

**AMENDMENT TO THE  
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**

**WHEREAS**, in May 1999, the National Park Service (NPS), California State Historic Preservation Officer (SHPO), and Advisory Council on Historic Preservation (Council) executed the *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

**WHEREAS**, the NPS, SHPO, and Council (signatories to the 1999 PA) amended the 1999 PA on May 13, 2014, while consulting on the development of a new parkwide PA to address parkwide activities; and

**WHEREAS**, the NPS, SHPO, and Council agree that the 1999 PA (as amended) should be amended to extend the duration of the PA and maintain the current consultation processes as established while consulting on the development of a new parkwide PA; and

**WHEREAS**, all the consulting parties to the 1999 PA, including the traditionally associated American Indian tribes and groups and National Trust for Historic Preservation, have been provided the opportunity to review and comment on this amendment; and

**WHEREAS**, the general public has been provided the opportunity to review and comment on the amendment; and

**NOW, THEREFORE**, in accordance with *Stipulation XVI. AMENDMENTS* of the 1999 PA, the NPS, SHPO, and Council agree to amend the 1999 PA as follows:

1. Amend Stipulation *XX.EXPIRATION* so it reads as follows:

This agreement will remain in effect until May 14, 2017, or until a new parkwide agreement is negotiated, whichever time period is shorter.

This amendment to the 1999 PA shall become effective on the date it is executed by all three signatories.

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AND MAINTENANCE, YOSEMITE NATIONAL PARK, CALIFORNIA

**SIGNATORY PARTIES:**

**National Park Service**



Don L. Neubacher  
Superintendent, Yosemite National Park

5/5/16  
Date

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**California State Historic Preservation Officer**

  
\_\_\_\_\_  
Julianne Polanco  
State Historic Preservation Officer

*11 May 2016*  
\_\_\_\_\_  
Date

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Advisory Council on Historic Preservation

*John M. Fowler*

John M. Fowler  
Executive Director

*5/13/16*

Date

*JMF*

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AND MAINTENANCE, YOSEMITE NATIONAL PARK, CALIFORNIA**

**CONCURRING PARTIES:**

**For the American Indian Council of Mariposa County (Southern Sierra Miwuk):**

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

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For the Bishop Palute Tribe:



Tribal Chairman

June 10, 2016

Name Gerald Howard

Title

Date

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**For the Bridgeport Paiute Indian Colony:**

_____	_____	_____
Name	Title	Date

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**For the Mono Lake Kutzadika<sup>a</sup> Tribe:**

Name	Title	Date
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**For the North Fork Rancheria of Mono Indians:**

Name	Title	Date

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**For the Picayune Rancheria of Chukchansi Indians:**

_____	_____	_____
Name	Title	Date

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For the Tuolumne Band of Me-Wuk Indians:

Kevin Day Tribal Chairman May 24, 2016  
Name Title Date

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**National Trust for Historic Preservation**

\_\_\_\_\_  
Barbara Pahl  
Western Vice President

\_\_\_\_\_  
Date

**AMENDMENT TO THE  
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REGARDING PLANNING, DESIGN, CONSTRUCTION, OPERATIONS  
AND MAINTENANCE, YOSEMITE NATIONAL PARK, CALIFORNIA**

**WHEREAS**, in May 1999, the National Park Service (NPS), California State Historic Preservation Officer (SHPO), and Advisory Council on Historic Preservation (Council) executed the *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

**WHEREAS**, the NPS, SHPO, and Council (signatories to the 1999 PA) agree that the 1999 PA should be amended to extend the duration of the PA while consulting on the development of a new agreement to address parkwide activities; and

**WHEREAS**, all the consulting parties to the 1999 PA, including the traditionally associated American Indian tribes and groups and National Trust for Historic Preservation, have been provided the opportunity to review and comment on this amendment; and

**WHEREAS**, the general public has been provided the opportunity to review and comment on the amendment; and

**NOW, THEREFORE**, in accordance with *Stipulation XVI. AMENDMENTS* of the 1999 PA, the NPS, SHPO, and Council agree to amend the 1999 PA as follows:

1. Amend Stipulation *V. Participation of Indian Tribes, B.* as follows:

B. Because the 36 CFR Part 800 regulations have been amended since the 1999 PA was signed, and because the 1999 PA did not identify Standard Mitigating Measures (SMMs) for adverse effects to historic properties with religious and cultural significance, Yosemite National Park (YOSE), representing NPS, shall address any assessment of adverse effects to these types of properties consistent with Stipulation VIII.B. of this agreement.

2. Amend Stipulation *VIII. RESOLUTION OF ADVERSE EFFECTS, B. Required Consultation* as follows:

In the following situations, YOSE shall consult, according to 36 CFR § 800.6 (incorporating amendments effective August 5, 2004), with the SHPO, Indian Tribe(s) and interested persons as defined and identified under Stipulation VI (as appropriate), and shall invite the Council's participation regarding any action that:

1. may adversely affect a National Historic Landmark
2. may affect a human burial

3. may adversely affect a historic property of religious and cultural significance to any traditionally associated American Indian tribe(s) or group(s), including traditional cultural properties
4. generates significant public controversy
5. involves a disagreement among YOSE, the SHPO, any Indian Tribe, or any interested persons regarding proposed mitigation measures
6. has the potential to adversely affect a large number of contributing elements proportional to the size of the historic property involved
7. has the potential for adverse effects that are not completely known and/or requires phased identification of historic properties and assessment of adverse effects
8. proposes demolition of an individually eligible historic property

3. Amend Stipulation *VIII. RESOLUTION OF ADVERSE EFFECTS* as follows:

If the SHPO, any Indian Tribe or any Interested Person does not object, within 30 calendar days of the notification, to YOSE's decision to treat the adverse effect according to the SMM, YOSE will proceed without further involvement of these parties.

4. Amend Stipulation *XVIII. REVIEW OF AGREEMENT, A.* as follows:

YOSE shall prepare and provide to the signatories and all parties invited to concur with this Agreement and the NPS Federal Preservation Officer an annual report describing how YOSE is carrying out its responsibilities under this Agreement. The report shall include, at a minimum, a list of "no historic properties affected" and "no adverse effect" actions carried out in accordance with Stipulation VII.C.2 above; efforts to identify and/or evaluate potential historic properties; monitoring efforts; and treatment of historic properties. YOSE shall ensure that this report is made available for public inspection, that potentially interested persons and members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to the Council and SHPO as well as to YOSE. The SHPO, Council, and Indian Tribes may review the report and provide comments to YOSE. At the request of any party to this Agreement, YOSE shall supplement this process through meeting(s) to address comments and/or questions.

5. Amend Stipulation *XX. EXPIRATION* so it reads as follows:

This agreement will remain in effect until May 14, 2016, or until a new parkwide agreement is negotiated, whichever time period is shorter.

This amendment to the 1999 PA shall become effective on the date it is executed by all three signatories.

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SIGNATORY PARTIES:

National Park Service

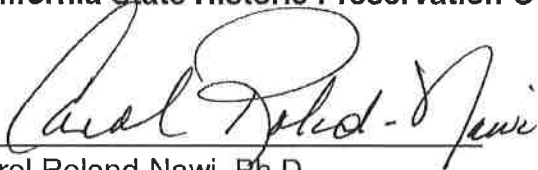


Don L. Neubacher  
Superintendent, Yosemite National Park

5/7/14  
Date

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California State Historic Preservation Officer



Carol Roland-Nawi, Ph.D.  
State Historic Preservation Officer

9-May-2014  
Date



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Advisory Council on Historic Preservation

*for*   
John M. Fowler  
Executive Director

5/13/14  
Date

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**CONCURRING PARTIES:**

**For the American Indian Council of Mariposa County (Southern Sierra Miwuk):**

Name	Title	Date
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**For the Bishop Paiute Tribe:**

_____ Name	_____ Title	_____ Date
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**For the Bridgeport Paiute Indian Colony:**

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**For the Mono Lake Kutzadika<sup>a</sup> Tribe:**

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**For the North Fork Rancheria of Mono Indians:**

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**For the Picayune Rancheria of Chukchansi Indians:**

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

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**For the Tuolumne Band of Me-Wuk Indians:**

_____ Name	_____ Title	_____ Date
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**National Trust for Historic Preservation**

---

Barbara Pahl  
Western Vice President

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Date

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REGARDING PLANNING, DESIGN, CONSTRUCTION, OPERATIONS  
AND MAINTENANCE, YOSEMITE NATIONAL PARK, CALIFORNIA.**

**WHEREAS**, the National Park Service (NPS) at Yosemite National Park (YOSE) has determined that planning, design, construction, operations and maintenance may have an effect on properties included in, or eligible for inclusion in, the National Register of Historic Places, and has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to Section 800.13 of the regulations (36 CFR Part 800), implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f; hereinafter NHPA); and

**WHEREAS**, the NPS, the Council, and National Conference of State Historic Preservation Officers (NCSHPO) executed a Nationwide Programmatic Agreement on July 17, 1995 that establishes a framework for taking historic properties into account and is supplemented by this agreement; and

**WHEREAS**, the NPS completed a 1980 General Management Plan (GMP) that provides the management direction for YOSE; and

**WHEREAS**, the NPS, SHPO and Council executed a November 1, 1979, Memorandum of Agreement that is still in effect to cover actions specified in the 1980 GMP; and

**WHEREAS**, a Concessions Services Plan and a Yosemite Valley Plan exist or are underway to implement proposals of and amend the 1980 General Management Plan; and

**WHEREAS**, the NPS has on staff or has access to qualified cultural resource specialists who meet, at a minimum, the appropriate qualifications set forth in the Department of the Interior's "Professional Qualifications Standards" (36 CFR Part 61, Appendix A) to carry out programs for cultural resource management. These include cultural resource management advisors described in Stipulation III (C)(3) of the nationwide programmatic agreement; and

**WHEREAS**, the terms in 36 CFR Section 800.2 "Definitions" are applicable throughout this Programmatic Agreement, including "Historic Property" to mean any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places. Historic Properties include artifacts and remains that are related to and located within such properties, cultural landscapes, as defined in National Register Bulletins 18 and 30, and traditional cultural properties, as defined in National Register Bulletin 38. "Indian Tribes" refers to American Indian tribes, bands, organized groups, or communities recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and who are culturally affiliated with YOSE lands and resources; and

**WHEREAS**, YOSE has consulted with Indian Tribes (American Indian Council of Mariposa County, Inc., the Tuolumne Me-Wuk Tribal Council, the Mono Lake Indian Community, the Bridgeport Paiute Tribe, the Chukchansi Nation, the Northfork Mono Rancheria and the Northfork Mono Indian Museum) and has provided these parties the opportunity to participate in the development of, and to concur in the terms of, this Agreement; and

**WHEREAS**, YOSE has consulted with the National Trust for Historic Preservation (National Trust) and has invited the National Trust to concur in this agreement; and

**WHEREAS**, YOSE has notified the public of the formulation of this agreement and provided them an opportunity to comment;

**NOW, THEREFORE**, the NPS, SHPO, and Council agree that YOSE shall carry out its responsibilities under the NHPA, as amended, for those undertakings/actions specified in Stipulation II below.

## **STIPULATIONS**

YOSE shall ensure that the following measures are carried out:

### **I. POLICY**

YOSE shall manage and preserve the historic properties of the park through undertakings and research, consistent with good management and stewardship. These efforts are, and will remain, in keeping with the NHPA, the National Environmental Policy Act of 1969 (NEPA), and other applicable laws, executive orders, regulations and policies. YOSE shall implement its programs with public review and in consultation with other federal agencies, the SHPO, Indian Tribes, city and county governments and their respective authorities, as appropriate.

- A. Guidelines, standards, and regulations that are relevant to this Agreement and that shall provide guidance and performance standards for management of historic properties include:

NPS/ACHP	The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act [Section 110 Guidelines]
ACHP	Treatment of Archeological Properties: A Handbook
FHWA	Manual for Uniform Traffic Control Services
NPS	Maintenance Management Program, Operations Manual, Parts 1&2
NPS	Museum Handbook, Parts 1&2
NPS	Director's Order 2: Park Planning
NPS-6	Interpretive and Visitor Services Guidelines
NPS-12	NEPA Compliance Guidelines
NPS-28	Cultural Resource Management Guideline
NPS-38	Historic Property Leasing Guidelines
NPS-76	Housing Design and Rehabilitation Guidelines
USDI	Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines
USDI	The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings
USDI	The Secretary of the Interior's Standards for Historic Preservation Projects with Guidelines for Applying the Standards
USDI	The Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes
US	Uniform Federal Accessibility Standards (49 FR 31528-31617)
US	Americans with Disabilities Act Accessibility Guidelines (56 FR 45731-45778)
US	Native American Graves Protection and Repatriation Act Regulations: Final Rule (43 CFR Part 10)

As needed, additional guidelines may be developed for the built or designed landscapes of YOSE. Proposed new guidelines developed by YOSE shall be submitted to the SHPO for review and comment. The SHPO shall have 30 days after receiving the proposed guidelines to respond to specific treatments described in the guidelines.

- B. YOSE shall use the following Cultural Resource Identification and Professional or Technical Plans and Studies in management:

NPS	YOSE Hazard Tree Plan
NPS	YOSE Fire Management Plan

NPS	YOSE Wilderness Management Plan
NPS	YOSE Resource Management Plan
NPS	YOSE Archeological Synthesis and Research Design
NPS	Cultural Landscape Report, Yosemite Valley
NPS	Ethnographic Evaluation of Yosemite Valley, the Native American Cultural Landscape
NPS	Historic Resource Study, Yosemite National Park
NPS	List of Classified Structures, YOSE
NPS	Wilderness Historic Resource Study
NPS	Archeological Inventory, Testing, Data Recovery and Monitoring Reports
NPS	Ethnographic Studies
NPS	YOSE Interpretive Prospectus

## II. APPLICABILITY

This agreement is applicable to all individual actions relating to:

- A. Routine maintenance and park operations
- B. Individual actions proposed in the 1980 General Management Plan, that will be attached in Appendix C, and individual actions proposed in implementing plans including, but not limited to:
  - 1992 Concessions Services Plan
  - Yosemite Valley Plan (in preparation)
- C. Design projects
- D. Specific management plans

## III. SCOPE OF AGREEMENT

- A. This Agreement applies to undertakings at YOSE that have not been covered by previous agreements, and that are under the direct or indirect supervision of the NPS including undertakings performed by NPS lessees, permittees, concessionaires, cooperators and park partners.
- B. The NPS shall ensure that the lessees, permittees, concessionaires, cooperators and park partners are notified that they are subject to the terms of this Agreement.

#### **IV. RELATIONSHIP TO OTHER PLANS**

- A. This Agreement incorporates provisions of, but does not supersede, the 1979 MOA executed for the 1980 GMP. Provisions of that agreement will continue to be implemented as written.
- B. This Agreement supplements the 1995 Nationwide Programmatic Agreement among the NPS, the Council, and the National Conference of State Historic Preservation Officers.

#### **V. PARTICIPATION OF INDIAN TRIBES**

- A. YOSE shall consult with Indian Tribes in such a manner as to meaningfully involve them in decisions affecting resources of concern.
- B. Within one year of the execution of this Agreement, YOSE shall develop an agreement that sets forth the process by which Indian Tribes will be involved in considering the impacts of undertakings on Historic Properties at YOSE that are of interest to them. This protocol will:
  - 1. Define when consultation between the YOSE and tribes is necessary
  - 2. Identify individuals or offices directly involved in the consultation process
  - 3. Outline key elements of the consultation process
  - 4. Outline the process to be followed in case of inadvertent discovery of human remains or other items subject to the NAGPRA
- C. Until this agreement is in place, YOSE shall continue to consult with Indian Tribes according to 36 CFR Part 800 and, when appropriate, the provisions of NAGPRA.

#### **VI. PUBLIC PARTICIPATION**

- A. YOSE shall consult with the signatories to this Agreement and with other Interested Parties or Persons to determine if there are organizations or individuals that may be concerned with actions described in Stipulation VIII below, and shall provide notice to the public of the undertakings subject to the stipulations of this Agreement through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set forth in 40 CFR Parts 1500-1508. Any member of the public may participate as an Interested Person in the consultation for a particular action upon notifying YOSE of their interest. YOSE, SHPO and Council, if participating, shall jointly determine when such Interested Persons shall be invited to participate as a consulting party for individual undertakings in accordance with 36

CFR Section 800.5(e)(1)(iv). YOSE shall take into account the views of such parties regarding any adverse effect of an undertaking described in Stipulation VIII below.

- B. Documentation regarding identification and National Register evaluation of historic properties, when not subject to confidentiality concerns, will be available for inspection at YOSE, SHPO, or NPS Pacific West Regional Office.

## VII. CONSIDERATION OF HISTORIC PROPERTIES

Pursuant to the NHPA and in the earliest stages of the planning process, YOSE shall identify, evaluate, determine effects to, and treat historic properties in conformance with all applicable regulations, policies and guidelines listed in Stipulation I above.

### A. Identification

1. YOSE shall consult with Indian Tribes and Interested Persons, as appropriate, on activities to locate and inventory Historic Properties, in accordance with Section 110 of the NHPA, and 36 CFR Section 800.4 .
2. If no Historic Properties are identified, YOSE shall maintain documentation of the inventory for purposes of review under Stipulation XVIII and no further action will be necessary.
3. If Historic Properties are identified, and consistent with any confidentiality protocols provided by the Tribe(s) and/or described in Section 304, NHPA, all final reports resulting from the Historic Properties surveys stipulated above shall be submitted to SHPO.

### B. National Register Evaluation

1. YOSE, in consultation with SHPO, shall follow the procedures in 36 CFR Section 800.4 (c) (1 through 3) to evaluate the historical significance of all properties that may be affected by an undertaking. If YOSE and SHPO do not agree on the National Register eligibility of any property, or if the Council so requests, YOSE shall obtain a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Section 800.4 (c) (4). If SHPO does not respond within the review period described in Stipulation IX below, YOSE may assume SHPO concurrence with YOSE determinations.
2. As part of the 1980 GMP planning process, NPS evaluated and SHPO concurred in National Register eligibility determinations of certain properties in Yosemite. These determinations are itemized in the Case Report accompanying the 1979 MOA (summary list to be appended within six months). In addition,

subsequent studies have evaluated properties under National Register criteria. These determinations will be reviewed, on a case by case basis by YOSE cultural resource staff or advisors, for new information or changed circumstances. Previous National Register determinations will be revisited by YOSE staff or cultural resources advisors if new information, such as recognition of new property types (e.g. cultural landscapes and traditional cultural properties) or change in historic context(s), is forthcoming or if SHPO so requests.

3. If traditional cultural properties are identified through the process outlined in Stipulation VII (A), YOSE shall seek the participation of all Indian Tribes (or other groups as appropriate) who ascribe traditional cultural values to those properties in applying the National Register criteria. Except as provided by any confidentiality protocols developed by Indian Tribes, and/or those described in Section 304, NHPA, YOSE shall ensure that documentation of determinations, including the SHPO's comments, are made available for inspection according to provisions stated in Stipulation VI.

#### C. Assessment of Effect

YOSE shall determine the effect of any undertaking subject to this Agreement using the Criteria of Effect and Adverse Effect (36 CFR Part 800). At its discretion, YOSE may consult with the signatories to this Agreement or with other Interested Persons regarding effect determinations for individual undertakings.

##### 1. Repetitive, Low Impact Activities

Repetitive, low impact activities defined in Appendix B will be undertaken with no additional review by YOSE cultural resource staff. The project proponent shall maintain records of actions for inspection according to Stipulation XVII below.

##### 2. Actions Having No Effect or No Adverse Effect

Activities determined by YOSE to have "No Effect" or "No Adverse Effect" to Historic Properties, as defined in 36 CFR Part 800, may be implemented and will be documented for purposes of this Agreement by YOSE without further review by the Council or SHPO, provided:

- a) that the undertaking is not subject to provisions of Stipulation VIII(B);
- b) that the applicable YOSE management office has submitted a proposed undertaking to the YOSE Section 106 Coordinator for review and concurrence 15 work days prior to the start of the undertaking;



- c) that the YOSE Section 106 Coordinator has reviewed the undertaking to ensure that identification and evaluation of Historic Properties in the area of potential effect has been completed according to Stipulation VII (A) and (B) above, and that adequate information has been compiled to identify and evaluate the effects of proposed undertakings on Historic Properties;
- d) that YOSE ensures that decisions regarding proposed undertakings are made and carried out in conformance with the standards and guidelines in Stipulation I above;
- e) that YOSE shall ensure that recovery of archeological data is based on the existing YOSE Archeological Research Design and Archeological Synthesis and Revised Research Design;
- f) that YOSE has consulted with the appropriate Indian Tribe(s) regarding possible effects to Native American archeological or traditional cultural properties;
- \* g) that YOSE has determined that the proposed action either does not affect or does not adversely affect Historic Properties based on the criteria of adverse effect found in 36 CFR Section 800.9; and
- h) Monitoring, when appropriate, shall be summarized in a brief letter report. If Historic Properties are discovered during implementation, a detailed monitoring report shall be prepared. Large-scale ground disturbing activities shall be monitored in accordance with a monitoring plan. The monitoring plan shall include, at minimum, the following elements:
  - i. a detailed summary of properties that may be exposed during construction activities, based on archival research;
  - ii. treatment strategies (i.e. documentation, data recovery excavations, protection, etc.) for anticipated property types;
  - iii. specific guidelines for any necessary work stoppages;
  - iv. the locations of Historic Properties to be avoided and the means by which they will be avoided;
  - v. specific areas and phases of construction which will be monitored;
  - vi. a schedule for submitting progress reports of monitoring activities to the SHPO;
  - vii. a process for dealing with types of properties not anticipated in the monitoring plan, including names of individuals or offices to be contacted in the event of discovery
  - viii. reporting requirements, to be followed upon project completion

- ix. specific procedures to be followed in the event of discovery of human remains
- x. Indian tribal monitoring procedures

## VIII. RESOLUTION OF ADVERSE EFFECTS

YOSE shall make every reasonable effort to avoid adverse effects to Historic Properties identified according to Stipulation VII (A) through project design, facilities' location, or other means. Avoidance alternatives will be documented during the NEPA process.

When avoidance of a Historic Property is not feasible or prudent, and the undertaking does not involve properties or actions described in (B) below, YOSE, as part of its examination of treatment options, may decide to implement one or more Standard Mitigating Measures (SMM) described in (A) below. YOSE shall notify the following parties in writing of the decision to implement SMM:

- the SHPO
- Indian Tribe(s) (when American Indian properties are involved)
- members of the public who have made their interest in the undertaking known according to provisions outlined in Stipulation VI.

Consultation with the Council will not be undertaken when YOSE decides to implement SMM. If the SHPO, any Indian Tribe or any Interested Person does not object, within 14 calendar days of the notification, to YOSE's decision to treat the adverse effect according to the SMM, YOSE will proceed without further involvement of these parties. Should the SHPO, Indian Tribe, or Interested Person(s) object to the implementation of SMM as set forth above, YOSE shall make every effort to resolve the objection. If YOSE decides not to implement SMM, or YOSE and the objecting party are unable to resolve the objection, YOSE shall consult in accordance with (B) below, Required Consultation.

### A. Standard Mitigating Measures

#### 1. Recordation

- a) Individual, nationally significant Historic Properties will be documented according to the standards of the Historic American Buildings Survey or Historic American Engineering Record, as appropriate. The level of documentation for these Historic Properties shall be determined by the NPS. Copies of documentation will be deposited in the YOSE archives, SHPO, and Library of Congress.

b) The following categories of structures, whether significant at the national, state, or local level, will be documented by black and white 5 x 7 photographic prints, and a Historic Record that includes narrative history and original drawings where available. Copies of documentation will be deposited in the YOSE archives and with SHPO:

- Contributing elements in a historic district (unless individually eligible)
- Individual elements of linear resources, such as ditches, roads, trails
- Minor elements of a complex (e.g. sheds, garages)
- Individual elements of cultural landscapes
- Individual Historic Properties of state and local significance

## 2. Salvage

If a Historic Property will be demolished, YOSE historical architect, curator and/or preservation specialist will conduct a documented inspection to identify architectural elements and objects that may be reused in rehabilitating similar historic structures, or that may be added to the YOSE museum collection.

## 3. Interpretation

YOSE will ensure that the story of human interaction with nature and changes in that interaction is a central theme in the interpretation of the Yosemite story. This interpretation will include a history of alteration of the human environment and reasons for that change.

## 4. National Register Reevaluation

Within 120 working days after adverse alteration, relocation, or demolition of a Historic Property, YOSE shall consult with SHPO regarding the Property's continued eligibility for the National Register. The results of this consultation, with accompanying documentation, shall be forwarded to the Council and Keeper of the National Register. Should YOSE and SHPO disagree, YOSE shall seek a determination from the Keeper in accordance with 36 CFR Section 800.4 (C)(4).

## B. Required Consultation

YOSE shall consult, according to 36 CFR Section 800.5(e) with the SHPO, Indian Tribe(s) (as appropriate) and Interested Persons as defined and identified under Stipulation VI (as appropriate), and shall invite the Council's participation regarding any action that:

1. may affect a National Historic Landmark
2. may affect a human burial
3. adversely affect a traditional cultural property
4. generates significant public controversy
5. involves a disagreement among YOSE, the SHPO, any Indian Tribe, or any Interested Persons regarding proposed use SMMs

## IX. REVIEW PERIODS

- A. YOSE shall submit the results of all identification efforts, NRHP eligibility determinations, discovery plans, and treatment plans to SHPO, Indian Tribes, and Council (as necessary) for a 30 calendar day review and comment period, unless otherwise agreed to. Opportunity for review by Interested Persons is as identified in Stipulation VI. This period shall begin upon receipt of adequate documentation by the reviewing party. If any reviewing party does not respond to YOSE within 30 calendar days of receipt of adequate documentation, YOSE may assume that that party does not object to the findings and recommendations as detailed in the submission. If any party does not respond, does not object, or proposes changes that YOSE accepts, no further review by that party will be required and YOSE may proceed according to its findings and recommendations.
- B. Should any party object to findings or recommendations in any submittal within the time period specified in (A) above, YOSE shall consult with the objecting party to resolve the objection. If the objection is not resolved, YOSE shall consult according to Stipulation XIV, Dispute Resolution.

## X. DISCOVERY

### A. Native American Human Remains

1. YOSE shall ensure that any Native American burials or Native American human remains, funerary objects, sacred objects and objects of cultural patrimony discovered during implementation of an undertaking, archeological fieldwork, or other actions, are treated with appropriate respect and according to federal law, including, but not limited to, the Native American Graves Protection and Repatriation Act, Public Law 101-601 (NAGPRA) and its implementing

regulations (43 CFR Part 10, Native American Graves Protection and Repatriation Act Regulations). Actions described herein do not constitute compliance with provisions of NAGPRA.

2. If objections are raised by any Indian Tribe regarding treatment of human remains or cultural items as defined under NAGPRA, the objection shall be resolved in accordance with NAGPRA. YOSE shall notify SHPO and Council of any such dispute if so requested by involved tribes.

#### B. Other Historic Properties

YOSE shall notify the SHPO and Indian Tribe(s), as appropriate, as soon as practicable if it appears that an 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. YOSE shall stop all potentially harmful activities (if ongoing) in the vicinity of the discovery and shall take all reasonable steps to avoid or minimize harm to the property until YOSE concludes consultation. If the newly discovered property has not previously been included in or determined eligible for listing in the National Register, YOSE may assume that the property is eligible for purposes of this Agreement. YOSE shall notify the SHPO at the earliest possible time and consult with the SHPO to develop actions that will take the effects of the undertaking into account. YOSE will notify SHPO of any time constraints, and YOSE and SHPO will mutually agree upon time frames for this consultation. YOSE shall provide the SHPO (and Indian Tribe[s], as appropriate) with written recommendations that take the effects of the undertaking into account. If the SHPO does not object to YOSE's recommendations within the agreed upon time frame, YOSE will implement the recommendations. If SHPO or the Indian Tribe(s) object to the proposed treatment, and these objections cannot be resolved, YOSE shall follow procedures outlined in Stipulation XIV, Dispute Resolution.

### XI. NATURAL DISASTERS

In the past YOSE has experienced major floods, fires, earthquakes, wind damage from storms, earth slides, and other natural disasters/emergencies which are likely to recur in the future. For a period not exceeding 45 days after the conclusion of the emergency (plus any extension agreed upon by YOSE, SHPO and Council) YOSE will proceed as follows:

- A. YOSE will, without SHPO consultation, undertake emergency actions pursuant to the terms of this Agreement to stabilize Historic Properties and prevent further damage.

- B. YOSE cultural resource specialists shall work closely with the emergency operations team, participate in discussions regarding emergency response activities and monitor work that has the potential to affect Historic Properties.
- C. YOSE staff shall consult with the appropriate Indian Tribe(s) regarding emergency actions.
- D. All work having the potential to affect Historic Properties shall be documented.
- E. Every effort will be made to avoid known or discovered Historic Properties during emergency response activities. However, in those rare cases where this is impossible or could impede emergency responses, photographic and written documentation of affected Historic Properties shall be completed.
- F. All such emergency measures shall be undertaken in a manner that does not foreclose future preservation or rehabilitation, unless YOSE determines that integrity has been permanently lost.
- G. Within 90 days after the conclusion of the disaster or emergency period, YOSE shall submit to the SHPO, Council and the Federal Preservation Officer, NPS a report that documents how any effect of disaster or emergency response operations on Historic Properties were taken into account.

## **XII. EMERGENCY REPAIRS**

- A. In the event that damage to or failure of park infrastructure poses an immediate threat to life or health, YOSE will undertake emergency repairs with on-site monitoring by appropriate cultural resource specialists.
- B. Should Historic Properties be discovered during emergency repair activity, all work that could result in adverse effects shall cease provided the Superintendent or designated representative determines work cessation will not impede emergency repairs. If the work stoppage at the discovery site will impede emergency repairs, emergency repair will continue and YOSE officials shall immediately notify the SHPO by telephone and provide the following information:
  1. finding of a required emergency
  2. description of the emergency and steps necessary to address the situation
  3. description of the discovery and its apparent significance
  4. description of the emergency and potential effect on the discovery feature
  5. efforts to consider Historic Properties

- C. Repairs and emergency treatment of any discovered properties shall be documented by YOSE on a Preservation Assessment Form or its equivalent. This form, along with a description of the emergency situation, signed by the requesting park official and the cultural resource specialist accomplishing the monitoring, shall be provided to the SHPO within 15 days of the emergency repair.

### **XIII. PERMITS**

- A. Permits and other legal agreements including, but not limited to, special use permits, leases, concessions, contracts and easements (hereinafter "Permits") for use of lands or structures in YOSE reflect a diversity of utilities and uses. All such Permits shall contain terms and conditions YOSE deems appropriate to protect and preserve Historic Properties.
- B. YOSE shall require that any undertaking proposed and implemented by a permittee/licensee, which may affect a Historic Property, shall meet the guidelines and standards set forth in Stipulation I above, and is reviewed by YOSE in accordance with Stipulation VII (c). Any permittee/licensee who proceeds with an undertaking without project review and approval, and who forecloses the obligation of YOSE to fulfill terms of this agreement, may be subject to appropriate sanctions in accordance with the terms of the permit/license.

### **XIV. DISPUTE RESOLUTION**

- A. Should SHPO or Council object within 30 calendar days to any matter submitted by YOSE for review pursuant to this Agreement, YOSE shall consult with the objecting party to resolve the objection. If after 30 calendar days YOSE or the objecting party determines that the objection cannot be resolved, YOSE shall forward all documentation relevant to the dispute to the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:
1. provide YOSE with recommendations, which YOSE shall take into account in reaching a final decision regarding the dispute; or
  2. notify YOSE that it will comment pursuant to 36 CFR Section 800.6(b), and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by YOSE in accordance with 36 CFR Section 800.6(c)(2) with reference only to the subject of the dispute; YOSE's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.
- B. Should any Indian Tribe object to the manner in which the terms of this Agreement are implemented, YOSE shall take the objection into account and consult with the

objecting party for 30 calendar days. If YOSE determines that the objection cannot be resolved, YOSE shall refer the objection to the Council according to Section A of this Stipulation.

C. Should any Interested Persons or a member of the public object to the manner in which this Agreement is implemented, YOSE shall take the objection into account and consult with the objecting party for 30 calendar days. If YOSE determines that the objection cannot be resolved, YOSE shall refer the objection to the Council in accordance with Section A of this Stipulation.

D. Should the subject of an objection pertain to the eligibility of a property for listing in the National Register, YOSE shall consult with the objecting party for a 30-day period. If the objection is not resolved within those 30 calendar days, YOSE shall refer the matter to the Keeper of the National Register for a final determination.

#### **XV. FUTURE AGREEMENTS**

Programmatic agreements or memoranda of agreement may be negotiated by YOSE, SHPO, and the Council, as appropriate, and may supplement this Agreement.

#### **XVI. AMENDMENTS**

Any signatory may request that this Agreement be amended, whereupon the parties will consult in accordance with 36 CFR Section 800.13. Where the parties cannot agree on executing an amendment, the matter shall be addressed pursuant to Stipulation XIV, Dispute Resolution. Any amendment agreed upon will be executed in the same manner as the original Agreement.

#### **XVII. FAILURE TO CARRY OUT AGREEMENT**

In the event YOSE does not or cannot carry out the terms of this Agreement, YOSE shall comply with the NPS Nationwide Programmatic Agreement with regard to individual undertakings covered by this Agreement.

#### **XVIII. REVIEW OF AGREEMENT**

A. On or before November 15 of each year for two years and biannually thereafter, so long as this Agreement is in effect, YOSE shall prepare and provide to the signatories and all parties invited to concur with this Agreement and the NPS Federal Preservation Officer a report describing how YOSE is carrying out its responsibilities under this Agreement. The report shall include, at a minimum, a list of "no effect and "no adverse effect" actions carried out in accordance with



Stipulation VIII (B), above; efforts to identify and/or evaluate potential Historic Properties; monitoring efforts, and treatment of Historic Properties. YOSE shall ensure that this report is made available for public inspection pursuant to Stipulation VI, that potentially Interested Persons and members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to the Council and SHPO as well as to YOSE. The SHPO, Council, and Indian Tribes may review the annual report and provide comments to YOSE. At the request of any party to this Agreement, YOSE shall supplement this process through meeting(s) to address comments and/or questions.

- B. The SHPO and the Council may monitor activities carried out pursuant to this Agreement, and the Council will review such activities if so requested. YOSE shall cooperate with the SHPO and the Council in carrying out their monitoring and review responsibilities.

**XIX. TERMINATION**

YOSE, SHPO, or Council may terminate this Agreement by providing 30 calendar days' written notice to the other parties provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the NPS shall comply with 36 CFR Sections 800.4 through 800.6 for individual undertakings covered by this Agreement.

**XX. EXPIRATION**

This Programmatic Agreement shall be null and void fifteen (15) years from date of execution of this Agreement by the Council.

Execution and implementation of this Programmatic Agreement evidences that YOSE has satisfied its Section 106 responsibilities for all individual undertakings referenced in this Agreement.

**NATIONAL PARK SERVICE**

By:   
Superintendent, Yosemite National Park

3/17/99  
Date

  
Regional Director, Pacific West Region

3/31/99  
Date

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: *Samuel Abeyta, acting*  
State Historic Preservation Officer

4-26-99  
Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *[Signature]*  
Advisory Council on Historic Preservation  
*Executive Director*

5/19/99  
Date

Concur:

By: \_\_\_\_\_  
American Indian Council of Mariposa County, Inc.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Bridgeport Paiute Tribe

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Chukchansi Nation

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Mono Lake Indian Community

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
North Fork Mono Rancheria

\_\_\_\_\_  
Date

By: \_\_\_\_\_ Date \_\_\_\_\_  
North Fork Mono Indian Museum

By: \_\_\_\_\_ Date \_\_\_\_\_  
Tuolumne Me-Wuk Tribal Council

By: \_\_\_\_\_ Date \_\_\_\_\_  
National Trust for Historic Preservation

## APPENDIX B: REPETITIVE LOW IMPACT ACTIVITIES

The following classes of undertakings are considered exempt from further review or consultation under the terms of this Agreement. NPS staff are not required to notify or consult with YOSE cultural resource staff about these classes of undertakings unless the project proponent has reason to believe that a specific exempt undertaking may affect historic properties. (NOTE: Items 1, 6, and 11 should be recorded in building files, and should include date, action taken, building location, type of paint used, etc.).

1. Maintenance (housekeeping, routine maintenance, and building monitoring) which includes:
  - a) Painting of historic structures (exterior and interior) to match existing color or based on paint analysis by a historical architect or exhibit specialist (structures);
  - b) Regrading of terrain adjacent to a building to achieve positive water runoff in areas not designated as archeologically sensitive;
  - c) Housekeeping, routine maintenance, building monitoring and other such actions (such as replacement of individual window panes, replacement of window putty, repair/replacement of light switches, and rewiring existing fixtures in existing conduit) that do not incur damage to historic fabric;
  - d) Roofing maintenance or replacement, when maintained or replaced in kind with original historic appearance and materials;
2. Routine grounds maintenance, such as grass cutting and treatment, maintenance of shrubs, and tree trimming;
3. Installation of environmental monitoring units, such as weather, water, air quality, and natural science monitoring units, provided that such installations are done in an unobtrusive manner and do not impact historic fabric or cultural landscapes;
4. Maintenance of existing roads or existing parking areas, including repaving and grading, within previously disturbed areas ;
5. Maintenance of fire detection and suppression systems and security alarm systems, if done in an unobtrusive manner and without impacting historic fabric;
6. Rehabilitation, maintenance, or replacement of above-ground utility lines or transmission lines, unless it requires heavy equipment traffic with the potential for ground disturbance;

7. Health and safety activities such as non-destructive testing for radon gas, asbestos, lead-based paint, lead pipes, and hazardous materials and wastes;
8. Mitigation or abatement of hazardous materials, under the direction of the park exhibit specialist, including the following:
  - a) Removal of damaged asbestos floor tile and replacement with appropriate historic or non-historic floor treatment;
  - b) Carpeting over damaged asbestos floor tiles which do not contribute to the historic significance of a structure;
  - c) Encapsulation of lead-based paint in window trim and molding where there is no change to color or appearance;
9. Maintenance operations for non-contributing buildings in a historic district, except excavations and borings in archeologically sensitive areas;
10. Conducting non-ground disturbing elements of an Integrated Pest Management (IPM) program for removal of pests such as termites, insects and rodents.
11. Fire hazard reduction activities that do not involve ground or surface disturbance and that do not have the potential to affect access to or use of resources by Native Americans;
12. Routine trail maintenance limited to brushing and light maintenance of existing trail tread with hand tools;
13. Felling of hazardous trees along trails, roadways, utility corridors, or within recreation areas, provided they are not elements of designed historic landscapes and provided that they are left in place and do not generate risk of indirect effects on historic properties from intense burning,
14. Removal of hazard trees from road prisms, so long as ground disturbance is not allowed off previously disturbed areas associated with road prisms;
15. Maintenance of existing facilities that does not involve new or additional ground disturbance (e.g. maintenance or replacement of cattle guards, gates, fences, guard rails, barriers, traffic control devices, light fixtures, curbs, sidewalks, etc.);

16. Maintenance (that does not add to nor change the configuration of the existing facilities) of existing electronic communication sites involving no ground disturbance.

17. Repair/removal of bridges when integrity has been lost.