

**PROGRAMMATIC AGREEMENT
BETWEEN THE NATIONAL PARK SERVICE, YOSEMITE NATIONAL PARK AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING THE
AHWAHNEE HOTEL NATIONAL HISTORIC LANDMARK COMPREHENSIVE
REHABILITATION PROGRAM, MARIPOSA COUNTY, CALIFORNIA**

WHEREAS, the U.S. Department of the Interior, National Park Service (NPS) at Yosemite National Park (the Park) proposes to administer a comprehensive rehabilitation program for The Ahwahnee hotel and associated guest cottages (collectively The Ahwahnee) in the Park through actions to provide code-compliant fire protection systems, egress, seismic safety, and accessibility; to preserve and protect the historic fabric and integrity of the historic property; to upgrade mechanical, electrical, and plumbing systems; to enhance sustainability by upgrading thermal efficiency of the buildings and improving energy and water-use efficiency; and to improve functionality and operational efficiency to ensure The Ahwahnee's continued use and enjoyment by the American public (the Undertaking); and

WHEREAS, The Ahwahnee is a National Historic Landmark (NHL) and a contributor to the Ahwahnee Developed Area within the Yosemite Valley Historic District; and

WHEREAS, NPS consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to the 1999 *Programmatic Agreement Among the National Park Service at Yosemite, The California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Planning, Design, Construction, Operations, and Maintenance, Yosemite National Park, California* (1999 PA) and regulations at 36 CFR 800 for implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470f); and

WHEREAS, NPS and SHPO are entering into this programmatic agreement (PA) because the Undertaking will have an adverse effect on the NHL and has the potential to affect archeological sites that contribute to the Yosemite Valley Archeological District; and

WHEREAS, NPS notified ACHP and the National Trust for Historic Preservation (NTHP) of the intent to develop the PA pursuant to 36 CFR 800.14(b), and invited the agencies to participate, via letters dated November 23, 2010, and both agencies declined to participate in consultations to develop this PA (ACHP in writing via letter dated December 15, 2010, and NTHP verbally via telephone on December 6, 2010); and

WHEREAS, a Historic Structures Report, a Cultural Landscape Report, and a Historic Furnishings Report for The Ahwahnee (REPORTS) are being completed to inform the planned actions that comprise the Undertaking; and

WHEREAS, actions that comprise the Undertaking will be described and analyzed in the Comprehensive Rehabilitation Plan Environmental Assessment and 100% schematic design document, which will be completed in 2011; and

WHEREAS, NPS has notified the public and interested parties of the proposed Undertaking through public scoping meetings; targeted outreach letters to California museums, historical societies, and preservation groups; regular open house presentations in Yosemite Valley; gateway community meetings; and electronic media such as web sites and daily reports; and provided them an opportunity to comment through the National Environmental Policy Act review process; and

WHEREAS, NPS has notified the public of the development of this PA through the NPS Planning, Environment, and Public Comment website and targeted outreach to museums, historical societies, and preservation groups; and has provided the opportunity to review and comment on the PA; and

WHEREAS, NPS has determined and SHPO has concurred that the Area of Potential Effect (APE) for the Undertaking incorporates areas within the site boundaries as described in the 1977 National Register of Historic Places (NRHP) nomination for The Ahwahnee Hotel, which includes The Ahwahnee hotel, eight multi-unit cottages, parking areas, employee dormitory, meadow, and hotel grounds; the area west of the 1977 NRHP nomination western boundary containing the Ahwahnee Road, the pedestrian/bicycle path, the bridle path, and the stone hotel

entry gatehouse features; and the area east of the 1977 NRHP nomination eastern boundary containing an unpaved road and a service/storage area, as identified in Attachment A to this PA; and

WHEREAS, the APE coincides in part with the general location of the mid-nineteenth century American Indian village of Wis'-kah-lah and Yosemite Valley traditional cultural use areas, NPS has consulted with the Tuolumne Band of Mewuk Indians, the Bridgeport Paiute Indian Colony, the Bishop Paiute Tribe, the North Fork Rancheria of Mono Indians and the Picayune Chukchansi Indians, the American Indian Council of Mariposa County, Inc. (aka Southern Sierra Miwuk Nation), and the Mono Lake Kutzadikaa Paiute Indian Community, and invited each to participate as a concurring party to this PA via letters dated January 5, 2011; and

WHEREAS, work conducted under the Undertaking will occur over a number of years, through a phased implementation approach, pending funding approvals; and

WHEREAS, the Park has on staff or has access to qualified cultural resource specialists who meet, as a minimum, the appropriate qualifications set forth in the Secretary of the Interior's Professional Qualifications Standards to carry out programs for historic preservation including history, historic architecture, historic landscape architecture, archeology, and ethnography;

NOW, THEREFORE, NPS at Yosemite National Park and SHPO (the Signatories) agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this PA expires or is terminated.

STIPULATIONS

I. Definitions

The definitions provided at 36 CFR 800.16 are applicable throughout this PA.

II. Professional Qualifications and Standards

- A.** All historic preservation activities implemented pursuant to this PA shall be carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-39) for the discipline appropriate to the historic property in question.
- B.** Any inventory or documentation of historic properties pursuant to implementation of the PA shall conform to the provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) and applicable standards and guidelines for historic preservation established by SHPO.
- C.** Curation of materials and records resulting from actions stipulated by this PA shall be in accordance with 36 CFR 79. Such materials and records shall be curated by NPS to the extent permitted by sections 5097.98 and 5097.991 of the California Public Resources Code.
- D.** The Signatories to this PA acknowledge that historic properties covered by this PA are subject to the provisions of section 304 of the NHPA and section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archeological site information and, having so acknowledged, shall ensure that all actions and documentation prescribed by this PA are consistent with said sections.

III. Consultation

- A.** NPS initiated consultation with SHPO on September 2, 2009, via written correspondence, and has continued consultation through visits by NPS to SHPO offices in Sacramento on September 15, 2009, and March 11, 2010; a visit by SHPO staff to the Park on October 21, 2010; and correspondences at various study and design stages of the planning process for the Comprehensive Rehabilitation Program.
- B.** NPS shall continue to consult with SHPO regarding design and construction planning as described below:

1. Submission of Project Documents – Comprehensive Rehabilitation Program. NPS has submitted or shall submit schematic design (50% and 100%), design development (50% and 90%), and construction working documents for each phase of work to SHPO for review and comment.
2. SHPO shall have 30 calendar days from the date of receipt to provide comments to NPS. If SHPO fails to respond within this time, NPS shall assume SHPO has no comments and will proceed to the next step in the design process.
3. Through consultation and by mutual agreement, NPS and SHPO may adopt a more expedited review process for portions of the Undertaking, as circumstances indicate. If departure from the review process outlined in Stipulations III.B.1 and III.B.2 of this PA is adopted, NPS shall document the expedited process and the consultations through which the mutual decision to expedite was made, via the reporting specified in Stipulation XIII of this PA.

IV. Actions to Resolve Adverse Effects

A. Documentation

1. NPS shall complete HABS photographic documentation of The Ahwahnee hotel and cottages. HABS documentation for areas of the hotel and cottages to be directly affected by the Undertaking will be completed prior to implementing actions in those respective areas. The Park shall consult with the HABS/HAER/HALS coordinator for the NPS Pacific West Region to determine the type and level of documentation.

B. NHL Nomination Form Update

1. NPS shall update the NHL nomination form for The Ahwahnee to reflect the findings of historical research conducted in preparation of the REPORTS. The revised content for the nomination form will be prepared in consultation with qualified cultural resource staff and in collaboration with the NPS Pacific West Regional Office cultural resources staff, and submitted to the SHPO for 30-day review and comment before being submitted to the NPS Regional NHL Program.

C. Interpretation

1. NPS shall incorporate selected historic information compiled in the REPORTS or through other research conducted in conjunction with, and collected during implementation of, the Undertaking into interpretive media and materials on The Ahwahnee, to be prepared in consultation with qualified cultural resource staff. NPS will make interpretive media and materials available in more than one format (e.g., written pamphlet, web media) for distribution to the public.
2. NPS shall prepare a report to document the rehabilitation Undertaking. As each rehabilitation phase is completed, that phase will be described through narrative and photographic documentation of conditions before, during, and after construction activities. NPS shall submit the draft phase reports to SHPO for 30-day review and comment. NPS shall submit the final phase reports to the Park archives and provide these reports through web media accessible to the public for each major phase of the Undertaking.

V. Archeological and Traditional Cultural Resources

- A.** NPS shall conduct archeological monitoring of all ground-disturbing activities for this Undertaking in accordance with Stipulation VII. All archeological investigations conducted in support of the Undertaking, including testing and data recovery, shall be carried out in accordance with a treatment plan consistent with the *Archeological Synthesis and Research Design* and in consultation with the SHPO and American Indian tribes and groups participating in this PA. NPS National Register determinations of eligibility (DOEs) shall be submitted to SHPO in accordance with Stipulation VI of this PA.
- B.** NPS shall afford American Indian representatives from the culturally associated tribes and groups an opportunity to participate in the protection of resources to which they attach cultural, spiritual, and/or religious significance that may be affected by the Undertaking, including archeological investigations.

VI. Post-Review Discoveries and Unanticipated Effects

- A.** If it appears that an action of the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner, NPS will halt construction activities in the vicinity of the discovery, and take all reasonable measures to avoid or minimize harm to the property. Within two (2) working days of the discovery, NPS shall notify SHPO via telephone of the discovery, and shall provide via electronic mail to SHPO an assessment of National Register eligibility of the property and description of actions proposed to resolve any potential adverse effects.
- B.** SHPO shall respond to NPS within two (2) working days of the notification via electronic mail. NPS shall take into account SHPO's recommendations regarding National Register eligibility and proposed actions, and then shall carry out appropriate actions. NPS shall provide SHPO a report of the actions when they are completed.

VII. Monitoring of Construction Activities

NPS subject matter experts will be available on site during construction activities. SHPO and Tribes may monitor activities pursuant to this agreement. NPS shall cooperate with SHPO and Tribes in carrying out any monitoring and review responsibilities. Tribes will be invited to participate in monitoring of any ground disturbing activities associated with the Undertaking.

VIII. Relationship to Other Existing Agreements and Acts

This PA shall not be construed to supersede or contravene the provisions of the following: Archaeological Resources Protection Act (1979), as amended; Native American Graves Protection and Repatriation Act (1990); American Indian Religious Freedom Act (1978). This PA shall supersede the provisions of the 1999 *Programmatic Agreement Among the National Park Service at Yosemite, The California State Historic Preservation Officer and the Advisory Council on Historic Preservation Regarding Planning, Design, Construction, Operations and Maintenance, Yosemite National Park, California* (1999 PA) only for actions of the Undertaking of The Ahwahnee Comprehensive Rehabilitation Plan.

IX. Dispute Resolution

- A.** The signatories agree that this PA shall guide the implementation of the Undertaking for addressing its effects to and treatment of historic properties until this PA expires or is terminated. Should any of the signatories of this PA at any time object in writing to the manner in which the terms of this PA are implemented, to any action carried out or proposed with respect to implementation of this PA, or to any document prepared in accordance with and subject to the terms of this PA, the objecting party shall notify the other signatories of this PA. The signatories shall consult for 30 days from receipt of the notice of objection to promptly resolve the objection.
- B.** If the objection is resolved through consultation, NPS shall notify in writing the other signatories of the terms of the resolution, and NPS may proceed in accordance with the terms of such resolution.
- C.** If after initiating consultation, NPS determines that the objection cannot be resolved through consultation, or if the duration of the consultation has exceeded 30 days from the commencement of consultation to resolve the dispute, NPS shall forward all documentation relevant to the objection to the ACHP, including NPS's proposed resolution of the objection, with the expectation that the ACHP will respond within 30 days after receipt of such documentation by either:
 - 1. Advising NPS that the ACHP concurs in NPS's proposed resolution of the objection, whereupon NPS shall notify the other signatories, and NPS shall resolve the objection accordingly; or
 - 2. Providing NPS with recommendations, which NPS shall take into account in reaching a final decision to resolve the objection. NPS shall notify all the signatories and the ACHP of its final decision.

If the ACHP or any of the signatories object to the final decision, the objecting party shall notify the other signatories and the ACHP, and the ACHP shall follow the procedures at 36 CFR 800.7(c).

- D.** The procedures outlined in Stipulations IX.A to IX.C, above, shall apply only to the subject of the objection. NPS's responsibility to carry out all actions under this PA that are not the subjects of the objection, and which do not foreclose the consideration of alternatives to resolve the objection, shall remain unchanged.
- E.** At any time during implementation of the terms of this PA, should a member of the public object to the manner of such implementation, NPS shall immediately notify SHPO in writing. NPS shall consult with the objecting party and, if the objecting party so requests, with the other parties to this PA, for no more than 30 days. Within 30 days following closure of this consultation period, NPS will render a decision regarding the objection and notify the other parties of its decision in writing. In reaching its decision, NPS will take all comments from the other parties into consideration. NPS's decision regarding resolution of the objection will be final.

X. Amendments

Either signatory party may propose that this PA be amended, whereupon NPS and SHPO shall consult to consider such amendment pursuant to 36 CFR 800.6(c)(7 and 8). This PA may be amended only upon the written agreement of both signatories to the Agreement. The amended PA shall take effect on the date that it is executed by NPS and SHPO. NPS shall then submit a copy of the amended PA to ACHP and the concurring parties to this PA.

XI. Termination

- A.** If a signatory party to this PA proposes termination of this PA, the party proposing termination shall, in writing, notify the other, explain the reasons for proposing termination, and consult for 30 days to seek alternatives to termination.
- B.** Should such consultation result in an agreement on an alternative to termination, then the signatories shall proceed to amend this PA in accordance with Stipulation X.
- C.** Should such consultation fail to find an alternative to termination, the party proposing termination may terminate this PA by promptly notifying the other parties in writing. Termination hereunder shall render this PA without further force or effect.
- D.** Should this PA be terminated, NPS shall consult with SHPO to develop a new PA in accordance with 36 CFR 800.14(b). Until and unless a new PA is executed for the undertaking, NPS will consult with the SHPO in accordance with 36 CFR 800.4 through 6.

XII. Duration of the PA

- A.** Unless terminated pursuant to Stipulation XI, the duration of this PA is twenty (20) years from the date of its execution or until this project is complete, whichever is shorter. Five (5) years after the date of executing this Agreement, and every five (5) years thereafter for the duration of the term of the PA, NPS shall contact SHPO in writing to organize a review of the sufficiency of the PA and consider potential amendments of its terms, as appropriate.
- B.** If stipulations are not carried out by the expiration of the PA, NPS shall consult with SHPO to determine if the PA should be allowed to expire or should be extended through amendment. Unless NPS and SHPO agree on an extension, the PA shall automatically terminate 20 years from the date of execution and have no further force or effect.

XIII. Reporting

NPS will describe how the agency is carrying out its responsibilities under this PA by including a summary of Undertaking actions taken, including those described in Stipulations V, VI, and VII, within an annual report. NPS shall submit the draft annual reports to SHPO for 30-day review and comment. NPS shall provide the final annual reports to SHPO, concurring parties to this PA, and ACHP, and shall make these reports available to the public through the Yosemite Research Library and on the Yosemite National Park website.

XIV. Effective Date of the PA

This PA shall take effect on the latest date that it is signed and executed by NPS and SHPO.


XV. Anti-Deficiency Act

Any requirement for the payment or obligation of funds by the Government established by the terms of this PA shall be subject to availability of appropriated funds. No provision in this PA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341. If the availability of funds and compliance with the Anti-Deficiency Act impair NPS' ability to perform under this PA, then NPS shall consult in accordance with Stipulation X of this PA.

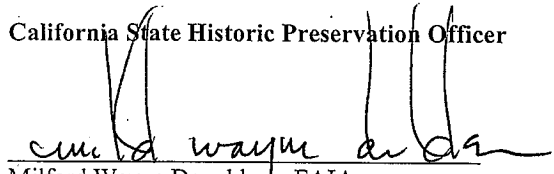
EXECUTION of this PA, its subsequent filing with the ACHP, and implementation of its terms evidence that NPS has taken into account the effects of this Undertaking on historic properties and has afforded the ACHP, SHPO, and Tribes an opportunity to comment on the Undertaking and its effect on historic properties.

SIGNATORIES

National Park Service

 Date: 1/20/11
Don L. Neubacher
Superintendent, Yosemite National Park

California State Historic Preservation Officer

 Date: 24 JAN 2011
Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

CONCURRING PARTIES

**American Indian Council of Mariposa County
aka Southern Sierra Miwuk Nation**

Name Title

Date: _____

Bishop Paiute Tribe

Name Title

Date: _____

Bridgeport Paiute Indian Colony

Name Title

Date: _____

Mono Lake Kutzadika^a Tribe

Name Title

Date: _____

North Fork Mono Rancheria

Julie L. Smith Tribal Chairman

Name Title

Date: 2/24/11

Picayune Rancheria of the Chukchansi Indians

Name Title

Date: _____

Tuolumne Band of Me-Wuk Indians

Name Title

Date: _____

Attachment A – Defined Area of Potential Effect for this Programmatic Agreement



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