



June 6, 2024

Kerwin S. Dewberry  
Forest Supervisor, Coronado National Forest  
Attn: Hermosa Critical Minerals Project  
300 West Congress Street  
Tucson, AZ 85701

**RE: Scoping Notice Comments (89 Fed. Reg. 40462 (May 10, 2024))**

Dear Mr. Dewberry:

South32 Hermosa Inc. (“South32”) is pleased to provide comments on the scope of analysis for the draft environmental impact statement (“DEIS”) related to its proposed Hermosa Critical Minerals Exploration and Mine Plan of Operation (“PoO”). South32’s Hermosa project has the potential to become a globally significant producer of critical minerals (zinc and manganese) necessary for a low carbon future and the company looks forward to a long and productive working relationship with area stakeholders including the Coronado National Forest (“CNF”) and other regulatory agencies.<sup>1</sup> Toward that end, our comments reflect opportunities to enhance coordination and appropriately focus the analysis in the DEIS.

A. FAST-41

Hermosa has been confirmed by the United States Federal Permitting Improvement Steering Council (the “Council”), an independent federal agency, as the first FAST-41 mining sector covered project. The importance of advancing the Hermosa project to meet the long-standing and recently confirmed objectives of Congress cannot be overstated.<sup>2</sup> In line with those

---

<sup>1</sup> The Energy Act of 2020 defines a “critical mineral” as a non-fuel mineral or mineral material essential to the economic or national security of the U.S. and which has a supply chain vulnerable to disruption. Critical minerals serve an essential function in the manufacturing of a product, the absence of which would have significant consequences for our country’s economy or national security (Division Z, Title VII, Critical Minerals of the Consolidated Appropriations Act, 2021, P.L. 116-260).

<sup>2</sup> A fundamental purpose of the Mining Law is to “foster and encourage private enterprise in the development of economically sound and stable domestic mining ...” 30 U.S.C. 21 (a). Congress repeatedly has emphasized the continuing policy of the United States to “promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production” and, most recently, the need to “minimize delays in the administration of applicable laws (including regulations) and the issuance of permits and authorizations necessary

objectives, we believe it might be helpful to explain in the DEIS the purpose of the Council and their role in the permitting process which is designed to improve the timeliness, predictability and transparency of the federal environmental review and authorization process for covered projects.

In addition, we are aware that certain community stakeholders have expressed concern about the FAST-41 permitting schedule moving too quickly. In that regard, the CNF could also explain in the DEIS two important points. First, that the Fiscal Responsibility Act of 2023 imposed statutory deadlines requiring that an agency complete an environmental impact statement within two years of issuing a notice of intent to prepare an EIS. 42 U.S.C. 4336a (g)(1). The timeline for the Hermosa project’s NEPA process is two years, one month and 27 days – a longer timeline than what is required by law. Second, the congressional mandates to minimize delays in the issuance of authorizations for mining critical minerals cannot be ignored such as the Infrastructure Investment and Jobs Act of 2021 requiring federal agencies to take immediate and constructive actions to increase domestic mineral production from the Nation’s lands. 30 U.S.C. 1607. We understand the CNF is dedicating all necessary resources to ensure a fulsome effects analysis that includes a recognition of the economic and other benefits of the project, but it may be helpful to discuss in the DEIS the Council’s disclosure efforts and the extraordinary scoping efforts that the CNF has undertaken prior to the publication of the notice of intent (“NOI”) to prepare an EIS on May 10, 2024.

These efforts include the following:

1. May 5, 2023: the South32 Hermosa Critical Minerals Project was designated as a covered project under FAST-41 (notably, one year ahead of the NOI);
2. June 22, 2023: the CNF met with federal, state, local and tribal government partners to outline the timetable for all environmental and permitting actions for the project;
3. December 17, 2023: the Hermosa Critical Minerals Project permitting timetable was posted on the Council’s dashboard;
4. January 30, 2024: following South32’s public release of its Critical Minerals Exploration and Mine Plan of Operations, the CNF also announced availability and posted a link on its Pinyon public page;

---

to explore for, develop, and produce critical minerals ... in accordance with applicable environmental and land management laws.” 30 U.S.C. 1602. The Infrastructure Investment and Jobs Act of 2021 amended the Mineral Lands and Mining title of the United States Code to require federal agencies to take immediate and constructive actions to increase domestic mineral production from the Nation’s lands. 30 U.S.C. 1607.



5. May 6, 2024: the CNF produced bi-lingual video guides to public participation to encourage scoping comments.

In addition, the CNF's efforts were supplemented by South32's extensive efforts to ensure public awareness and engagement and we ask that these outreach efforts also be disclosed in the DEIS including:

Mailer: 9,644 households in Santa Cruz County received a bilingual mailer with information about the project and scoping comment process and deadline;

Email Blast: a bilingual notification was sent to Nogales International's list of 20,000 emails;

Opinion Editorial: on May 13, 2024, the Nogales International published a South32 Guest Opinion (authored by Pat Risner) in English and in Spanish inviting public comment and participation in the CNF's scoping process; and

Social Media: South32 published three NEPA awareness posts and put advertising dollars behind the first English/Spanish posts on Facebook. The results showed this was beneficial with significantly higher reach and engagement than average for South32's posts (2,973 unique users for the English version and 3,564 unique users for the Spanish version).

As the CNF discussed in the NOI, scoping is an opportunity to gather information to inform the environmental review and decision-making process. South32 has contributed substantially to, and will continue to do so, such data gathering efforts and is deeply committed to ensuring the impacts of its operations are robustly evaluated during the established permitting schedule.

#### B. Preliminary Alternatives

The scoping notice referred to the "no-action" alternative as a baseline for comparison among action alternatives. In our view, the "no-action" alternative is a "benchmark" for the comparison of effects, just as an adequate description of the affected environment will be. The affected environment as it currently exists (i.e., at the early development stage, but prior to mining) should be described in the DEIS addition to disclosing the anticipated effects of a "no-action" scenario which will include mining on nearby private lands for a shorter duration than contemplated in the PoO. This is an important distinction relative to a fulsome disclosure and comparison of effects.

Further, South32 has designed its project in a manner to minimize impacts to the environment, proposing a lined, dry stack tailings facility, using waste rock and cemented paste

backfill in mined stopes to minimize the tailings facility footprint and enhance underground stability. The infrastructure of the mine is also designed to accommodate future automation in support of South32's goal of net-zero greenhouse gas emissions by 2050. Notwithstanding, we remain open to facilitating CNF's evaluation of any alternative that achieves the purpose and need of our PoO and welcome refinements to our proposed action that further our corporate sustainability policies and goals. We will continue our work with the community through the Santa Cruz County Advisory Panel and other forums to ensure any technically and economically feasible alternatives identified, have an opportunity to be examined.

### C. Plan Amendment – Substantive Provisions and Need

In the event a plan amendment is required, it will be helpful for the CNF to explain the process and required content for plan amendments (as opposed to plan revisions) in the DEIS. Specifically, applicable federal regulations provide that the responsible official is not required to apply any substantive requirements within §§ 219.8 through 219.11 that are not directly related to the amendment.<sup>3</sup> In fact, the responsible official's determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment . . .".<sup>4</sup>

At this juncture, it is unclear whether a plan amendment will be required or not. With regard to the assertion in the scoping notice that a plan amendment may be required to allow "major aboveground utility corridor development" outside the area identified and mapped in the 2008 West-Wide Energy Corridor Programmatic EIS, we encourage the CNF to review the applicable provisions of the Energy Policy Act and to put them in context with the applicable regulatory standards for determining forest plan consistency.

Section 368 (a) of the Energy Policy Act encourages the establishment of energy corridors for electricity transmission and distribution facilities on Federal land to aid in expediting permitting to meet energy demands. Importantly, however, Section 368 (c) imposes an ongoing responsibility for the Secretary of Agriculture to:

*establish procedures under their respective authorities that "ensure that additional corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land are promptly identified and designated as necessary" and to "expedite applications to construct or modify oil, gas, hydrogen pipelines and electricity transmission*

---

<sup>3</sup> 36 CFR § 219.13 (b)(5) and (6).

<sup>4</sup> *Id.*

and distribution facilities within such corridors, taking into account prior analyses and environmental reviews undertaken during the designation of such corridors.”

Accordingly, the proposed location of a 138kV transmission line which largely follows an existing 13.2kV transmission line alignment should not constitute the creation of a new “major corridor” (acknowledging that “major” is not defined in the forest plan) nor should it automatically trigger a plan amendment just because the proposed location is outside a prior designated 368 corridor. In other words, the placement of the proposed 138kV line in this alignment does not mean that other future lines can be placed in the same alignment in the future unless or until a corridor is created.

The measure of plan consistency derives from the applicable plan components. In other words, the CNF evaluates whether the project or activity complies with the standards and guidelines in the current plan and/or will foreclose an opportunity to achieve any goals, desired conditions or objectives over the long term. Locating a single additional transmission line within an existing transmission corridor does not appear to trigger a plan amendment under either standard. We encourage the CNF to revisit the relevant provisions of the Energy Policy Act and the record of decision associated with the establishment of the 368 corridors, along with what reasonable criteria may constitute a “major” energy corridor before making a determination on necessity of a plan amendment.

Thank you for the opportunity to comment and South32 looks forward to working with the CNF as the environmental review and decision-making process moves forward.

Sincerely,

A handwritten signature in black ink that reads 'Pat Risner'.

Pat Risner

Hermosa President