



Appendix G: Draft Memorandum of Agreement

DRAFT
MEMORANDUM OF AGREEMENT
BETWEEN THE NATIONAL PARK SERVICE AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE RESTORATION OF THE
MARIPOSA GROVE OF GIANT SEQUOIAS,
YOSEMITE NATIONAL PARK,
MARIPOSA COUNTY, CALIFORNIA

(NOTE: DRAFT MOA will be revised based on ongoing consultation with SHPO and traditionally associated American Indian tribes and groups. Final MOA to be included in Record of Decision.)

WHEREAS, the National Park Service (NPS) has determined that existing infrastructure within the Mariposa Grove of Giant Sequoias (Grove), including buildings roads and parking areas, is effecting the long term health of the giant sequoias within the Grove, and

WHEREAS, the Mariposa Grove of Giant Sequoias was part of the Yosemite Grant, legislation passed by the US Congress and signed by President Lincoln in 1864, which set aside Yosemite Valley and the Mariposa Grove of Giant Sequoias as the first public lands protected for all time for their scenic and natural values, and

WHEREAS, the NPS has developed a plan to restore natural processes at key locations within the Grove, and that this action constitutes an Undertaking as defined by the National Historic Preservation Act (NHPA); and

WHEREAS, the NPS initiated consultation with the California State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (Council), American Indian tribes and groups on September 30, 2011, and has involved the public according to the process specified by the National Environmental Policy Act, and the NPS will maintain ongoing consultation with all parties as required, including the following American Indian tribes and groups: American Indian Council of Mariposa County, Inc. (also known as the Southern Sierra Miwuk Nation), Bishop Paiute Tribe, Bridgeport Paiute Indian Colony of California, Mono Lake Kutzadika^a Paiute Tribe, North Fork Rancheria of Mono Indians of California, Picayune Rancheria of the Chukchansi Indians, and Tuolumne Band of Me-Wuk Indians; and

WHEREAS, the NPS initiated consultation pursuant to the 1999 *Programmatic Agreement among the National Park Service at Yosemite National Park, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Planning, Design, Operations and Maintenance, Yosemite National Park, California*, and at the request of the SHPO, the NPS agreed to consult (as confirmed by NPS in an April 11, 2012, letter) under the standard review process as identified under 36 CFR Part 800 because of the Undertaking's potential for adverse effects, and

WHEREAS, the NPS notified the Council by letter dated August 7, 2013 that the proposed Undertaking had the potential to adversely affect historic properties and that a memorandum of agreement would be developed with SHPO and no response to the notification was received by the NPS; and

WHEREAS, the Area of Potential Effect (APE) was defined as the combined Mariposa Grove and the South Entrance Station Historic Districts, which includes the 4-square-mile area comprising the original 1864 Yosemite Grant, the Mariposa Grove Road, and the Mariposa Grove Archeological District, and for which NPS received concurrence from the SHPO on February 5, 2013 (Attachment A of this Agreement provides a map that shows the extent of the APE including associated trails, roads, parking lots, and buildings); and

WHEREAS, through consultation, NPS and SHPO agree that the Undertaking will constitute an adverse effect to the Mariposa Grove Historic District (as amended) as a result of the effects of the proposed actions to the historic road and trail system within the Grove; and

WHEREAS, the NPS and SHPO agree that the Undertaking will adversely affect archeological resources as a result of the construction of parking areas near the South Entrance Station and Grove picnic area and potentially adversely affect archeological resources in the lower Grove area; and

WHEREAS, the NPS and SHPO agree that the Undertaking will adversely affect resources of importance to traditionally associated American Indian tribes and groups; and

WHEREAS, this Memorandum of Agreement (Agreement) provides the mechanism to resolve the adverse effects of the Undertaking and complete any and all requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) and its implementing regulations, 36 CFR 800 with regard to any activities relating to the Undertaking.

NOW, THEREFORE, the NPS and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the Undertaking on historic properties, American Indian traditional cultural resources, and archeological resources and that these stipulations shall govern the Undertaking until this Agreement expires.

STIPULATIONS

The NPS shall implement the following stipulations:

I. Stipulations for Mitigation Measures to resolve the adverse effects of the Undertaking

A. Update of National Register of Historic Places Nominations and Determinations of Eligibility

- 1. Nomination Updates for the Historic Properties Affected.** Within three years of completion of the Undertaking, the NPS will prepare an amendment to the Mariposa Grove Archeological District National Register nomination to update the nomination

with currently available information, incorporate tribal cultural perspectives, and reflect any changes to the district resulting from the Undertaking. The NPS will submit the amendment to the associated American Indian tribes and groups with and SHPO for review and comment. Within six months of the receipt of the comments, the NPS will address the comments and forward the amendment to the Keeper of the National Register.

2. Determination of Eligibility (DOE) Update for the Historic Properties Affected.

Within three years of completion of the Undertaking associated with the proposed construction of a roundabout at the South Entrance Station, the NPS will prepare amendments to the Cultural Landscape Inventories for the Mariposa Grove Historic District and South Entrance Historic District to reflect changes to the districts resulting from the Undertaking. The NPS will submit amendments to SHPO for review and concurrence.

B. Measures to Address Tribal Cultural Values (*To be determined based on continuing consultations with Yosemite's tribal partners*)

C. Archeological Resources Treatments

- 1. Archeological Data Recovery Excavations.** Based on the final designs developed for the project and prior to any ground disturbing actions at CA-MRP-660/H and CA-MRP-661/H associated with the undertaking, the NPS will conduct archeological excavations suitable to recover the scientific information that would otherwise be lost through implementing the undertaking. Further evaluation at CA-MRP-660/H will be required to determine the extent of the archeological site. These excavations will be designed in consultation with traditionally associated American Indian tribes and groups who ascribe religious and cultural significance to these resources, and will incorporate measures to protect these values during conduct of data recovery activities. These excavations will conform to standard archeological preservation practices as specified in the Secretary of the Interior's Standards for Treatment of Archeological and Historic Properties, and NPS guidance for management and treatment of archeological resources. The research design(s) for data recovery will be consistent with the Yosemite Archeological Synthesis and Research Design, and incorporate where appropriate recommendations from more recent archeological studies regarding field, laboratory, and analysis methods. NPS will submit research design(s) and draft report(s) of findings for review by SHPO, traditionally-associated tribes and groups, and professional peers within the agency. NPS will submit copies of final reports to SHPO and traditionally-associated tribes and groups, and incorporate digital versions of the reports into the Yosemite Digital Science Library. All resultant records, data, and archeological materials will be archived into the Yosemite Museum Collections consistent with NPS standards for archeological materials and data.

2. Archeological Construction Monitoring: (TBD)

D. Other Documentation

Prior to implementing any construction, deconstruction, or removal aspects of this Undertaking, the NPS will prepare standard, 5 x 7 archival quality photographic documentation [*Details under discussion with SHPO.*] for those portions of the Mariposa Grove and South Entrance historic districts that will be directly affected by the undertaking, in keeping with the standards of the State of California Historic Resource recording format. Within three years of the completion of the Undertaking, the NPS will prepare the following:

1. **Completion Report.** Documentation will consist of a completion report noting methods, contributing resource documentation, and detailed State of California historic resource records. Photographic documentation will follow standards for State of California Historical Records. Information will also be entered into the NPS List of Classified Structures as a means of tracking changes to contributing elements of the Historic Districts.
2. **Submission of products.** Three copies of the Completion Report, the negatives, prints, and associated records, will be prepared according to the National Park Service archival standards as specified by Yosemite Archives and accessioned into the Yosemite Museum Collections. Image files should be a minimum of 1200 dpi at 8"x10" size in RAW format. Yosemite National Park will file a copy of the Completion Report in the park's Resources Management and Science library and Yosemite Archives.
3. **Digital copies of products.** A digital copy of all materials produced for this project will be included in the archival materials accessioned into the Yosemite Museum Collections, and incorporated into the Yosemite Digital Science Library.

E. Salvage

During field documentation efforts, YOSE historical architect, historical landscape architect, curator and/or preservation specialist will identify any architectural or masonry elements, objects, and materials that may be reused in rehabilitating similar historic structures or landscapes, or that may be suitable for accessioning into the Yosemite Museum Collection.

F. Interpretation

NPS will prepare interpretive materials pertaining to cultural, historical and archeological Resources. Interpretive materials will be developed in conjunction with ongoing consultation with Yosemite's traditionally associated American Indian Tribe and groups and the SHPO's office. Interpretation will include information related to American Indian traditional cultural resources and archeological resources within the Mariposa Grove and Historic District and the Mariposa Grove Archeological District. The history of timber operations in the vicinity of the South Entrance Station will also be addressed through wayside exhibits and other interpretive media and will include interpretation of extant features such as logging machinery, structural remnants of the logging operation and

remnant trees utilized in support of the logging operation. The history of Chinese involvement in Washburn Family operations, especially road construction, will be incorporated into interpretive components along the Washburn Wagon Road.

G. Site Clean-up

After materials have been salvaged, the following actions will take place in the Mariposa Grove Historic District:

1. **Materials and features to be left in place.** Where the historic road surfacing is being modified, the overall roadway prism (extending from the base of the road fill to the inboard edge of the road) will be retained so that extent of the road as historic feature is still intact. Exceptions include those portions of the road that will be slightly modified/reggraded to restore sheet flow of storm water along the uphill side of the roads. In instances where drainage ditches divert water away from the sequoias, the ditches would be modified to restore the natural flow of storm water to the sequoias. In such instances, the extent of the fill slope along the roads would be retained but the cut slope portions would be modified in support of restoring natural hydrologic functions.

II. Standards and Special Conditions

A. Definitions

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

B. Project Standards

The standards, guidelines, regulations, and codes cited below will be followed in execution of the Undertaking:

1. **Professional qualification standards.** All historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of individuals meeting the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-39) for the discipline appropriate to the activity.
2. **Standards for inventory, evaluation, registration, and documentation.** Any inventory, evaluation, registration, or documentation of historic properties completed as per this Agreement shall conform to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) and to applicable guidelines and conventions established by NPS and SHPO.
3. **Treatment standards.** Any work on historic buildings, structures, and sites shall conform to the Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties.

4. **Curation standards.** If applicable, curation of materials and records resulting from actions stipulated by this Agreement 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.
5. **Disclosure of archeological site information.** The Signatories to this Agreement acknowledge that historic properties covered by this Agreement are subject to the provisions of section 304 of the National Historic Preservation Act, as amended, and section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archeological site information. All actions and documentation prescribed by this Agreement must be consistent with these sections.

C. Discoveries and Unanticipated Effects

If NPS encounters a previously unidentified property that may be eligible for the National Register during an action of the Undertaking or if it appears that a known historic property will be affected in an unanticipated manner, NPS and SHPO will follow these procedures:

1. When unanticipated properties are found.

- a. NPS will halt activities in the vicinity of the previously unidentified property and take all reasonable measures to avoid or minimize harm to the property.
- b. NPS will notify SHPO within two (2) working days of the discovery and provide SHPO with a written assessment via electronic mail. The assessment will evaluate the National Register eligibility of the property and describe actions proposed to resolve any potential adverse effects.

2. SHPO's recommendation regarding eligibility and proposed actions.

- a. SHPO shall respond to NPS within two (2) working days of the notification via electronic mail.
- b. NPS shall take into account SHPO's recommendations regarding National Register eligibility and proposed actions. Appropriate actions will then be carried out by NPS. A report of the actions will be submitted to SHPO when they are completed.

III. Administrative Stipulations

A. Amendments

Either signatory party may propose amendments to this Agreement. If a signatory proposes an amendment, the other party shall consult on its appropriateness pursuant to 36 CFR 800.6(c)(7) and (8). This Agreement may be amended only upon the written agreement of both signatories. The amended Agreement shall take effect on the date it is executed by both signatories.

B. Termination

The following process shall be followed to terminate this Agreement:

1. **Proposed termination.** A signatory party can propose termination of this Agreement in writing to the other signatory, explaining the reasons for proposing termination. The signatories shall consult for 30 days to seek alternatives to termination.
2. **Amendment in lieu of termination.** If the consultation results in an agreement on an alternative to termination, the signatories shall proceed to amend this Agreement in accordance with Stipulation III.A.
3. **Failure to agree.** If consultation does not result in agreement on an alternative to termination, the party proposing termination may terminate this Agreement by promptly notifying the other party in writing. Such termination shall remove all force and effect from this Agreement.
4. **Process to terminate.** Should this Agreement be terminated, NPS shall consult with SHPO to develop a new Agreement in accordance with 36 CFR 800.14(b). Until and unless a new Agreement is executed for the Undertaking, NPS will consult with SHPO in accordance with 36 CFR 800.4 - 6.

C. Dispute Resolution

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, all work that is the subject of the dispute will stop until the dispute is resolved according to the procedures in this section and NPS shall consult with the objecting party(ies) to resolve the objection. If NPS determines, within 30 days, that such objections(s) cannot be resolved, NPS will:

1. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise NPS on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the Agreement, will be taken into account by NPS in reaching a final decision regarding the dispute.
2. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, NPS may render a decision regarding the dispute. In reaching its decision, NPS will take into account all comments regarding the dispute from the parties to the Agreement.
3. It is the NPS's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute that remain unchanged. NPS will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. NPS's decision will be final.

4. **Biennial reporting requirement for this Agreement.** The park will report in writing on the progress made toward the completion of the requirements of this Agreement and the Undertaking in the biennial report required by Section VIII of the 2008 Nationwide Programmatic Agreement between NPS, the National Conference of State Historic Preservation Officer, and the Council.
5. **Duration of this Agreement.** Unless terminated pursuant to Stipulation III.B, the duration of this Agreement is ten (10) years from the date of its execution or until the Undertaking is complete, whichever is shorter.
6. **Effective Date of this Agreement.** This Agreement will take effect on the date that it is executed by NPS and SHPO.

EXECUTION of this Agreement by NPS and implementation of its terms shall be considered evidence that NPS has taken into account the effects of this Undertaking on historic properties and has afforded the Council, SHPO, and tribes and groups an opportunity to comment.

SIGNATORIES

National Park Service

Don L. Neubacher
Superintendent, Yosemite National Park

Date

California State Historic Preservation Officer

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

Date

CONCURRING PARTIES

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

_____	_____	_____
Name	Title	Date

For the Bishop Paiute Tribe:

_____	_____	_____
Name	Title	Date

For the Bridgeport Paiute Indian Colony:

_____	_____	_____
Name	Title	Date

For the Mono Lake Kutzadika^a Paiute Tribe:

_____	_____	_____
Name	Title	Date

For the North Fork Rancheria of Mono Indians:

_____	_____	_____
Name	Title	Date

For the Picayune Rancheria of Chukchansi Indians:

_____	_____	_____
Name	Title	Date

For the Tuolumne Band of Me-Wuk Indians:

_____	_____	_____
Name	Title	Date

Attachment A

Map of Area of Potential Effect, Restoration of the Mariposa Grove of Giant Sequoias



