

**EPA Response to Comments
Regarding the National Historic Preservation Act Section 106 Process
For the Proposed Florence Copper Project
May 2023**

The United States Environmental Protection Agency (EPA) solicited public comments on “regulations.gov” on EPA’s Draft Florence Copper Class III Underground Injection Control (UIC) Area Permit (Draft Permit) and the Draft Programmatic Agreement (PA) to address “adverse effects” from the proposed Florence Copper Project (“project”) pursuant to Section 106 of the National Historic Preservation Act (NHPA) from August 14, 2022, through September 29, 2022. EPA also held a virtual public hearing on September 15, 2022, to provide the public the opportunity to provide comments on the record on the Draft Permit, the NHPA Section 106 process, and the Draft Programmatic Agreement.

The Public Notice, the Draft Permit, the Draft Programmatic Agreement, and supporting background information regarding the NHPA Section 106 process related to the proposed project were all posted on regulations.gov at <https://www.regulations.gov/docket/EPA-R09-OW-2021-0149>. EPA is still evaluating the comments submitted on the Draft Permit at “regulations.gov” and will respond to the comments on the Draft Permit separately when EPA makes its final permit decision. EPA did not receive any comments on “regulations.gov” or during the virtual public hearing on the Draft Programmatic Agreement or the Section 106 process. However, EPA did receive two emails during the comment period on the NHPA Section 106 process that EPA considered as comments which are summarized and responded to below.

Arizona State Historic Preservation Office (SHPO) August 17, 2022 Email

Comment: The SHPO’s August 17, 2022 email noted that the virtual public hearing did not constitute public consultation pursuant to the NHPA regulations at 36 CFR Part 800. The SHPO’s email noted that EPA did not provide background about Section 106 and its objectives, the Area of Potential Effects (APE), or EPA’s efforts to identify historic properties. The SHPO also noted that EPA did not explain the Memorandum of Agreement or how EPA would address “adverse effects” pursuant to it.

EPA Response: The purpose of the hearing was to allow the public to provide formal comments on the record for the Draft Permit, the NHPA Section 106 process, and the Draft Programmatic Agreement (EPA did a Programmatic Agreement instead of a Memorandum of Agreement). The hearing was not intended as a mechanism to consult in a back-and-forth manner with the Section 106 consulting parties or the public. EPA had an extensive Section 106 consultation process with the consulting parties prior to the public hearing and EPA provided detailed background information as required in 36 CFR § 800.6(a)(4) to the public on both “regulations.gov” and our website from the beginning of the comment period on August 14, 2022.

On September 16, 2022, EPA responded to the SHPO’s email and provided essentially the same response that EPA is providing in this Response to Comments, including the following:

1. On August 14, 2022, EPA issued a public notice that included the following language under the heading “Purpose of Public Notice:” *“During the public comment period for the Draft Permit, EPA is also providing an opportunity pursuant to the Section 106 process under the National Historic Preservation Act (NHPA) for the public to comment on EPA’s identification of potential adverse effects to historic properties from the proposed project, measures to avoid, minimize, or mitigate the potential adverse effects to historic properties, and the draft Programmatic Agreement (PA) to resolve such effects (36 CFR § 800.2(d) and § 800.6(a)(4)). To provide the public with the background documentation required by 36 CFR § 800.11(e), EPA is providing detailed information about the project and its effects on historic properties, a summary of views submitted to EPA by consulting parties, and a copy of the draft PA. EPA will consider all comments submitted during the public comment period regarding resolution of potential adverse effects of the proposed project on historic properties at the site. Additionally, EPA will hold a virtual public hearing where the public can provide oral testimony on the Draft Permit and resolution of adverse effects of the proposed project on historic properties. Details of the public hearing and instructions on how to participate in the hearing are provided below.”*
2. EPA’s August 14th, 2022 Notice also instructed the public of the availability of supporting materials related to the NHPA process. The Notice referred to additional information and provided the following: “Supporting Materials:” *“Detailed information about the project and its potential effects on historic properties, a summary of views submitted to EPA by consulting parties, and a copy of the draft PA are also available for public review online at www.regulations.gov under docket number EPA-R09-OW-2021-0149.”*
3. EPA’s August 14th, 2022 Notice was published in the Arizona Republic newspaper, directly mailed or emailed to over 200 people with an identified interest in the Florence Copper Project (including all Section 106 consulting parties) and posted to EPA’s website.
4. EPA held a public hearing on September 15, 2022, for members of the public to *“provide oral testimony on the Draft Permit and resolution of adverse effects of the proposed project on historic properties.”*
5. EPA provided the public 45 days to comment on EPA’s identification of potential adverse effects to historic properties from the proposed project; measures to avoid, minimize, or mitigate the potential adverse effects to historic properties; and the draft Programmatic Agreement to resolve such effects. The public comment period closed on September 29, 2022.

Based on the information described above, EPA respectfully disagrees with the SHPO’s contention in its August 17, 2022 email message that the Agency did not meet the public consultation requirements pursuant to the NHPA Section 106 regulations at 36 CFR Part 800.

Tohono O’odham Nation August 17, 2022 email

Comment: The Tribal Historic Preservation Officer (THPO) of the Tohono O’odham Nation sent an email on August 17, 2022, which notes that the Tohono O’odham Nation opposes the

Florence Copper Mine project due to potential damage to many Hohokam sites located in the area.

EPA Response: EPA acknowledges that the Tohono O’odham Nation opposes the Florence Copper project because of the impacts it may have on historic and culturally significant properties in the area.

EPA considered the potential effects of the proposed project on historic properties eligible for inclusion in the National Register of Historic Places in compliance with the Section 106 process of the NHPA and its implementing regulations, 36 CFR Part 800. EPA determined that the project has the potential to cause adverse effects on historic properties, subject to the criteria in 36 CFR §800.5(a). EPA consulted with all parties to address potential adverse effects to historic properties from this project and to develop the Programmatic Agreement, pursuant to 36 CFR §800.6.

EPA acknowledges views expressed by the Tohono O’odham THPO during consultation in “Whereas” recitals in the Programmatic Agreement. These views included that the Tohono O’odham Nation has identified groundwater in the area as sacred to their Tribe, is opposed to the project’s potential impacts to groundwater, and believes that all impacts to archaeological sites of the Escalante Community should be avoided.

Section III of the Programmatic Agreement requires Florence Copper LLC to avoid adverse effects to historic properties, if possible. Where avoidance is not possible, it requires Florence Copper LLC to minimize or mitigate adverse effects to historic properties through the development and implementation of a Historic Properties Treatment Plan (HPTP).

If EPA’s final permit decision is to issue a permit to Florence Copper LLC then the Programmatic Agreement will fulfill EPA’s responsibilities under Section 106 of the NHPA by requiring Florence Copper LLC to avoid adverse effects where possible and by requiring Florence Copper LLC to minimize or mitigate adverse effects where they cannot be avoided.