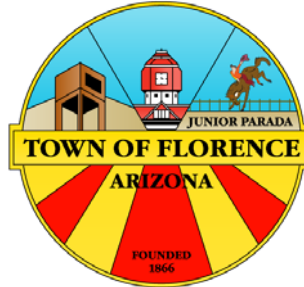


TOWN OF FLORENCE SPECIAL MEETING AGENDA

Mayor Tara Walter
Vice-Mayor John Anderson
Councilmember Bill Hawkins
Councilmember Karen Wall
Councilmember Kristen Larsen
Councilmember Michelle Cordes
Councilmember Judy Hughes



Florence Town Hall
775 N. Main Street
Florence, AZ 85132
(520) 868-7500
www.florenceaz.gov
Meet 1st and 3rd Mondays

4:30 PM

Friday, June 21, 2019

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Town of Florence Council and to the general public that a Special Meeting of the Florence Town Council will be held on Friday, June 21, 2019, at 4:30 p.m., in the Florence Town Council Chambers, located at 775 N. Main Street, Florence, Arizona. The agenda for this meeting is as follows:

1. CALL TO ORDER

2. ROLL CALL: Tara Walter __, John Anderson __, Bill Hawkins __, Karen Wall ____, Kristen Larsen ____, Michelle Cordes __, Judy Hughes __.

3. CALL TO THE PUBLIC Call to the Public for public comment on issues within the jurisdiction of the Town Council. Council rules limit public comment to three minutes. Individual Councilmembers may respond to criticism made by those commenting, may ask staff to review a matter raised or may ask that a matter be put on a future agenda. However, members of the Council shall not discuss or take action on any matter during an open call to the public unless the matters are properly noticed for discussion and legal action.

4. NEW BUSINESS

- a. **Discussion/Approval/Disapproval** of a proposed Settlement Agreement among the Town of Florence, Florence Copper Inc. and TASEKO Mines, LTD. with the condition that this offer to settle on these terms will terminate in 45 days of the date the Agreement is executed by the Town, unless on or before the forty-fifth day, TASEKO Mines, LTD. and Florence Copper Inc. accept, approve and execute the Settlement Agreement.
- b. **Resolution No. 1704-19:** Discussion/Approval/Disapproval of a RESOLUTION OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE TOWN OF FLORENCE'S APPEAL CHALLENGING THE VALIDITY AND ISSUANCE OF THE RULE 54(b) JUDGMENT ENTERED ON JUNE 7, 2019 BY JUDGE BRODMAN IN CASE NO. CV2015-000325 ADDRESSING DECLARATORY RELIEF, DECLARATORY JUDGMENT AND EMINENT DOMAIN ("LAWSUIT"); AUTHORIZING THE FULL PROSECUTION/LITIGATION OF THE APPEAL, AND THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY.

5. CALL TO THE PUBLIC


6. CALL TO THE COUNCIL – CURRENT EVENTS ONLY

7. ADJOURNMENT

Council may go into Executive Session at any time during the meeting for the purpose of obtaining legal advice from the Town's Attorney(s) on any of the agenda items pursuant to A.R.S. § 38-431.03(A)(3). One or more members of Council may appear for part or all of the meeting including Executive Session telephonically.

POSTED ON JUNE 20, 2019, BY MARIA HERNANDEZ, DEPUTY TOWN CLERK, AT 775 NORTH MAIN STREET, FLORENCE, ARIZONA, AND AT WWW.FLORENCEAZ.GOV.

*****PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA), THE TOWN OF FLORENCE DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY REGARDING ADMISSION TO PUBLIC MEETINGS. PERSONS WITH A DISABILITY MAY REQUEST REASONABLE ACCOMMODATIONS BY CONTACTING THE TOWN OF FLORENCE ADA COORDINATOR, AT (520) 868-7574 OR (520) 868-7502 TDD. REQUESTS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATION.*****

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 4a.
MEETING DATE: June 21, 2019 DEPARTMENT: Legal STAFF PRESENTER: Clifford Mattice, Town Attorney SUBJECT: Settlement Agreement offered by the Town of Florence to Florence Copper, Inc. and TASEKO Mines, LTD.		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading <input type="checkbox"/> Other
STRATEGIC PLAN REFERENCE: <input type="checkbox"/> Community Vitality <input type="checkbox"/> Economic Prosperity <input checked="" type="checkbox"/> Leadership and Governance <input type="checkbox"/> Partnerships and Relationships <input type="checkbox"/> Transportation and Infrastructure <input type="checkbox"/> Statutory <input type="checkbox"/> None		

RECOMMENDED MOTION/ACTION:

Motion to approve the Settlement Agreement among the Town of Florence, Florence Copper Inc. and TASEKO Mines, LTD. with the condition that this offer to settle on these terms will terminate in 45 days of the date the Agreement is executed by the Town, unless on or before the forty-fifth day, TASEKO Mines, LTD. and Florence Copper Inc. accept, approve and execute the Settlement Agreement.

BACKGROUND/DISCUSSION:

This litigation is over the operation of the Florence Copper Pilot Test Facility in Florence, Arizona by Florence Copper, Inc. ("FCI"), a wholly-owned subsidiary of Taseko Mines LTD. The Town's interest is affected by FCI's proposal to operate a commercial copper mine in Florence, Arizona. There are multiple matters which are the subject of administrative or civil litigation, including but not limited to regulatory permit challenges, administrative reviews, environmental litigation, non-conforming zoning use and condemnation matters. Several of such matters listed above are now subject to post-trial motions and the appellate stages of the proceedings.

At issue in one of the lawsuits (Case No. CV2015-000325) is whether Florence Copper, Inc. ("FCI") has a right to maintain and expand nonconforming uses or structures related to mining on the subject property (the "Property"). The Town of Florence asserts that a 2007 Zoning Ordinance for the Property adopted at the request of the previous property owner replaced, superseded, and rescinded the 2003 Planned Unit Development Plan for the Property and, as a result, the right to mine the Property is lost. A trial to the Court was conducted December 5th through the 13th, 2018.

The trial judge in this case determined that the actions of a prior owner of the Property and the Town's rezoning actions in 2007 did not eliminate or abandon in-situ mining rights of the owner established by the 2003 Development Agreement and the Town is not entitled to an order finding the 2007 rezoning effective and enforceable by the Town to prevent in-situ mining within the mine overlay area. The trial judge concluded that merely amending the zoning did not change rights in the development agreement, even when the zoning amendment was requested by the property owner.

In this lawsuit, the judge awarded attorneys' fees to Florence Copper Inc. in the amount of \$1,700,000 and costs in the amount of \$32,365.55 to be paid by the Town. The judge entered final judgment in this matter on June 7, 2019, which becomes final if not appealed by July 6, 2019. Counterclaims filed by Florence Copper Inc. against the Town of Florence are still pending in Case No. CV2015-000325, and failure to appeal the Rule 54(b) Judgment will impair the Town's ability to defend itself against the Counterclaims.

There is also pending litigation between the parties involving the environmental permits for the project.

SETTLEMENT AGREEMENT:

Approval of the Settlement Agreement by both parties will resolve the ongoing litigation between the parties. The Agreement also approves a land use clarification requested by Florence Copper and TASEKO extending the time for performance under the existing 2003 Development Agreement by seven years. If the Town Council approves and executes the Settlement Agreement, Florence Copper and TASEKO then have 45 days to agree with the terms and execute the document.

A VOTE OF YES WOULD MEAN:

The Town approves the Settlement Agreement, which remains open for 45 days from the date executed by the Town, for Florence Copper and TASEKO to agree with the terms and execute the document for the agreement to be binding on the parties.

A VOTE OF NO WOULD MEAN:

The Town does not approve the Settlement Agreement.

FINANCIAL IMPACT:

The expenses for legal fees and related services are budgeted annually based upon the projected activities for the proceedings during the fiscal year. If approved by all parties, the immediate impact of the Settlement Agreement is the Town's payment of \$1,732,365.55 dollars for attorneys' fees and costs for the lawsuit involving the nonconforming uses and structures, along with avoiding the expense of ongoing litigation, including appeals and defense of numerous Counterclaims asserted by Florence Copper and TASEKO against the Town of Florence.

ATTACHMENTS:
Settlement Agreement

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is offered to **FLORENCE COPPER, INC., and TASEKO MINES, LTD, a Canadian company** (hereinafter the "Company") by the **TOWN OF FLORENCE** (hereinafter the "Town" or "Florence"), for themselves, their officers, directors, executives, managers, employees, agents, attorneys, divisions, related and subsidiary entities, affiliates, successors and assigns (all of whom are collectively referred to as the "parties").

WHEREAS, the parties have been engaged in the following litigation: Town of Florence, et al. v. ADEQ, et al., LC2017-000466-001 DT (Maricopa Cty. Sup. Ct.), currently on appeal under Arizona Court of Appeals cause number 1 CA-CV 19-0122; Town of Florence, et al. v. USEPA, et al., Nos 17-73168 and 17-73170 (9th Cir.) (Dismissed August 8, 2018); and Town of Florence v. Florence Copper, Inc., et al., No. CV2015-000325 (Maricopa Cty. Sup. Ct.) (Decided by trial to the Court on January 2, 2019), (collectively referred to as the "Lawsuits"); and

WHEREAS, a trial to the Court was held on December 5-13, 2018, in Town of Florence v. Florence Copper, Inc., et al., NO. CV2015-000325 (Maricopa Cty. Sup. Ct.); and

WHEREAS, except for Count 1 which was dismissed, the counterclaims filed by the Company in Town of Florence v. Florence Copper, Inc., et al., NO. CV2015-000325 (Maricopa Cty. Sup. Ct.) are unresolved; and

WHEREAS, any litigation on the counterclaims has been stayed; however, discovery on the counterclaims has been ordered to proceed; and

WHEREAS, the Court issued its ruling on January 2, 2019, finding that the Company has a right to engage in in-situ copper mining ("Mining or "Use") in the BHP Mine Overlay Area as identified in pages 19, 21 and 28 of Exhibit B to the 2003 Development Agreement ("Development Agreement" or "DA"); and

WHEREAS, on June 7, 2019, the Court entered a Rule 54(b) judgment in the Town of Florence, Inc., et al., No. CV2015-000325(Maricopa Cty. Sup. Ct.) which limited the rights granted in clause 3(b) of the 2003 Development Agreement to run until the expiration of the DA on December 1, 2038.

WHEREAS, the Town has agreed to waive the right to appeal the Court's ruling in CV2015-000325; and

WHEREAS, the Company was awarded \$1.7 million in attorneys' fees and \$32,365.55 in costs; and

WHEREAS, the Town paid the Company \$145,242.00 in attorneys' fees and costs in matter Town of Florence, et al. v. ADEQ, et al., LC2017-000466-001 DT; and

WHEREAS, the Town has agreed to dismiss itself as a party in Arizona Court of Appeals cause number 1 CA-CV 19-0122 the appeal of Town of Florence, et al. v. ADEQ, et al., LC2017-000466-001 DT (Maricopa Cty. Sup. Ct.); and

WHEREAS, the parties desire to settle and resolve the Lawsuits and any claims based on the facts alleged in the Lawsuits, on the terms and subject to the conditions set forth herein; and

WHEREAS, the parties acknowledge and agree that in-situ copper mining within the “BHP Copper Mine Overlay Area” is preserved as a nonconforming use by the Merrill Ranch Pre-annexation and Development Agreement Florence, Arizona effective December 1, 2003 (the “2003 DA”) which references and incorporates the PUD dated November 7, 2003 as Exhibit “B” (the “2003 PUD”), and therefore in-situ copper mining is a vested right within the “BHP Copper Mine Overlay Area” until the Development Agreement expires on December 1, 2038;

WHEREAS, Section 6(b) of the Development Agreement authorizes the Town to make certain amendments to the Development plan provided such amendments are not major amendments; and

WHEREAS, Section 4 of the Development Agreement provides that the Town reserves the right to modify or otherwise change the Development Agreement if 4,500 residential units have not received final plat approval as of December 18, 2018, or if 4,500 residential units have not been constructed after the passage of 25 years from the commencement date of the Development Agreement.

WHEREAS, Section 4 of the Development Agreement provides that the Company may request, an extension of the time periods in Section 4, and, upon good cause shown, the Town may approve the request and may not unreasonably withhold its approval of extension requests.

WHEREAS, the parties agree that there has been substantial progress towards the requirements in Section 4 as defined in Section 3.a of the Development Agreement;

WHEREAS, each party has been represented by counsel, has been apprised of its rights regarding the settlement, and enters into the settlement freely and voluntarily.

NOW THEREFORE, in consideration of the promises, mutual promises, undertakings, agreements, payments, and releases provided in this Settlement Agreement, the receipts and sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

1. **EFFECTIVE DATE / TOWN COUNCIL APPROVAL.** This Settlement Agreement shall not be effective nor binding on any party unless and until the Town Council, at a duly noticed and agendized public meeting, has voted to approve and accept the Settlement Agreement and the Company has approved same. This Agreement shall be effective upon the later date of such approvals (“Effective Date”).
2. **RECITALS.** The recitals and “whereas” clauses above are expressly incorporated into the Settlement Agreement by this reference.

3. NO ADMISSION OF LIABILITY. Neither this Settlement Agreement nor anything contained within it shall be admissible in any proceeding as evidence of liability or wrongdoing on the part of either party. However, this Settlement Agreement may be introduced in any proceeding instituted to enforce its terms.
4. PROMISE TO PAY. In full settlement of the Lawsuits, the Town shall pay to the Company the amount of \$1,732,365.55 dollars (the "Settlement Amount"). Such Settlement Amount includes all monetary remedies of any kind relating to the Lawsuits, including but not limited to, damages, consequential damages, attorney fees, expert fees, costs, expenses, and interest accrued and/or accruing on said amount, however characterized.
5. DISMISSAL OF LAWSUITS.
 - a. The parties agree to dismiss with prejudice Town of Florence v. Florence Copper, Inc., et al., NO. CV2015-000325 (Maricopa Cty. Sup. Ct.) (Decided by trial to the Court on January 2, 2019), including the counterclaims. If an appeal is filed by either party in this matter, same shall be dismissed.
 - b. The Town agrees, as to the ADEQ issuance of the Significant Amendment to Temporary APP No. P-106360, to dismiss Town of Florence, et al. v. ADEQ, et al., LC2017-000466-001 DT (Maricopa Cty. Sup. Ct.) and the pending Arizona Court of Appeals matter, No. 1 CA-CV 19-0122. Company waives any claims or rights to attorneys' fees, costs, and expert fees and costs in the Arizona Court of Appeals matter, No. 1 CA-CV 19-0122.
6. LAND USE CLARIFICATION. As requested by the Company in its Counterclaim No. 7 and as authorized by Sections 4, 3(b) and 6(b) of the Development Agreement, the Town agrees to execute a Land Use Clarification Agreement ("Clarification") extending, until December 1, 2025, the time for performance under Section 4 of the Development Agreement.
7. NON-CONFORMING USE. The parties acknowledge and agree that in-situ copper mining within the "BHP Copper Mine Overlay Area" is preserved as a nonconforming use by the Merrill Ranch Pre-annexation and Development Agreement Florence, Arizona effective December 1, 2003 (the "2003 DA") which references and incorporates the PUD dated November 7, 2003 as Exhibit "B" (the "2003 PUD"), and therefore in-situ copper mining is a vested right within the "BHP Copper Mine Overlay Area" until the expiration of the Development Agreement on December 1, 2038.
8. RECORDING. Upon the Effective Date, this Settlement Agreement shall be recorded against the Company's property, and it shall run with the land.
9. INFORMATION TO THE TOWN. For all documents, including, but not limited to, environmental permit applications, modifications, amendments, or supplements, which

require regulatory review and/or approval by any governmental regulatory agency, including the Environmental Protection Agency (EPA), the Arizona Department of Environmental Quality (ADEQ), the Pinal County Air Quality Division, and/or the Arizona Department of Water Resources (collectively, the Regulatory Agencies), FCI will provide a draft of such document(s) to the Town 15 business days in advance of its submittal to the applicable Regulatory Agency. The Town will review and provide comments, if any, back to FCI five days prior to the submittal due date. FCI agrees to make a good faith effort to address comments provided by the Town. Simultaneously with the submittal of the final document to the Regulatory Agency, FCI will provide the Town with a copy of the final document.

FCI further agrees to simultaneously provide the Town with a copy of all correspondence, documents, notices, permit violations and/or exceedances, reports, sampling results, hydro-geologic data, and any other information that the Company or its agents or representatives submit to the Regulatory Agencies or receives from the Regulatory Agencies.

FCI agrees to include the Town in all meetings the Company has with the Regulatory Agencies.

10. NOTICE OF ADVERSE EVENTS. The Company will provide the Town with notice of any permit violation or the exceedance of any permit limit, including Alert Limits, that are required to be reported to the Regulatory Agencies under all environmental permits including, but not limited to, the Temporary APP permit, the UIC permit, and the Air Quality permit. As further clarification, but not a limitation, of this paragraph, an adverse event requiring reporting is any event where monitoring or other information indicates the occurrence of noncompliance with a permit condition.
11. OPPORTUNITY TO INSPECT. The Company agrees to provide Town Officials with a reasonable opportunity to inspect the PTF operations, including access to view and discuss with Company professionals and their retained consultants, Supervision Control and Data Advisory Systems presentations of operational data and geophysical imaging of the subsurface data. The Company agrees to provide Town officials with a reasonable opportunity to meet with Company staff and professionals to address any questions or concerns resulting from the Town's inspection of the PTF operation and data and analyses.
12. COMMUNICATION PROTOCOL. Each party agrees that should a party have an inquiry or question of the other related to the matters or activities that are the subject of this Settlement Agreement ("Inquiring Party"), that party will address the issue in writing to the other party ("Answering Party"). For issues reasonably submitted by the Inquiring Party as urgent, the Answering Party shall respond as soon as practicable but within 14 days. For all other issues submitted by the Inquiring Party the Answering Party shall respond within 30 days or upon a date agreed to by the parties. For purposes of the Communication Protocol, the Town's point of contact is the Town Manager and the Company's point of contact is its General Manager.

13. ALTERNATIVE DISPUTE RESOLUTION. With the exception of a Notice of Claim required by A.R.S. § 12-821.01 or an action governed by a statutory, regulatory or administrative filing deadline, the parties agree that prior to either party filing a claim, lawsuit or other action, the parties will follow the Communication Protocol. If the Communication Protocol does not resolve the issue, the parties agree to participate in good faith efforts to resolve the matter without legal action, including, but not limited to, in person discussions and pre-litigation mediation. The party contemplating the legal action will pay the reasonable costs of the mediator. As to all other aspects of the pre-litigation mediation, each party will bear its own costs and attorney fees, if any.
14. ADDITIONAL COST AND FEES. Each party will bear its own costs and attorney fees and costs for the negotiation, execution and implementation of this Settlement Agreement.
15. MUTUAL RELEASE OF ALL CLAIMS. In consideration for the faithful performance of the terms of this Settlement Agreement the Company, on behalf of itself and its past, present and future representatives, agents, and assigns, including its affiliates, divisions, parent entities, subsidiaries, principals, owners, shareholders, managers, investors members, insurers, officers, agents, employees, beneficiaries, partners, independent contractors, successors in interest, executors, trustees, administrators and assigns, heirs, and all or any other persons or entities claiming by, through, under, or on behalf of the Company, hereby knowingly and voluntarily relinquishes, waives, releases, acquits and forever discharges the Town and any, all, and each of the Town's past, present or future representatives, agents and assigns, including, but not limited to the Town, the Town Council, the Town officers, the Town's employees, elected and appointed public officials, officers, agencies, attorneys, departments, from any and all claims, disputes, actions, charges, complaints, causes of action, rights, demands, damages, or accountings of whatever nature, at law or in equity, known or unknown, asserted or not asserted, which it has or may have in the future, based on the Lawsuits.

In consideration for the faithful performance of the terms of this Settlement Agreement the Town, on behalf of itself and the Town's past, present or future representatives, agents and assigns, including, but not limited to the Town, the Town Council, the Town officers, the Town's employees, elected and appointed public officials, officers, agencies, attorneys, departments, hereby knowingly and voluntarily relinquishes, waives, releases, acquits and forever discharges the Company, and its past, present and future representatives, agents, and assigns, including its affiliates, divisions, parent entities, subsidiaries, principals, owners, shareholders, managers, investors members, insurers, officers, agents, employees, beneficiaries, partners, independent contractors, successors in interest, executors, trustees, administrators and assigns, heirs, and all or any other persons or entities claiming by, through, under, or on behalf of the Company, from any and all claims, disputes, actions, charges, complaints, causes of action, rights, demands, damages, or accountings of whatever nature, at law or in equity, known or unknown, asserted or not asserted, which it has or may have in the future, based on the Lawsuits.

16. ADDITIONAL DOCUMENTS. The parties agree to execute whatever modification(s) of the documents as may be reasonably necessary to carry out the terms, conditions and obligations of this Settlement Agreement.
17. INTEGRATION. This Settlement Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Settlement Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and release of claims.
18. SEVERABILITY. If any portions of this Settlement Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.
19. COOPERATIVE DRAFTING. In any construction or interpretation to be made of this Settlement Agreement, the Settlement Agreement shall not be construed or interpreted against any party on the basis that such party was the drafter. Any rule of law that would require interpretation of any ambiguities in this Settlement Agreement against a party that has drafted it is of no application and is hereby expressly waived.
20. NO ORAL MODIFICATION: This Settlement Agreement may be amended, modified or altered only by a writing signed by both parties; no oral modification of any term of this Settlement Agreement shall be effective for any purpose.
21. GOVERNING LAW AND FORUM: This Settlement Agreement is to be construed according to the State of Arizona, without regard to the conflict of law or choice of law doctrines thereof. If any suit, claim, cause, charge or action is brought related to this Settlement Agreement, it shall be brought in Pinal County Superior Court.
22. COUNTERPARTS. This Settlement Agreement may be executed in any number of copies, each of which shall be deemed to be a counterpart original.
23. REPRESENTATION OF AUTHORITY. Each person signing this Settlement Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.
24. A.R.S. § 38-511 NOTICE. In accordance with A.R.S. § 38-511, the Town may, at any time within three years after the Effective Date of this Agreement, cancel this Agreement without penalty or further obligation, if any person significantly involved on behalf of the Town in initiating, negotiating, securing, drafting or creating this Agreement is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of any other Party to this Agreement in any capacity or a consultant to any other Party to this Agreement with respect to the subject matter of this Agreement.
25. A.R.S. §12-1131: By entering into this Settlement Agreement, the Company and any and all Property Owners, waive any and all claims, suits, damages, compensation and causes of action for diminution in value of the Property that the Property Owners may have now

or in the future under the provisions of the Private Property Protection Act, A.R.S. §12-1131 *et. seq.*(“Act”), resulting from this Settlement Agreement, or any actions taken by the parties to execute or implement the Settlement Agreement. By signing this Settlement Agreement, the representative for the Company represents that he or she has the authority to bind the Property Owners to the waiver of rights under the Act. Additionally, any document entered into pursuant to the Settlement Agreement that implements the rights and obligations of the parties hereunder shall contain a waiver of rights under the Act.

26. TERMINATION OF OFFER TO SETTLE. This offer to settle will terminate in forty-five (45) days of the date executed by the Town below, unless on or before the forty-fifth day, the Company accepts, approves and executes this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement:

TOWN OF FLORENCE:

FLORENCE COPPER, INC., and TASEKO MINES, LTD.:

By: _____
Tara Walter, Mayor

By: _____
Its: _____

Date: _____

By: _____
John Anderson, Vice-Mayor

By: _____
William Hawkins, Councilmember


By: _____
Karen Wall, Councilmember

By: _____
Kristen Larsen, Councilmember

By: _____
Michelle Cordes, Councilmember

By: _____
Judy Hughes, Councilmember

Date: _____

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 4b.
MEETING DATE: June 21, 2019 DEPARTMENT: Legal STAFF PRESENTER: Clifford Mattice, Town Attorney SUBJECT: Resolution No. 1704-19: Appeal of Rule 54(b) Judgment Addressing Declaratory Relief, Declaratory Judgment and Eminent Domain.		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading <input type="checkbox"/> Other
STRATEGIC PLAN REFERENCE: <input type="checkbox"/> Community Vitality <input type="checkbox"/> Economic Prosperity <input checked="" type="checkbox"/> Leadership and Governance <input type="checkbox"/> Partnerships and Relationships <input type="checkbox"/> Transportation and Infrastructure <input type="checkbox"/> Statutory <input type="checkbox"/> None		

RECOMMENDED MOTION/ACTION:

Motion to adopt Resolution No. 1704-19 of the Town of Florence, Pinal County, Arizona, approving and authorizing the Town of Florence’s appeal, including the Notice of Appeal, challenging the validity and issuance of the Rule 54(b) Judgment entered on June 7, 2019 by Judge Brodman in Case No. CV2015-000325 addressing declaratory relief, declaratory judgment and eminent domain (“Lawsuit”); authorizing the full prosecution/litigation of the appeal, and the taking of all other actions necessary to the consummation of the transactions contemplated by this Resolution and declaring an emergency.

Staff recommends adopting Resolution No. 1704-09.

BACKGROUND/DISCUSSION:

This litigation is over the operation of the Florence Copper Pilot Test Facility in Florence, Arizona by Florence Copper, Inc. (“FCI”), a wholly-owned subsidiary of Taseko Mines LTD. The Town’s interest is affected by FCI’s proposal to operate a commercial copper mine in Florence, Arizona. There are multiple matters which are the subject of administrative or civil litigation, including but not limited to regulatory permit challenges, administrative reviews, environmental litigation, non-conforming zoning use and condemnation matters. Several of such matters listed above are now subject to post-trial motions and the appellate stages of the proceedings.

At issue in the Lawsuit (Case No. CV2015-000325) is whether Florence Copper, Inc. (“FCI”) has a right to maintain and expand nonconforming uses or structures related to mining on the subject property (the “Property”). The Town of Florence asserts that a

2007 Zoning Ordinance for the Property adopted at the request of the previous property owner replaced, superseded, and rescinded the 2003 Planned Unit Development Plan for the Property and, as a result, the right to mine the Property is lost. A trial to the Court was conducted December 5th through the 13th, 2018. The trial judge heard live witness testimony, videotaped depositions and reviewed exhibits. The trial judge also considered two sets of cross motions for summary judgment in the Lawsuit.

The trial judge determined that the actions of a prior owner of the Property and the Town's rezoning actions in 2007 did not eliminate or abandon in-situ mining rights of the owner established by the 2003 Development Agreement and the Town is not entitled to an order finding the 2007 rezoning effective and enforceable by the Town to prevent in-situ mining within the mine overlay area. The trial judge concluded that merely amending the zoning did not change rights in the development agreement, even when the zoning amendment was requested by the property owner.

The judge awarded attorneys' fees to Florence Copper Inc. in the amount of \$1,700,000 and costs in the amount of \$32,365.55 to be paid by the Town. The judge entered final judgment in this matter on June 7, 2019, which becomes final if not appealed by July 6, 2019. Counterclaims filed by Florence Copper Inc. against the Town of Florence are still pending in Case No. CV2015-000325, and failure to appeal the Rule 54(b) Judgment will impair the Town's ability to defend itself against the Counterclaims.

This action authorizes and approves the appeal challenging the validity and issuance of the Rule 54(b) Judgment in the Lawsuit.

A VOTE OF YES WOULD MEAN:

The Town approves the Resolution authorizing an appeal of the Rule 54(b) Judgment by Cathy Bowman (and Sims Mackin, LTD.) as its lawyer for the post-trial motions and appellate proceedings.

A VOTE OF NO WOULD MEAN:

The Town does not appeal the Rule 54(b) Judgment entered by the trial judge and the subject judgment becomes final.

FINANCIAL IMPACT:

The expenses for legal fees and related services are budgeted annually based upon the projected activities for the proceedings during the fiscal year.

ATTACHMENTS:

Resolution No. 1704-19 and Notice of Appeal

RESOLUTION NO. 1704-19

RESOLUTION OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE TOWN OF FLORENCE'S APPEAL CHALLENGING THE VALIDITY AND ISSUANCE OF THE RULE 54(b) JUDGMENT ENTERED ON JUNE 7, 2019 BY JUDGE BRODMAN IN CASE NO. CV2015-000325 ADDRESSING DECLARATORY RELIEF, DECLARATORY JUDGMENT AND EMINENT DOMAIN ("LAWSUIT"); AUTHORIZING THE FULL PROSECUTION/LITIGATION OF THE APPEAL, AND THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY.

WHEREAS, at issue in the Lawsuit (Case no. CV2015-000325) is whether Florence Copper, Inc. ("FCI") has a right to maintain and expand nonconforming uses or structures related to mining on the subject property (the "Property"). The Town of Florence asserts that a 2007 Zoning Ordinance for the Property adopted at the request of the previous property owner replaced, superseded, and rescinded the 2003 Planned Unit Development Plan for the Property and, as a result, the right to mine the Property is lost; and

WHEREAS, a trial to the Court was conducted December 5th through the 13th, 2018. The trial judge heard live witness testimony, videotaped depositions and reviewed exhibits; and

WHEREAS, the trial judge also considered two sets of cross motions for summary judgment in the Lawsuit; and

WHEREAS, the trial judge determined that the actions of a prior owner of the Property and the Town's rezoning actions in 2007 did not eliminate or abandon in-situ mining rights of the owner established by the 2003 Development Agreement and the Town is not entitled to an order finding the 2007 rezoning effective and enforceable by the Town to prevent in-situ mining within the mine overlay area; and

WHEREAS, the trial judge concluded that merely amending the zoning did not change rights in the development agreement, even when the zoning amendment was requested by the property owner; and

WHEREAS, the trial judge awarded attorneys' fees to Florence Copper Inc. in the amount of \$1,700,000 and costs in the amount of \$32,365.55; and

WHEREAS, the trial judge entered final judgment in this matter on June 7, 2019, which becomes final if not appealed by July 6, 2019; and

WHEREAS, Counterclaims filed by Florence Copper Inc. against the Town of Florence are still pending in CV2015-000325, and failure to appeal the Rule 54(b) Judgment will impair the Town's ability to defend itself against the Counterclaims.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Florence, Arizona, that:

Section 1. The execution, filing, delivery, and the full prosecution/litigation of the Town's appeal challenging the validity and issuance of the Rule 54(b) Judgment in the Lawsuit, and notices, filings, certificates, pleadings, correspondence, proceedings, agreements and other documents as may be necessary or convenient related thereto is approved and authorized, including but not limited to the Notice of Appeal attached hereto as **Exhibit "A"**.

Section 2. The Mayor, the Town Manager, the Attorneys for the Town and other officers of the Town, on behalf of the Town, are authorized and directed, without further order of the Mayor and Common Council of the Town, to do all such acts and things, including the full prosecution/litigation of the appeal, and to execute, file and deliver all such notices, certificates, filings, pleadings, correspondence, proceedings, agreements and other documents as may be necessary or convenient to be executed, filed and delivered on behalf of the Town, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated by, and as may be necessary to carry out the terms and intent of, this Resolution.

Section 3. All actions of the officers and agents of the Town which conform to the purposes and intent of this Resolution and which further the Town's rights with respect to the appeal as contemplated by this Resolution, whether heretofore or hereafter taken, are ratified, confirmed and approved.

Section 4. If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 5. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, particularly to immediately preserve the Town's rights with respect to the appeal of the Rule 54(b) Judgment in the Lawsuit, and an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the Mayor and Common Council of the Town and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Mayor and Council of the Town of Florence, Arizona, and approved by the Mayor of the Town of Florence, Arizona, this 21st day of June, 2019.

Tara Walter, Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa Garcia, Town Clerk

Clifford L. Mattice, Town Attorney

CERTIFICATION

I hereby certify that the foregoing Resolution No. 1704-19 was duly passed and adopted by the Mayor and Common Council of the Town of Florence, Arizona, at a special meeting held on the 21st day of June, 2019, and the vote was _____ ayes and _____ nays.

Lisa Garcia, Town Clerk

Exhibit "A"
NOTICE OF APPEAL NO. CV2015-000325

1 Catherine M. Bowman (SBN #011713)
2 *Of Counsel*
3 SIMS MACKIN LTD
4 3031 North Central Avenue, Suite 870
5 Phoenix, Arizona 85012
6 cmbowman@simsmackin.com
7 *Attorneys for Plaintiff and Counterdefendant*
8 *Town of Florence*

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11 Town of Florence,

12 Plaintiff,

No. CV2015-000325

13 v.

NOTICE OF APPEAL

14 Florence Copper, Inc., fka Curis
15 Resources (Arizona), Inc., et al.,

(Assigned to the Honorable Roger Brodman)

16 Defendants.

17 Florence Copper, Inc., fka Curis
18 Resources (Arizona), Inc.,

19 Counterclaimant,

20 v.

21 Town of Florence,

22 Counterdefendant.

23 NOTICE IS GIVEN that Plaintiff/Counter-defendant Town of Florence appeals
24 to the Arizona Court of Appeals, Division One, from the Judgment entered on June 7,
25 2019.

26 Respectfully submitted this ____ day of ____, 2019,

27 *Sims Mackin*

28 */s/Catherine M. Bowman*

Catherine M. Bowman

Attorneys for Plaintiff/ Counterdefendant Town of
Florence

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Original of foregoing e-filed this
with the ___ day of ____, 2019
Clerk of County Superior Court
for filing.

Copy of the foregoing electronically
served this ___ day of ___ to:

Colin F. Campbell
Hayleigh S. Crawford
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix AZ 85012
ccampbell@omlaw.com
hcrawford@omlaw.com
Attorneys for Defendants/Counterclaimants

/s/ _____