

**MEMORANDUM OF AGREEMENT
BETWEEN THE NATIONAL PARK SERVICE AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING THE REMOVAL
OF THE AHWAHNEE HOTEL TENNIS COURTS,
YOSEMITE NATIONAL PARK,
MARIPOSA COUNTY, CALIFORNIA**

May 16, 2019 Draft

WHEREAS, the National Park Service (NPS) at Yosemite National Park (the park) is planning the removal of the Ahwahnee Hotel Tennis Courts as part of meadow restoration components of the *Merced Wild and Scenic River Comprehensive Management Plan* (Merced River Plan) as approved in the March 2014 Record of Decision; and

WHEREAS, this action constitutes an Undertaking (Attachment A) as defined by the implementing regulations for Section 106 of the National Historic Preservation Act (NHPA), found at 36 CFR Part 800; and

WHEREAS, the park initiated consultation on this action implementing the Merced River Plan with the California State Historic Preservation Officer (SHPO) in accordance with the 2014 *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 Compliance with Section 106 of the National Historic Preservation Act for the Merced Wild and Scenic River Comprehensive Management Plan* (Merced River Plan PA) on May 29, 2018; and

WHEREAS, the Merced River Plan PA categorized this project with known adverse effects that would be resolved through the standard NHPA review process under 36 CFR Part 800; and

WHEREAS, the park notified the Advisory Council on Historic Preservation (ACHP) through their electronic notification process on June 4, 2018, that the park intended to move ahead with implementation of the Undertaking which would require development of an MOA to address the adverse effects identified in the Merced River Plan; and the ACHP did not notify the park of their intention to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the park has consulted on the undertaking with the following traditionally associated American Indian tribes and groups in accordance with 36 CFR § 800.2(c)(ii)(C) and Executive Order 13175: Consultation and Coordination with American Indian Tribal Governments: the American Indian Council of Mariposa County, Inc. (also known as the Southern Sierra Miwuk Nation), Bishop Paiute Tribe, Bridgeport Indian Colony, 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 park notified the National Trust for Historic Preservation per the Merced River Plan PA that the proposed Undertaking would adversely affect historic properties; and the National Trust for Historic Preservation did not notify the park of their intention to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the Signatories of this Agreement recognize that traditionally associated American Indian tribes and groups possess knowledge pertaining to historic properties of religious and cultural significance in the park; and

WHEREAS, the area of potential effects (APE) was defined in the park's May 29, 2018, correspondence with the SHPO and includes the Ahwahnee Hotel, tennis courts, meadow, associated project staging area and nearby trails (Attachment B); and

WHEREAS, the Ahwahnee Hotel is a National Historic Landmark and is recognized for its outstanding historical significance and would be indirectly affected by the Undertaking located outside the landmark boundary; and

WHEREAS, the Ahwahnee Hotel is located within the boundaries of the following three (3) National Register historic properties: Yosemite Valley (historic district), the Ahwahnee Hotel (historic building), and the Yosemite Valley Archeological District, as described and shown in (Attachment B); and

WHEREAS, the park and SHPO agree that the Undertaking has direct, indirect and cumulative effects to National Register properties and will adversely affect the Yosemite Valley Historic District due to the removal of the tennis courts (a contributing structure) and the associated sequoia trees planted to visually screen the view of the courts from the main hotel building (contributing vegetation) within the district's Ahwahnee Developed Area; and

WHEREAS, the park and SHPO agree that the Undertaking occurs within the boundary of the Ahwahnee Hotel National Register nomination and although the tennis court was described, it was not identified as a contributing resource and its construction post-dates the period of significance; and

WHEREAS, the park, SHPO, and traditionally associated American Indian tribes and groups agree that the Undertaking will not adversely affect known archeological historic properties in the Yosemite Valley Archeological District as a result of the removal of the tennis courts, associated structures and sequoia trees, and social trails; and

WHEREAS, the park, SHPO, and traditionally associated American Indian tribes and groups agree that the Undertaking will not adversely affect historic properties of religious and cultural significance to traditionally associated American Indian tribes and groups; and

WHEREAS, the park, SHPO and traditionally associated American Indian tribes and groups agree that the removal of the tennis courts and associated vegetation will allow for further restoration of the Ahwahnee Meadow which contributes to the significance of the Yosemite Valley historic district; and

WHEREAS, this Agreement provides the mechanism to resolve the adverse effects of the Undertaking and complete any and all requirements of Section 106 of the NHPA (54 U.S.C 306108) and its implementing regulations, 36 CFR Part 800, with regard to any activities relating to the Undertaking; and

WHEREAS, the park provided the public with an opportunity to review and comment on this MOA prior to its execution during a seven-day review period via the project page on the NPS Planning, Environment, and Public Comment website; and

NOW, THEREFORE, the park and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effects of the Undertaking on the Yosemite Valley historic district, and that these stipulations shall govern the Undertaking until this Agreement expires.

STIPULATIONS

I. Amend the National Register Nominations for Yosemite Valley and the Ahwahnee Hotel

The park shall amend the Yosemite Valley Historic District National Register Nomination documentation to reflect the removal of the contributing Ahwahnee Tennis Courts within five (5) years of executing this agreement. The park shall also amend the Ahwahnee Hotel National Register nomination within five (5) years of executing this agreement, to reflect the removal of the tennis courts.

- A.** The park shall provide the draft amendments to the nominations to the SHPO's Registration Unit for processing and submission to the NPS Federal Preservation Officer for National Register consideration.

II. Historic American Building Survey (HABS) Documentation of the Tennis Courts and Associated Features

The park shall photographically document the tennis courts, including the associated structures, screening vegetation, and setting, prior to any alterations. The documentation will include large format photographs and negatives that follow the HABS guidelines to ensure that they are archivally stable and meet HABS photographic standards.

- A.** Photographs of tennis court exterior and interior views including detailed views of court features (such as screening trees, stone terraces, water fountain remnants, and court playing surface) and setting, for the periods before, during, and after demolition.
 - 1. Photographs will include images taken perpendicular to each side of the court, along with images from opposite corners to show the relationship of the courts to the screening trees and setting. A minimum of two images from opposite diagonal corners taken from within fence will be needed to show details of court without being obscured by fence.
 - 2. High resolution (minimum of 600 dpi) digital black and white photographs shall be supplied as 5x7 inch archival prints of each image, along with digital files of all images (.tiff format).
 - 3. Photographs shall be numbered with an image and referenced to a written photolog sheet indicating the image number, date, photo location (UTM to within 3 m accuracy, feature, detail, brief description, and photo direction (e.g. view to north at northeast corner of courts).
 - 4. Digital files (.tiff format) and the report will be prepared according to the archival standards of the Library of Congress.
- B.** The park shall submit a copy of the draft documentation to the NPS Pacific West Region Preservation Partnership Program Manager for review prior to finalizing the documentation. The park shall copy (cc) the SHPO on the transmittal of documentation to the NPS, Pacific West Region. The park shall provide copies of correspondence from the NPS regional office to SHPO regarding the receipt and acceptance of documentation.
- C.** Within one (1) year of tennis court demolition, the park will submit final archival prints and digital files on gold-on-gold archival CDs to the Yosemite National Park Archives and to the Central California State Information Center.

III. Outreach through Social Media

- A. To address both direct, indirect, and cumulative effects of the undertaking, the park shall create a web-based outreach project through social media that would act as a public resource to interpret the history of recreation in Yosemite National Park, which will contribute to a larger effort to engage all generations and virtual visitors in understanding the history of Yosemite. The outreach piece will include the following components:

1. Web-based Gallery: A History of Recreation at the Ahwahnee Hotel
 - a. The park will prepare a web-based gallery to showcase historic and contemporary images of recreation in association with the Ahwahnee Hotel as part of an annotated photo and video gallery, with a series of passages that will tell the story of recreation at the historic hotel over the years. The project will include not only images of the tennis courts, but will also address cumulative impacts by highlighting other recreational pastimes that have been removed (such as the golf course) at the Ahwahnee. The park will host the gallery on the park website and link it to related and relevant content already on the park's website.
 - b. The park recently received a large donation of film clips from the Curry Company that the park will examine for relevant materials that have the potential to be shared with the public through this project and be archived in the gallery.
2. Public Outreach: Social Media Launch
 - a. The new gallery and content will be unveiled by the park on social media posts through Facebook, Instagram, and Twitter, that will link to the website for the project.
 - b. The park will launch a social media campaign to unveil the new gallery in a series of at least six posts (at least two per platform). At least one post on each social media platform will focus on the Ahwahnee tennis courts.
3. Integration: Public Access to the Gallery Resource
 - a. As part of the official park website, researchers, students, and interested stakeholders will have on-demand access to information about the significance of the Ahwahnee tennis courts and their role in developing recreation in Yosemite.
 - b. The digital gallery and website content will serve as a reference for interpretive rangers to incorporate the resource and appropriate themes into their public programs.
 - c. The park will ensure that content will be compliant with section 508 of the Rehabilitation Act of 1973 to ensure it is accessible to individuals with disabilities.

- B. The park shall complete and launch the outreach piece within three years of the removal of the tennis courts and associated vegetation. The park shall submit draft content to the SHPO for a 30-day review and comment period, at the stages described below (marked with an asterisk). The timeline for the completion of these materials is as follows:

1. Content development (estimated completion dates):
 - a. Gallery and narrative outline – June 2020
 - b. Gallery and narrative draft – July 2020 **SHPO review*

- c. Final gallery – September 2020
- 2. Public outreach (estimated completion dates):
 - a. Social media plan draft – September 2020
 - b. Social media plan final – November 2020 **SHPO review*
 - c. Social media launch – January 2021
- C. Following review periods, the park shall integrate and respond to SHPO comments in writing within 45 days. If no objections are raised by the SHPO within 30 days of receiving the amended deliverable, the park shall proceed with content development and/or launch on social media as outlined above.
- D. Stipulation III will not be considered completed until the park has negotiated resolution of comments with the SHPO and implemented the gallery outreach through social media.

IV. Re-purposing the Sequoia Trees

- A. The park shall offer wood from the sequoia trees to be removed to the traditionally associated tribes and groups for their traditional use. Subsequently, the park will make an effort to re-purpose the remaining wood (after the traditional tribes and groups have claimed or declined the sequoia trees for traditional use) for the fabrication of benches, signs, and other park amenities.

V. 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 shall 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 Historic Preservation Professional Qualifications Standards (48 FR 44738-39) for the discipline appropriate to the activity.
2. Standards for inventory, evaluation, registration, and documentation: Inventory, evaluation, registration, and documentation of any changes to the Yosemite Valley Historic District shall be done in accordance with the guidance and criteria for the National Register of Historic Places.
3. 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 the park to the extent permitted by sections 5097.98 and 5097.991 of the California Public Resources Code.
4. 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 NHPA, 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.

VI. Discoveries and Unanticipated Effects

A. Monitoring

The park's cultural resources program lead shall assign cultural resource subject matter experts meeting the qualifications for the applicable discipline as described in the Secretary's Historic Preservation Professional Qualification Standards to monitor ground disturbing activities in the vicinity of archaeological site CA-MRP-292/293H. Park monitor(s) shall prepare a summary report and data from park monitoring will be added to the park's archeological database, including spatial data. The park's Native American Liaison shall provide notification to the traditionally associated American Indian tribes and groups of any ground disturbance activities to ensure the opportunity to provide cultural monitoring if desired.

B. Training

All crew members participating in the restoration or removal of the Ahwahnee tennis courts, associated structures, screening trees, and social trails shall receive training in the avoidance of damage to archaeological and culturally significant resources prior to beginning ground disturbing activities. The training will include the recognition of such resources, an orientation to the site, and procedural guidance as to how the project will proceed with respect to avoiding impacting archaeological and other cultural resources.

C. Discoveries and Unanticipated Effects

If the monitor(s) encounter a previously unidentified property that may be eligible for the National Register during the undertaking or if it appears that a known historic property will be affected in an unanticipated manner, the park and SHPO shall address the discovery in accordance with 36 CFR 800.13(b), including:

1. The park shall halt activities within the project area until assessments by a park archeologist can occur and assess the extent and composition of the property.
2. The park shall notify the SHPO and the traditionally associated American Indian tribes and groups (as applicable) within two (2) working days of the discovery.
3. The park will provide consulting parties with a written preliminary assessment evaluating National Register eligibility of all historic properties discovered during the project. The assessment shall describe actions proposed to resolve any potential adverse effects before work continues in the vicinity of the discovery.
4. The SHPO and American Indian tribes shall respond to the park within two (2) working days of the notification of an unanticipated discovery and the park's assessment of eligibility. The park shall take into account the recommendations regarding National Register eligibility and proposed actions.

5. The park shall provide the SHPO with any comments on the preliminary assessment received from the traditionally associated American Indian tribes and groups within two (2) working days of receipt of the comments.
6. If the park determines that SHPO objections to the proposal of actions cannot be resolved, the park shall proceed consistent with Stipulation VIII.C.

VIII. Administrative Stipulations

A. Amendments

1. Either signatory party may propose amendments to this Agreement pursuant to 36 CFR § 800.6(c)(7). This Agreement may be amended only upon the written agreement of both signatories. The amended Agreement will take effect on the date it is executed by both signatories.

B. Termination

The following process will 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 will 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 will proceed to amend this Agreement in accordance with Stipulation VII.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 will remove all force and effect from this Agreement.
4. Process to terminate: Should this Agreement be terminated, the park will 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, the park 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 stipulation and the park will consult with the objecting party(ies) to resolve the objection. If the park determines, within 30 days, that such objections(s) cannot be resolved, the park will:

1. Notification and Comment: Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR § 800.2(b)(2). Any comment provided by the ACHP, and all comments from the parties to this Agreement, will be taken into account by the park in reaching a final decision regarding the dispute.
2. No Comments: If the ACHP does not provide comments regarding the dispute within 30 days

after receipt of adequate documentation, the park may render a decision regarding the dispute. In reaching its decision, the park will take into account all comments regarding the dispute from the parties to the Agreement.

3. Park Responsibility: It is the park's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute. The park will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The park's decision will be final.

D. Objections to Proposed Mitigations by the Public

1. Objections from the public to the proposed mitigations outlined in the draft MOA must be submitted in writing to the park during public review of the draft MOA on the Planning, Environment, and Public Comment website.
2. After the public review and comment period for the draft MOA has closed, the park shall consider any public comments regarding the proposed mitigations and incorporate any changes into a final MOA within 14 days following closure of the review period. The public review period and any public comments received will be summarized in the final MOA.
3. The park shall provide electronic notification to the SHPO of any comments or objections raised by the public to the proposed mitigations identified in the draft MOA within 14 days of the closure of the public review period. The park will provide the SHPO with any suggested changes to the MOA as a result of public comment, for review and concurrence before finalizing the MOA. The SHPO will respond to the park with any comments regarding any proposed changes to the MOA within seven (7) calendar days.
4. Stipulation VII.D will not be considered completed until the park has negotiated resolution of public comments with the SHPO.

E. Reporting Requirement for this Agreement

The park will submit an annual written report on the progress made toward the completion of the requirements of this Agreement and the Undertaking as part of the park's annual Section 106 reporting requirements:

1. Content: Reporting will include updates on progress of actions called for in Stipulations I – VI of this Agreement and any agreed upon changes to this Agreement. The report will also include consultation history on monitoring, discoveries, and any associated consultation efforts.
2. Distribution: The annual report will be provide to the SHPO and traditionally associated American Indian tribes and groups. Reports are also posted to the public on the park's Planning, Environment and Public Comment website.

F. Duration of this Agreement

Unless terminated pursuant to Stipulation VII.B, the duration of this Agreement is five (5) years from the date of its execution or until the signatories confirm that the Undertaking and associated

mitigations are complete, whichever comes first. The park may propose an extension of the agreement through an amendment in accordance with Stipulation VII.A.

G. Effective Date of this Agreement

This Agreement will take effect on the date that it is executed by the park and SHPO.

H. Anti-Deficiency Act Statement

The Anti-Deficiency Act, 31 U.S.C. 1341 (1998), prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the parties agree that any requirements for the obligation of funds arising from the terms of this Agreement shall be subject to the availability of appropriated funds, and that this agreement shall not be interpreted to require the obligation or expenditure of funds in violation of the Anti-Deficiency Act.

Execution of this MOA by the park and the SHPO and implementation of its terms evidence that the park has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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SIGNATORIES

National Park Service

Michael T. Reynolds
Superintendent, Yosemite National Park

Date

California Office of Historic Preservation

Julianne Polanco
State Historic Preservation Officer

Date

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CONCURRING PARTIES

For the American Indian Council of Mariposa County, Inc. (aka Southern Sierra Miwuk Nation):

William Leonard, Chairperson

Date

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For the Bishop Paiute Tribe:

William Vega, Tribal Chairman

Date

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For the Bridgeport Indian Colony:

John Glazier, Chair

Date

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For the Mono Lake Kutzadika^a Tribe:

Charlotte Lange, Chair

Date

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For the North Fork Rancheria of Mono Indians of California:

Gary Walker, Chairperson

Date

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For the Picayune Rancheria of the Chukchansi Indians:

Jennifer Ruiz, Chair

Date

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For the Tuolumne Band of Me-Wuk Indians:

Kevin Day, Chair

Date

Attachment A – Description of the Undertaking

Removal of the Ahwahnee tennis courts and the trees screening the courts from hotel views are associated with the meadow restoration components of the Merced Wild and Scenic River Comprehensive Management Plan (Merced River Plan) as described in the March 2014 Record of Decision for the plan. During consultation associated with the Merced Wild and Scenic River Final Comprehensive Management Plan and Final Environmental Impact Statement (FEIS), the California State Historic Preservation Office (SHPO) and other signatories of the 2014 *Merced Wild and Scenic River Comprehensive Management Plan Programmatic Agreement* (Merced River Plan PA) requested that, as a Merced River Plan Category 3 project, the project will undergo the standard review process (36 CFR §§ 800.3-800.6). In a letter dated May 29, 2018, the park provided the SHPO with information about the proposed undertaking, the area of potential effects, and the historic properties potentially affected.

The National Park Service is funding and carrying out this undertaking that includes the following actions:

- The demolition and removal of the existing historic tennis courts, comprised of a 14,400 square foot concrete pad, stone terraces, chain link fencing, and other associated minor structures;
- The removal of existing non-native, but historic, sequoia trees planted to screen the tennis courts from the hotel;
- The removal and ecological restoration of 420 linear feet of social trailing associated with the tennis courts;
- Ecological restoration of the tennis courts site, including filling and re-grading the site to restore a natural topography, in addition to re-vegetation with native plants.

Attachment B – Area of Potential Effects

