



Merced River Plan Legislative Parameters

The Merced Wild and Scenic River Comprehensive Management Plan and Environmental Impact Statement (Merced River Plan/EIS) will be prepared within a complex set of regulations and policies. The plan must not only comply with requirements of the Wild and Scenic Rivers Act and National Environmental Policy Act, but it must do so within the parameters of other legislation that governs land use within Yosemite National Park. In addition, the review process for Section 106 of the National Historic Preservation Act of 1966, as amended, is being conducted in conjunction with this NEPA review process.

This document describes the key pieces of legislation that will form the legal context for development of the Merced River Plan/EIS. These pieces of legislation will guide development of the draft EIS document and will continue to guide its implementation.

National Park Service Enabling Legislation

Act of June 30, 1864, 13 Stat. 325, 16 USC §48. Authorizes a grant to California for the “Yo-Semite Valley,” and for land embracing the “Mariposa Big Tree Grove.” This tract was “to be held for public use, resort, and recreation” by the state of California, and to “be inalienable for all time.”

Act of August 25, 1916 (National Park Service Organic Act), PL 64-235, 16 USC §1 et seq. As amended. On August 15, 1916, Congress created the National Park Service with the National Park Service Organic Act. This act, as reaffirmed and amended in 1970 and 1978, establishes a broad framework of policy for the administration of national parks:

“The Service thus established shall promote and regulate the use of the Federal areas known as National Parks, Monuments, and Reservations... by such means and measures as to conform to the fundamental purpose of the said Parks, Monuments, and Reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

General Legislation and Regulations

Americans with Disabilities Act, PL 101-336, 104 Stat. 327, 42 USC §12101. This act states that all new construction and programs will be accessible to individuals with disabilities. Additionally, National Park Service Special Directive 83-3 states that accessibility will be proportional to the degree of development (i.e., areas of intense development such as visitor centers, museums, drive-in campgrounds, etc., will be entirely accessible, and areas of lesser development such as backcountry trails and walk-in campgrounds may have fewer accessibility features). Any development proposed in the Merced River Plan must be consistent with this act.

Architectural Barriers Act of 1968, PL 90-480, 82 Stat. 718, 42 USC §4151 et seq. This act establishes standards for design/construction or alteration of buildings to ensure that physically disabled persons have ready access to and use of such buildings. The act excludes historic structures from the standards until they are altered. Any development proposed in the Merced River Plan must be consistent with this act.

California Wilderness Act of 1984 (PL 98-425). In 1984, Congress officially included most of Yosemite National Park in the National Wilderness Preservation System and named it the Yosemite Wilderness. Many other California wilderness areas were established or expanded with the passage of this act. Inclusion of an area in the National Wilderness Preservation System does not change the jurisdictional responsibility for the land. The National Park Service continues to manage the Yosemite Wilderness under the additional requirements for the Wilderness Act of 1964. The California Wilderness Act established 704,624 acres of designated Wilderness and 927 acres of potential wilderness additions within Yosemite National Park. Approximately 78% of the Merced River in Yosemite National Park flows through designated Wilderness areas. Wilderness areas in Yosemite are managed under the 1989 *Wilderness Management Plan*. The management approach to wilderness in the Merced River Plan/EIS will be consistent with the park's *Wilderness Management Plan*.

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR Parts 1500-1508). The Council on Environmental Quality regulations for implementing the National Environmental Policy Act (NEPA) establish the process by which federal agencies fulfill their obligations under the NEPA process. The Council on Environmental Quality regulations ascertain the requirements for environmental assessments and environmental impact statements that document the NEPA process. The Council on Environmental Quality regulations also define such key terms as “cumulative impact,” “mitigation” and “significantly” to ensure consistent application of these terms in environmental documents. This environmental impact statement was prepared as directed in the Council on Environmental Quality regulations.

National Environmental Policy Act (NEPA) of 1970. PL 91-190, 83 Stat. 852, 42 USC §4341 et seq. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. Regulations implementing NEPA are set forth by the Council on Environmental Quality. The NEPA process guides the overall planning process for the Merced River Plan/EIS.

Rehabilitation Act of 1973, PL 93-112, 87 Stat. 357, 29 USC §701 et seq. As amended by the Rehabilitation Act Amendments of 1974, 88 Stat. 1617, this act sets forth a broad range of services and basic civil rights for individuals with disabilities. It prohibits discrimination against persons with visual, hearing, mobility, and mental impairments. Any development proposed in the Merced River Plan must be consistent with this act.

Wild and Scenic Rivers Act of 1968 as amended (PL 90-542; 16 USC 12371-1287). This act identifies distinguished rivers of the nation that possess remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values; preserves the rivers' free-flowing condition; and protects their local environments. The Merced River in Yosemite National Park was designated a Wild and Scenic River in 1987. All actions proposed in this plan will protect and enhance the values that are recognized by the Merced Wild and Scenic River designation.

Wilderness Act of 1964 (PL 88-577). The federal Wilderness Act of 1964 and the California Wilderness Act of 1984 provide guidance for management within designated Wilderness. The purpose of the Wilderness Act of 1964 is to secure the benefits of an enduring resource of wilderness for current and future generations. Wilderness is defined in the act as an area managed to preserve its natural condition, which is affected primarily by the forces of nature, and which has outstanding opportunities for solitude and an unconfined type of recreation (Public Law 88-577). These goals complement the intent of the Wild and Scenic Rivers Act as it applies to the areas of the Merced River corridor classified as “Wild.”

Natural Resources Legislation

Clean Air Act, as amended, PL Chapter 360, 69 Stat. 322, 42 USC §7401 et seq. Section 118 of the Clean Air Act requires all federal facilities to comply with existing federal, state, and local air pollution control laws and regulations. The National Park Service works in conjunction with the Mariposa County Air Pollution Control District to ensure that all construction activities meet requirements.

Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) of 1977 (33 USC 1251 et seq.). The Clean Water Act provides for the restoration and maintenance of the physical, chemical, and biological integrity of the nation’s waters. Section 404 of the act prohibits the discharge of fill material into navigable water of the United States, including wetlands, except as permitted under separate regulations by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency. The placement of fill in wetlands should be avoided if there are practicable alternatives. Compliance with Section 401 and 404 of the Clean Water Act will be completed as necessary prior to any new construction proposed in this plan.

Clean Water Act Amendments of 1987. The 1987 amendments to the act required that the Environmental Protection Agency establish regulations for the issuance of municipal and industrial stormwater discharge permits as part of the National Pollutant Discharge Elimination System. The final Environmental Protection Agency regulations were published in November 1990. These regulations apply to any construction activities that disturb more than five acres of land. A Notice of Intent to comply with the state’s General Construction Activity Stormwater Permit will be submitted to the State Water Resources Control Board, and a Stormwater Pollution Prevention Plan will be developed and approved for all proposed construction projects that affect more than 5 acres.

Comprehensive Environmental Response, Compensation, and Liability Act (commonly referred to as CERCLA or the Superfund Act) PL 96-510, 94 Stat. 2767, 42 USC §9601 et seq. Congress enacted CERCLA to address growing concerns about the need to clean up uncontrolled, abandoned hazardous waste sites and to address future releases of hazardous substances into the environment. Applicable sites in Yosemite National Park are managed under the National Park Service CERCLA program.

Endangered Species Act of 1973, as amended, PL 93-205, 87 Stat. 884, 16 USC §1531 et seq. The Endangered Species Act protects threatened and endangered species, as listed by the U.S. Fish and Wildlife Service, from unauthorized take, and directs federal agencies to ensure that their actions do not jeopardize the continued existence of such species. Section 7 of the act defines federal agency responsibilities for consultation with the U.S. Fish and Wildlife Service and requires preparation of a Biological Assessment to identify any threatened or endangered species that is likely to be affected by the proposed action. The National Park Service has initiated and will maintain formal consultation with

the U.S. Fish and Wildlife Service throughout the Merced River planning process and will prepare a Biological Assessment in order to meet obligations under the Endangered Species Act.

Porter-Cologne Water Quality Control Act (California Water Code, Section 13020). Under the authority of the Porter-Cologne Act and federal Clean Water Act, Regional Water Quality Control Boards act as regional agencies for the State Water Resources Control Board and are responsible for regional enforcement of water quality laws and coordination of water quality control activities. The regional board for the Yosemite area is the Central Valley.

Resource Conservation and Recovery Act, as amended (RCRA), PL 94-580, 30 Stat. 1148, 42 USC §6901 et seq. This act establishes a regulatory structure for the management of solid and hazardous waste from the point of generation to disposal. In particular, applicable provisions include those that address underground storage tanks and sites contaminated with elements identified under Federal and State Resource Conservation and Recovery Act regulations.

Cultural Resources Legislation

Antiquities Act of 1906, PL 59-209, 34 Stat. 225, 16 USC §432 and 43 CFR 3. This act provides for the protection of historic or prehistoric remains, “or any antiquity,” on federal lands. It protects historic monuments and ruins on public lands. It was superseded by the Archeological Resources Protection Act (1979) as an alternative federal tool for prosecution of antiquities violations in the National Park System.

Archeological Resources Protection Act of 1979, PL 96-95, 93 Stat. 712, 16 USC §470aa et seq. and 43 CFR 7, subparts A and B, 36 CFR. This act secures the protection of archeological resources on public or Indian lands and fosters increased cooperation and exchange of information between private, government, and the professional community in order to facilitate the enforcement and education of present and future generations. It regulates excavation and collection on public and Indian lands. It requires notification of Indian tribes who may consider a site of religious or cultural importance prior to issuing a permit. The act was amended in 1988 to require the development of plans for surveying public lands for archeological resources and systems for reporting incidents of suspected violations.

National Historic Preservation Act of 1966, as amended, PL 89-665, 80 Stat. 915, 16 USC §470 et seq. and 36 CFR 18, 60, 61, 63, 68, 79, 800. The National Historic Preservation Act requires agencies to take into account the effects of their actions on properties listed in or eligible for listing in the National Register of Historic Places. The Advisory Council on Historic Preservation has developed implementing regulations (36 CFR 800), which allow agencies to develop agreements for consideration of these historic properties. Yosemite National Park, in consultation with the Advisory Council, the California State Historic Preservation Officer (SHPO), American Indian tribes and the public, has developed a Programmatic Agreement for planning, design, construction, operations and maintenance activities. This Programmatic Agreement provides a process for compliance with National Historic Preservation Act, and includes stipulations for identification, evaluation, treatment, and mitigation of adverse effects for actions affecting historic properties. The National Park Service will follow stipulations of this Programmatic Agreement for all future planning and design projects. The Programmatic Agreement allows the National Park Service to implement standard mitigating measures for some actions, if the State Historic Preservation Officer and the public are notified and provided an opportunity to comment.

American Indian Religious Freedom Act, PL 95-341, 92 Stat. 469, 42 USC §1996. This act declares policy to protect and preserve the inherent and constitutional right of the American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express, and exercise their traditional religions. It provides that religious concerns should be accommodated or addressed under NEPA or other appropriate statutes.

Native American Grave Protection and Repatriation Act, PL 101-601, 104 Stat. 3049, 25 USC §3001-3013. This act assigns ownership or control of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that are excavated or discovered on federal lands or tribal lands to lineal descendants or culturally affiliated Native American groups.

Executive Orders

Executive Order 11593: Protection and Enhancement of the Cultural Environment. This Executive Order instructs all federal agencies to support the preservation of cultural properties. It directs them to identify and nominate cultural properties under their jurisdiction to the National Register of Historic Places and to “exercise caution... to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished, or substantially altered.”

Executive Order 11988: Floodplain Management. This Executive Order requires federal agencies to avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains, and to avoid development in floodplains whenever there is a practical alternative. If a proposed action is found to be in the applicable regulatory floodplain, the agency shall prepare a floodplain assessment, known as a Statement of Findings. A Statement of Findings will be prepared for the Merced River Plan/EIS in accordance with National Park Service, Special Directive 93-4 (Floodplain Management Guideline).

Executive Order 11990: Protection of Wetlands. This Executive Order established the protection of wetlands and riparian systems as the official policy of the federal government. It requires all federal agencies to consider wetland protection as an important part of their policies and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. Should adverse impacts on wetlands be identified, a Wetland Statement of Findings would be prepared and included in subsequent compliance (such as an environmental assessment or environmental impact statement) for the specific project.

Presidential Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This Executive Order requires all federal agencies to incorporate environmental justice into their missions by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs and policies on minorities and low-income populations and communities. Impacts on minority and low-income populations will be identified and are addressed in the EIS.

Presidential Executive Order 12902: Energy Efficiency and Water Conservation. This Executive Order directs each agency involved in the construction of a new facility to design and construct it to use energy efficiently, conserve water, and employ renewable energy technologies. The requirements of this Executive Order would be met during the design phase for any new facilities proposed in the Merced River Plan.

Executive Order 13101: Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition. This Executive Order requires that federal agencies increase the procurement of environmentally preferable or recovered materials. Agencies are directed to set annual goals to maximize the number of recycled products purchased relative to nonrecycled alternatives. In addition, each agency is to establish a program for promoting cost-effective waste prevention and recycling at each of its facilities. The requirements of this executive order would be met during development and implementation phases of the Merced River Plan.

Executive Order No. 13112: Invasive Species. This Executive Order prevents the introduction of invasive species and directs federal agencies to not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species. Actions proposed in the Merced River Plan/EIS would include measures to prevent the introduction and spread of invasive species.

Department of the Interior – Director’s Orders

Director’s Orders provide guidance for implementing certain aspects of National Park Service policy. Copies of those that have been completed may be obtained by contacting the NPS Office of Policy or by accessing the National Park Service web site at www.nps.gov/refdesk/DOrders/. The following Director’s Orders may be relevant to the Merced River Plan/EIS planning process:

Completed Director’s Orders

1. The Directives System
2. Park Planning
9. Law Enforcement Program
- 16A. Reasonable Accommodation for Applicants and Employees with Disabilities
17. National Park Service Tourism
18. Wildland Fire Management
20. Agreements
21. Donations and Fundraising
28. Cultural Resource Management
32. Cooperating Associations
41. Wilderness Preservation & Management
- 50B. Occupational Safety and Health
- 77-1. Wetland Protection
83. Public Health

National Park Service Guidelines

NPS-12 National Environmental Policy Act Guidelines

NPS-77 Natural Resources Management Guidelines