

# ACHP Issues Comments to USDA on Resolution Copper Project and Southeast Arizona Land Exchange

Monday, March 29, 2021

WASHINGTON, D.C.– Advisory Council on Historic Preservation (ACHP) Vice Chairman Rick Gonzalez today sent a letter to Secretary of Agriculture Tom Vilsack with the ACHP’s final comments and recommendations regarding the U.S. Forest Service (USFS) Tonto National Forest’s (TNF) Section 106 review for the proposed Resolution Copper Project and Southeast Arizona Land Exchange. Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties and provide the ACHP a reasonable opportunity to comment.

In the letter to Secretary Vilsack, the ACHP recommends USDA work with the Biden Administration and Congress to take immediate steps to amend or repeal the legislation directing the land transfer or otherwise prevent it from happening as proposed. The ACHP emphasized that the proposed measures to resolve adverse effects to Chí’chil Bıldagoteel (Oak Flat) as well as the numerous other historic properties were not sufficient. The ACHP considered Oak Flat’s profound importance to multiple Indian tribes as a critical factor in its decision.

“As the heads of federal agencies, we have a responsibility to exercise leadership in the preservation of the nation’s irreplaceable cultural heritage,” Vice Chairman Gonzalez said in the letter. “In that spirit, I hope you will see these recommendations as a wise path forward.”

Among the ACHP’s recommendations were those focused on USFS improving its consultation efforts for controversial or challenging Section 106 consultations as well as better coordinating environmental and historic preservation reviews for large-scale projects. Another recommendation urges USFS to pursue initiatives to strengthen early coordination with Indian tribes in the region regarding proposed mining activities.

The Section 106 regulations require the Secretary of the Agriculture to take the ACHP’s comments into account and to respond back to the ACHP prior to reaching a final decision on the undertaking.

On February 11, 2021, the ACHP notified the USFS that it was terminating consultation on the development of a Section 106 agreement with the USFS in the Resolution Copper Project, having determined that further consultation to reach an agreement was unlikely to be productive. In accordance with the

Section 106 regulations, the ACHP was required to provide comments to the Secretary for consideration in reaching a final decision. As part of this process, the ACHP initiated a public comment period from February 11 to 26 to elicit the views of consulting parties and the public on the undertaking and its effects to historic properties. The ACHP received more than 500 comments during that time period, which were considered as it formulated its comments to the Secretary.

In 2015, the National Defense Authorization Act (NDAA) mandated transfer of Oak Flat out of federal ownership. This Act was passed by Congress and signed into law by President Barack Obama. As the agency required by law to transfer the property, the USFS is responsible for carrying out the Section 106 review and consultation regarding the proposed Resolution Copper Project and Southeast Arizona Land Exchange. Because the statute requires specific actions to be taken, the parties to the Section 106 review were not able to consider an alternative that would avoid all adverse effects to historic properties.

The ACHP has participated in the consultation since 2017. Recognizing that neither the National Historic Preservation Act nor the NDAA authorized the ACHP to stop this undertaking, the ACHP's participation was focused on giving advice to the USFS on steps it could take to comply with the regulations to attempt to avoid, minimize, and mitigate adverse effects to historic properties that would result from both the legislated exchange and the proposed mining project, and, specifically, the harm to those historic properties of religious and cultural significance to Indian tribes.

## TOPICS

Termination

## ATTACHMENTS