Rosemont Copper Project Draft Environmental Impact Statement" for review and comment, public distribution of other project materials, management of the comments received on the environmental impact statement, public notice and filing requirements, and arrangements associated with any public meetings to be held.**
- C. Identify any requirements necessary for compliance with the Land and Resource Management Plan for the Coronado National Forest, 1986, as amended or revised, (hereafter, Forest Plan) or to further amend the Forest Plan as needed.**
- D. Designate the Cooperator as a cooperating agency in the environmental impact statement.**
- E. Share with the Cooperator data and other information that is relevant to the development of the environmental impact statement and within the Cooperator's area of special expertise.**
- F. Hold, on its own accord or upon request, government-to-government meetings and field reviews with the Cooperator as determined appropriate, without general public notice or participation.**
- G. Confer with the Cooperator on relevant technical studies and reports that may be required for the project.**
- H. Include, to the extent feasible, sufficient documentation in the environmental impact statement and supporting record to allow use by the Cooperator to meet its compliance requirements or other responsibilities.**
- I. Request Cooperator review internal working drafts of select portions of the environmental impact statement.**
- J. Provide the Cooperator with copies of the internal working drafts of the "Rosemont Copper Project Draft Environmental Impact Statement" and "Rosemont Copper Project Final Environmental Impact Statement" for review prior to printing of such for public distribution, and negotiate a reasonable amount of time for review.**
- K. Ensure that contributions by the Cooperator are considered and appropriately incorporated into the project.**
- L. Notify the Cooperator of any public notices made by the Forest Service pertaining to the project.**



- M. Keep the Cooperator apprised of the project schedule and provide an updated schedule as it becomes available.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. **JURISDICTIONS.** This MOU does not affect each agency's jurisdictions that exist as a matter of law.
- B. **LEAD AGENCY.** The U.S. Forest Service is the Lead Federal Agency, and has the authority through the Forest Supervisor to enter into this MOU.
- C. **COOPERATING AGENCY.** The Cooperator's participation in preparation of the environmental impact statement for the Rosemont copper Project as a cooperating agency is appropriate because of potential air quality effects to the Class I airshed of Saguaro National Park. The Cooperator has the authority to enter into this MOU through:

National Park Service Organic Act of 1916 (16 USC Section 1, et seq.)

National Environmental Policy Act of 1969 (42 USC 4321)

Council of Environmental Quality regulations on implementing the National Environmental Policy Act at 40 CFR 1501

Alternative Dispute Resolution Act of 1990 (5 USC 581, et seq.)

- D. **INFORMATION MANAGEMENT.** The U.S. Forest Service will share draft and deliberative materials with the Cooperator to further accomplish the purposes of this MOU in achieving the previously stated mutual benefits and interest. While the U.S. Forest Service seeks to conduct a transparent process, not all shared information may be ripe for disclosure to the public. Sometimes confusion and angst is created by the premature release of information to the public. To minimize this, the U. S. Forest Service asks that the Cooperator does not proactively make public notice of shared information. However, the U.S. Forest Service recognizes that the Cooperator may receive and process, within its authorities, external requests for information. To reduce external requests for information, the U.S. Forest Service intends to post select items of shared information that it deems ripe for public dissemination to the worldwide Internet at www.RosemontEIS.us. Information furnished by the Cooperator in response to a formal request by the U.S. Forest Service under this MOU will become part of the U.S. Forest Service's official record and subject to public release pursuant to the Freedom of Information Act and other applicable federal statutes. To allow full and frank discussion of preliminary analysis and recommendations, meetings with cooperating agencies to review draft and deliberative materials will not be open to the public.



E. **PRINCIPAL CONTACTS.** Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Natasha Kline, Acting Chief, Science & Resources Management, Saguaro National Park Address: 3693 S. Old Spanish Trail City, State, Zip: Tucson, AZ 85730-5601 Telephone: 520/733-5170 FAX: 520/733-5183 Email: meg_weczner@nps.gov	Name: Address: City, State, Zip: Telephone: FAX: Email:

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Program Contact
Name: Robert Lefevre, Soils, Water, Air & Forestry Program Manager Address: 300 W. Congress City, State, Zip: Tucson, AZ 85701 Telephone: 520/388-8373 FAX: 520/388-8305 Email: rlfevre@fs.fed.us	Name: Mindee Roth, Special Project Manager Address: 300 W. Congress City, State, Zip: Tucson, AZ 85701 Telephone: 520/388-8319 FAX: 520/388-8305 Email: mroth@fs.fcd.us

U.S. Forest Service Administrative Contact
Name: Andrea Sepulveda, Grants and Agreements Specialist Address: 300 W. Congress City, State, Zip: Tucson, AZ 85701 Telephone: 520/388-8310 FAX: 520/388-8331 Email: asepulveda@fs.fed.us

F. **NON-LIABILITY.** The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.

G. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the Cooperator is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:
To the U.S. Forest Service Program Manager, at the address specified in the MOU.



To the Cooperator, at the Cooperator's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- H. **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the U.S. Forest Service or the Cooperator from participating in similar activities with other public or private agencies, organizations, and individuals.
- I. **ENDORSEMENT.** Any of the Cooperator's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the Cooperator's products or activities.
- J. **NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- K. **USE OF U.S. FOREST SERVICE INSIGNIA.** In order for the Cooperator to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.



- L. **FREEDOM OF INFORMATION ACT (FOIA)**. Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- M. **U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA**. The Cooperator shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- N. **NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL**. The Cooperator shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

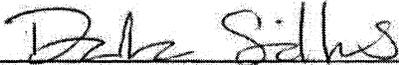
If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

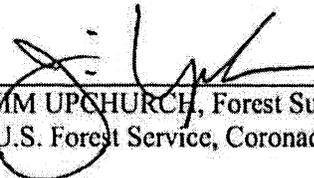
- O. **TERMINATION**. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- P. **MODIFICATIONS**. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- Q. **COMMENCEMENT/EXPIRATION DATE**. This MOU is executed as of the date of the last signature and is effective through December 31, 2015 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- R. **AUTHORIZED REPRESENTATIVES**. By signature below, each party certifies that the individuals listed in this document as representatives of the individual



parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.


DARLA SIDLES, Superintendent
National Park Service, Saguaro National Park

28 FEB 2011
Date


JIM UPCHURCH, Forest Supervisor
U.S. Forest Service, Coronado National Forest

3/7/11
Date

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


ANDREA G. SEPULVEDA
U.S. Forest Service Grants & Agreements Specialist

3/2/11
Date



Attachment 1

Description of National Park Service Jurisdiction

The National Park Service manages the land designated as Saguaro National Park (Proclamation No. 2032, Proclamation No. 3439, P.L. 94-578, P.L. 102-61, and P.L. 103-364), which is located approximately 30 miles north of the Rosemont Copper Project. P.L. 94-567 designated 71,400 acres of the park as Wilderness, to be administered by the Secretary of the Interior and subject to the provisions of The Wilderness Act of 1964 and subsequent regulations and policies. The Clean Air Act Amendments of 1977 designated this wilderness area as a Class I Airshed, in which the Federal Land Manager has a responsibility to prevent the deterioration of existing air quality. The National Park Service Organic Act of 1916 directs the National Park Service to conserve the resource values (including scenery and wildlife) of the units designated as part of the National Park System, including Saguaro National Park (formerly Saguaro National Monument from 1933 to 1994).

Areas of Special Expertise and/or Jurisdiction include:

1. Identification of Air Quality Related Values within Saguaro National Park, a class I airshed as defined in the Clean Air Act Amendments of 1977,
2. Analysis of air quality impacts of the Rosemont Copper Project on the park's Class I Airshed, and
3. Review of the impacts of the Rosemont Copper Project on wildlife migration corridors, particularly as they affect migratory and mobile species that occur within Saguaro National Park.

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9892 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.