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To: [Beason, Mark@Parks](mailto:Beason.Mark@Parks)
Subject: MRP ROD concerns
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Hello Mark—I just left you a VM regarding this. Please treat this as a confidential draft until we get a chance to discuss.

Best, Anthony
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Notes on the Merced Wild and Scenic River Comprehensive Management Plan Record of Decision

Following are notes on three important areas of concern in the Merced River Plan Record of Decision.

- Superintendent's House & Garage
- Sugar Pine Bridge
- Non-Impairment Determination

1. Superintendent's House & Garage

The ROD states that the Selected Action “modifies Alternative 5 by removing Residence 1 from its current location within the river corridor either by demolition or relocation,” noting that this is the only change to the Final Merced River Plan/EIS that was incorporated in the Selected Action.

It furthermore notes that Alternative 6 (one of the alternatives not selected) would have retained and rehabilitated Residence 1 in its current location, but states that “concerns about inadequate access and parking to support the public use of the facility would make it challenging to justify the investment.”

In addition, the ROD states that the decision to remove Residence 1 was based on “concern about the radiating impacts to Cook's Meadow from social trails related to the presence of the structures” and “the likelihood of exacerbating congestion and crowding by promoting additional activity in the area without the land available to provide parking and an appropriate means of access.”

COMMENT: Concerns about congestion, crowding, and inadequate parking access as a significant barrier to the reuse of the property were never raised in the Draft Plan or at any point during consultation. Concerns about parking were raised for the first time during our final consultation call with Don Neubacher.

In addition, the ROD once again states that the decision to remove Residence 1 is based on “direction in the Secretarial Guidelines to limit facilities in the river corridor to those that are necessary for public use.”

COMMENT: We have disputed the NPS's interpretation of these prohibitions of major facilities (as Res 1 is arguably neither “major” nor a public facility) in our Draft Plan comments and during consultation but to no avail. (The Secretarial Guidelines are

silent on situations in which facilities are also ORV's, as is the case here.)

While the NPS agreed to the inclusion of "relocation" language for Residence 1, in a binding agreement under Section 106 of the NHPA, the ROD proceeds to explain why relocation is unlikely:

"Suitable locations for Residence 1 within Yosemite Valley have not been identified, as developable space outside of the river corridor is extremely limited and already allocated to other visitor services and overnight accommodations. Co-locating the facility within existing housing areas introduces a potentially incompatible use and does not alleviate the concerns associated with providing adequate parking and public access. Finally, a public use for this facility has not been identified, regardless of its location, and this, along with the cost and logistical difficulties of moving it without damaging or destroying a number of black oak trees, were considerations in the original decision to demolish it."

COMMENT: The NPS's unwillingness to seriously consider opportunities to move Residence 1 is made evident by the detailed discussion of obstacles to moving the structures in the ROD. The consulting parties were never given the opportunity to explore potential receiving sites for Residence 1, and the NPS had inaccurately characterized our opposition to relocation as grounded in part on the impact to the historic integrity of receiving sites; in fact, we never raised that concern.

The non-impairment determination (see below) states that "removal of a minimal number of contributing resources at Housekeeping Camp and Residence 1 will result in long-term, minor, adverse impacts." (In contrast, the removal of half of the Merced Lake High Sierra Camp tents, for example, is deemed a "moderate" impact.)

COMMENT: It is remarkable, and arbitrary, that the NPS has determined the proposed removal of Residence 1 to be a "minor impact," especially given the magnitude of the controversy over the proposed removal of Residence 1, including the insistence of the Advisory Council on Historic Preservation that relocation be considered.

2. Sugar Pine Bridge

The treatment of Sugar Pine Bridge and the nature of future planning are discussed very inconsistently throughout the ROD (as they are in the Final Plan.) The bridge is not even referenced in the non-impairment determination, under the theory that it is not proposed for removal in the plan.

The section 106 Programmatic Agreement includes the following language, which was the result of extensive consultation:

Hydrological Study for Sugar Pine Bridge

The Merced River Plan undertaking **retains all historic bridges for the immediate future** (emphasis added). To address the localized impacts that have been attributed to Sugar Pine Bridge, the NPS will initiate a study to assess the merits of various long-term bridge management strategies. The NPS will consult with the signatory and concurring parties to this agreement with regard to the content and structure of the study, including the development of the criteria for success in mitigating hydrologic

impacts and the array of alternative mitigation techniques to be tested.

In contrast, the Floodplain Statement of Findings in the ROD states: **“Sugar Pine Bridge will be removed contingent on the results of a separate hydrologic study, which will evaluate the extent to which the bridge affects river flows under existing conditions. If the bridge is determined to exceed a certain threshold, it will be removed”** (emphasis added.)

COMMENT: It is not only the varying degree of commitment to retaining Sugar Pine Bridge that is troubling; a major theme in our comment letters and discussion during consultation was how the NPS would evaluate alternatives to bridge removal. Rather than study how the bridge currently affects river hydrology, the National Trust has advocated instead for dynamic management by testing the effectiveness of mitigation strategies. Under the terms of the PA, the bridge would only be removed if these mitigation strategies failed to improve hydrology according to criteria of success developed in consultation with the signatory and concurring parties.

In stating elsewhere in the ROD that the bridge **“will be removed”** pending the findings of a hydrologic study evaluating the effects of the bridge **under existing conditions**, the Floodplain Statement of Findings flies in the face of the letter and spirit of the PA (itself a part of the ROD and seemingly directly contradicted by the Floodplain Statement) It also suggests that the NPS has foreclosed the future consideration of alternatives by prejudging the outcome of a decision that is supposed to be made in the future based on additional information.

3. Non-Impairment Determination

Under guidelines promulgated by the NPS National Leadership Council, the NPS must make a determination of “non-impairment” for each impacted resource that is analyzed in the Final Plan, with an explanation as to why the selected action’s impacts will not result in impairment.

The ROD states that “Historic Buildings, Structures and Cultural Landscapes” will not be impaired as a result of the Selected Action. It notes that, while “a select number of contributing resources within the Yosemite Valley Historic District would be removed and specific locations would be redesigned that would result in adverse effects to certain historic properties ... the NPS has deemed **these consequences to be acceptable because of the substantial benefits to biological resources**” (emphasis added.)

In addition, the ROD states that, “while some effects to historic properties are adverse, these effects do not rise to the level of impairment because as with any cultural system, change is inherent within the Yosemite Valley landscape”

COMMENT: We have on numerous occasions, both in written comments and through consultation, challenged the NPS’s attempts to take cultural landscape concepts regarding the dynamic nature of natural systems and applying them inappropriately to its treatment of historic structures. While we naturally support the notion that latitude for change must exist to allow historic structures to be adapted to meet current needs, we find it highly inappropriate that the NPS would use this flexibility as a defense or rationale for its demolition of historic properties.

It is remarkable that ultimately, the NPS has attempted to argue that removing historic structures does not qualify as “impairment” because (1) it benefits natural resources and (2) “change is inherent” in Yosemite. (Elsewhere the NPS has gone so far as to suggest that change resulting from demolition is not only “inherent” but even “desirable.”) We strongly object to this reasoning, as a matter of both policy and law. In our view, it is not consistent with the agency’s stewardship responsibilities for historic properties under Section 110(a) of the National Historic Preservation Act.

The ROD summarizes its determination of non-impairment of historic structures and cultural landscapes by direct reference to the consultation process and resulting PA: “In summary, the Selected Action will not result in impairment ... because avoidance, minimization and/or mitigation measures would be instituted to resolve adverse effects”

COMMENT: The Determination of Non-Impairment seems to suggest that the PA somehow offers a safeguard against impairment, a notion at odds with the fact that the final plan explicitly calls for the removal of dozens of historic structures; only by abandoning these elements of the plan can loss of these resources be avoided. The Determination of Non-Impairment is arbitrary, capricious, an abuse of discretion, and contrary to law.

The ROD concludes the discussion of non-impairment of historic buildings, structures and landscapes by stating “Furthermore, the parks will continue to preserve cultural resources; therefore, there is no reason to suspect that implementation of the selected alternative will pose a risk of impairment to the parks [*sic*] cultural resources.” [ROD, at B-10.]

COMMENT: This statement is absurd and circular; the unsubstantiated assertion that “the park[] will continue to preserve cultural resources” is in no way a guarantee that cultural resources are safe from impairment, especially given the agency’s track-record as reflected in this Section 106 consultation.

The Determination of Non-Impairment section concludes by finding that the Selected Action is consistent with the NPS management policies because “park resources and values will be passed on to future generations in a condition that is as good as, or better than, the conditions that exist today.”

COMMENT: Based on the outcomes in the Final Plan and in the PA, we strongly disagree with this conclusion.

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