



National Park Service
Yosemite National Park

Superintendent's Order: Moratorium on El Portal Administrative Site Residential and Facility Construction and Expansion

Approved: Acting Superintendent, Yosemite National Park

Effective Date: December 15, 2009

Sunset Date: Four years from the effective date unless superseded by successor Superintendent's Order or upon completion of a new Merced Wild and Scenic River Comprehensive Management Plan Record of Decision

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1. Background and Purpose

As authorized by federal law in 1958, (codified at 16 USC Section 47-1) the National Park Service (NPS) has developed administrative facilities and permitted private individuals and groups to develop and occupy private residences and facilities on federal land within the El Portal Administrative Site. Since the designation of the Merced River as a Wild and Scenic River in 1987, the NPS has authorized additions, modifications, reconstruction, and new construction of residences and facilities in accordance with the Yosemite National Park 1980 General Management Plan, the 2000 Merced River Comprehensive Management Plan (MR CMP), and the 2005 Revised MR CMP. In 2000, a lawsuit (Friends of Yosemite v. Salazar) challenging the MR CMP was filed. This litigation resulted in decisions by the U.S. Court of Appeals for the Ninth Circuit that invalidated both the 2000 and the 2005 CMP. Following the Ninth Circuit's decision in March 2008, the parties to the litigation entered into settlement discussions. In September, 2009, the parties reached a settlement of the litigation. The Settlement Agreement was filed with the U.S. District Court for the Eastern District of California on September 29, 2009. Under the terms of the settlement, the NPS has three years in which to prepare a new CMP for the Merced River. The deadline for the new MRP is December, 2012.

The purpose of this Superintendent's Order is to explain how the constraints imposed by the September 2009 Settlement Agreement relate to the requests to modify facilities in the El Portal Administrative Site. Decisions regarding requests for modifications to existing non-NPS structures and facilities in the El Portal Administrative Site must be legally defensible, objective, clear, concise, predictable, and consistent.

2. Relationship of the Merced River Plan Settlement Agreement to El Portal Administrative Site Land Use Actions

The following provisions of the Settlement Agreement relate to NPS management and oversight of non-NPS facilities in the El Portal Administrative Site. Requests to modify the footprint of a structure in the El Portal Administrative Site must conform to the Settlement Agreement's limitations.

- A. Between now and December 2012, the Settlement Agreement imposes constraints on maintenance and construction activity in the Merced Wild and Scenic River corridor. Maintenance and upkeep of existing buildings and facilities is allowed. This includes maintenance and operational projects that are designed to preserve the status quo of existing buildings and facilities. New structures are prohibited except for minor structures that are small, temporary, not habitable, and that are not designed to support commercial uses.
- B. Under the terms of the Settlement, the new CMP will address existing and future development within the river corridor at a programmatic and site-specific level. These decisions will have ramifications on the future management of the El Portal Administrative Site and its associated community.
- C. Existing and future development in the El Portal Administrative Site (including residential development) must protect and enhance the Merced River ORVs. The determination as to whether ORVs are being protected and enhanced will not be made until the new CMP has been completed.

Both the Ninth Circuit Court of Appeals decision from March 2008 and the September 2009 Settlement Agreement can be viewed at: <http://www.nps.gov/yose/parkmgmt/litigation.htm>

3. Moratorium on Permanent Residential and Facility Construction / Expansion

In accordance with the Settlement Agreement, permanent modifications to non-NPS structures within the El Portal Administrative Site, where such modifications would constitute a material expansion or alteration of the status quo condition of the structure, will not be considered until a Record of Decision is reached on the CMP. The following statements provide additional guidance on the scope of the moratorium:

- A. Routine maintenance and upkeep of existing structures is allowed.
- B. The conversion of whole structures or portions of structures from non-residential to residential use is prohibited during the moratorium.
- C. Proposals to reconfigure or remodel the interior of existing structures may be approved by way of an amendment to the existing NPS Special Park Use Permit or other NPS Agreement. Such approval will only be made following the issuance of and in accordance with the requirements of Mariposa County building permits and/or full NPS compliance review, as appropriate. Approval by the NPS will depend on the scope of the reconfiguration requested.
- D. Proposals to upgrade infrastructure serving structures currently or historically used for residential or other purposes may be approved by the NPS by way of an amendment to the existing NPS Special Park Use Permit or other NPS Agreement. Such approval will only be made following the issuance of and in accordance with the requirements of Mariposa County building permits and/or full NPS compliance review, as appropriate.
- E. No new permanent structures shall be authorized.
- F. Projects involving expansion and/or new residential or facility construction that were authorized prior to completion of the Settlement Agreement but have not yet been implemented shall be re-evaluated by the NPS in accordance with requirements of the Settlement Agreement to determine if they should be continued. If necessary these projects shall be discussed between settling parties identified in the Settlement Agreement.
- G. Temporary facilities may be approved for location within the El Portal Administrative Site if they comply with the terms of the Settlement Agreement. Any temporary facilities would be approved by the amendment to the existing NPS Special Park Use Permit or other NPS Agreement. Such approval will only be made following the issuance of and in accordance with the requirements of Mariposa County building permits and/or full NPS compliance review, as appropriate.

4. Clarifying Examples

- Request to add a bedroom and expand footprint. Not eligible for approval
- Request to convert an existing porch or garage to bedrooms. Not eligible for approval.
- Request to add a rooftop deck. Eligible for approval.
- Request for addition of a garage or porch in new footprint. Not eligible for approval.
- Request to remodel a kitchen, bathroom or other room(s) within the existing residential footprint – Eligible for approval

- Requests for approval to construct minor structures in developed areas that are small, temporary, easily removed, not habitable, and that are designed to support existing uses, systems and programs. Eligible for approval.
- Requests for routine operations, maintenance projects, and emergency projects which are intended to stabilize and protect private property, maintain and operate facilities, to address health and safety issues, and/or to protect natural and cultural resources. Eligible for approval.

5. Scope

This policy applies to all non-NPS facilities in the El Portal Administrative Site not directly under the day-to-day administrative control of the National Park Service. For example, this policy applies to privately-owned residential structures, to NPS-owned facilities assigned to other entities such as the Yosemite Institute and Yosemite Association offices and the Clark Community Hall, and to federal and local government facilities such as the U.S. Post Office, the El Portal School and the Community Pool. NPS owned and operated facilities are also covered by similar limitations as outlined in the Settlement Agreement.

6. Definitions

None

7. Responsibilities and Delegations

The Realty Officer in the Division of Business Revenue and Management is the responsible party to coordinate all non-NPS activities in the El Portal Administrative Site. The Realty Officer will communicate with the Superintendent (or the Superintendent's designee), the Chief of the Division of Business and Revenue Management, and/or the park's management team, as well as involved third parties, on these issues as needed. Questions related to the completion of the Merced River Comprehensive Management Plan should be directed to the Chief of Planning.