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Subject: MERG / FOYV Scoping Comments on the 2007 CMP

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YOSEMITE NATIONAL PARK

Attn: Merced River Plan,  
Yosemite National Park,  
PO Box 577,  
Yosemite National Park, California  
95389

From: The Friends of Yosemite Valley, and Mariposans for Environmentally Responsible Government  
To: Yosemite National Park Planners and Staff:

Thank you for this opportunity to participate in scoping for the Merced River CMP.

We would like first of all to recognize that there are many well-meaning employees within Yosemite's ranks, who want the best for the Park and for the Merced. We acknowledge them, and thank them for being here in Yosemite. We greatly hope they will find the courage to speak out on behalf of the River in their official roles during this process.

The voices of those of us outside the NPS who have called for meaningful protection of Yosemite's Merced have not yet been taken seriously. We have filed administrative comments at every possible juncture, in the hopes that this would change. Of those who have been largely resisted or ignored, we would include ourselves, MERG, the Sierra Club, and also very astute private citizens like Jeanne and Lou Aceto, and many others. We are surprised by how very good ideas, with some exception, have been shut out. We would simply say that we are, at this moment, hoping to again state clearly some good ideas which we think are fundamental in completing the task at hand. We will try to avoid the temptation to cynicism given the circumstances of NPS's current appeal in the 9th Circuit..

Of those who have been ignored so far, we regretfully include the Ninth Circuit Court of Appeals. We would ask that the NPS recognize that the courts often play a key and productive role in changing agency culture and ideas, and in shaping the thinking about plans in an evolving legal environment over time. Admittedly there is an element of "pain" if an agency is corrected by a court. But we think it is a mistake for the NPS to merely react to this, and to resist a new opportunity towards a directed change. We have been honestly, extremely surprised by the NPS's response to the Appellate decision in 2004. Whereas the Court made it clear that the entire CMP was held invalid, NPS made efforts to portray another reality in the public press, essentially saying that the earlier CPM was a good plan in need of specific technical corrections. This became the public position of the Park Spokesman, the Chief of Planning, and in fact of the 2005 CPM itself. This was obviously misguided, given the plain language of the 9th Circuit's holdings, as underscored by the ruling of the District Court last July. We do not mention this to belabor errors of the past. Quite respectfully, we mention it because it appears that the NPS still holds

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this erroneous position. A few weeks ago, the Spokesman for the NPS publicly re-iterated the belief that the 9th Circuit (and now the District Court) had merely ordered something akin to a technical correction of an existing CMP. The problem is that this has not been the position of any court since 2004, and was never the position of the 9th Circuit. It should not be the position of the NPS now. We think that the NPS should publicly clarify that we -- collectively -- are before the task of producing a new and different CMP.

**D). Concerning public posture in advancing this planning process:**

**NPS should decide to produce a new CMP.**

By this we mean, simply, that you should collectively intend to do it. We worry that because of your parallel action to preserve the old CMP through appeal, you really do not intend to produce a new one. We worry that you are just going through the motions, and dragging us all along.

**NPS should produce a new CMP.**

A new CMP needs to thoroughly rethink management elements in order to succeed. We think the best course for a new CMP is a comprehensively new CMP, which freshly proposes management elements which will actually protect the River's values. Most important to this is re-thinking ORVs, giving them quantified and geographic substance, and defining a capacity of use which will result in their protection, as we discuss below.

**NPS should produce a new CMP and properly explain this action to the public.**

NPS should make every effort to explain that it is intentionally and thoroughly revisiting, or newly proposing any and all management elements necessary to provide the Merced with a legal and protective CMP. This would begin to correct the errors of 2005, when NPS improperly reigned in the scoping process by announcing that the scope of the plan would be limited to revision of El Portal Boundaries and re-proposing VERP. We ask that NPS make it clear to the public that this new plan is, and must be, open for fundamental revision.

**National Input**

NPS should expand its outreach for comments on his plan. Yosemite is a significant national and international resource. Thus, the scoping process should include a means and solicitation for public input from across the U.S. to comment. It appears that most of the time and effort of the scoping process, and the public participation throughout the past planning process (e.g., evaluation of alternatives), has been too focused on the current visitors and local residents.

**In explaining the character of a new CMP to the public, the NPS should begin to correctly characterize what the law requires for its user capacity aspect in the public press, and should facilitate an honest public dialogue.**

It is within NPS's power, and its responsibility, to begin an honest public dialogue about what a legal user capacity program means in managing Yosemite. As we describe below, creating user capacity for Yosemite's Merced is an administrative decision, and as such it requires the participation and credence of all who can be named as stakeholders. The law, the courts, and the Interagency Guidelines give very sound language for describing what is meant by "user capacity". We respectfully ask that NPS stop using the negative term "quota" in the press, and to no longer

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claim that FoYV is advocating a "quota". Additionally, we ask that NPS stop saying that (FOYV et. al.) want to enforce a regime of "bouncers at a nightclub", and so on. This does the public a great disservice. It undermines the work which we must all try to accomplish together, next. Implementing a legally valid user capacity program for Yosemite requires honest engagement with the public. It must involve dialogue about the meaning, importance, and practical steps involved in establishing a workable and legal user capacity.

**NPS should publicly explain that, because it will produce a new CMP for the Merced, it will revisit decisions made in the Yosemite Valley Plan (YVP) and its tiering documents.** We ask that the Chief of Planning correct earlier statement(s) concerning the NPS having no intention to revisit the YVP. We ask that this correction be conveyed through the park spokesman as well. We think the error in this is plain, and should be corrected.

**II). NPS should rescind the Yosemite Valley Plan ROD.**

NPS should integrate the rescision of the YVP into the development of this CMP, at this time. NPS should subsequently revisit planning for Yosemite Valley, the Merced Gorge, El Portal, and Wawona upon the guidance of a legally valid CMP, and the court-mandated revision of the GMP.

Doing this (rescinding the YVP ROD) is important because of history. The earlier, invalid CMP was undermined at its conception, because the YVP and its program was truthfully, and obviously in force. We have been saying this all along:

"The head of the MRP revision planning team indicated that as part of preparation for the revision of the MRP, the planning team re-read the Yosemite Valley Plan and consider it in the planning process. When a member of FoYV questioned this, it was indicated that this did not seem to be a problem. We feel it is a major problem to producing a protective River Plan. The ORVs need to come first. They need to be what forms the River Plan. The Yosemite Valley Plan and its myriad of development projects, lurking on the sidelines, should not be determining what happens in the MRP. The short term goals of previous and current administrators of Yosemite National Park to get the Yosemite Valley Plan implemented need to be set aside by the Merced River Planning Team."  
(FoYV, CMP Scoping, 2005)

Friends of Yosemite Valley have many times made the point that the 2000 CMP was obviously, and improperly developed in light of decisions in the Yosemite Valley Plan. The plans were developed simultaneously, but the management ideas of the YVP had a longer history and deeper roots in Yosemite's planning culture. The YVP itself, and perhaps more generally its

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management ideas, broad redevelopment program, and unchecked environmental impacts, profoundly shaped the invalid 2000 CMP. The 2000 CMP's progeny in 2005 was thoroughly undermined for the same reason. We characterized this situation as the "development cart" standing in the way of the "protection horse". We think that the CMP for the Merced has never been properly developed because its scope and objectives have been constrained by management objectives of other plans, particularly the YVP. This is improper.

If the correct "horse-to-cart" relationship for the Merced CMP is to be established, the CMP must provide direction and guidance for "managing visitor use, development of lands and facilities, and resource protection" within the Merced River corridor while providing a "template against which future implementation plans are judged." ... The new River Plan should be developed under the assumption that the (extant) 2000 YVP is not providing guidance in the development of the new CMP. To rescind the YVP ROD is the most important single measure which would assure that the new CMP would actually place the horse in front of the cart, for the first time.

In order to credibly produce a CMP for the Merced which guides subsequent decisions concerning development of lands and facilities, and because of the numerous inescapable conflicts between the YVP agenda and the protection of ORV's, we have said that the YVP ROD should be rescinded:

- \* We think that NPS should rescind the YVP ROD without delay.
- \* NPS should integrate the rescision of the YVP into the development of the new CMP.
- \* A crucial goal in the development of the CMP -- which depends upon rescision of the YVP ROD -- should be the abandonment or complete re-thinking of "zoning" proposed in the 2000 CMP, also noted below.
- \* The YVP ROD should be set aside because it improperly retains the management objectives of the zoning program of the 2000 CMP. (Please note, conversely; a new CMP would remain immune to real alteration, unless the new CMP improperly adopts the same management zoning scheme as prior plans, because these schemes were designed to dovetail with the YVP).
- \* This CMP should start fresh from a very different "use" perspective, tied closely to the protection and enhancement of ORV's (as discussed below).
- \* We think that a decision to rescind the YVP ROD is properly within the scope of this CMP. Decisions on ORV protection, user capacity, zoning, and all land use are determinative of all planning for Yosemite Valley, El Portal, the Gorge, and Wawona. These decisions must occur FIRST, within this CMP. It would be improper to "grandfather in" these decisions from a prior document. Land use decisions of the YVP are particularly

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inappropriate as CMP management constraints, because the NPS can simply translate these into new CMP management elements on the pattern of the former zoning.

### III) The NPS should draft a CMP based upon the protection of the Merced River's ORVs

#### \* The NPS should more clearly define ORVs:

Recognizing the importance of ORVs, the WSRA Interagency Commission (2002) provided another management directive: "Thoroughly define the ORVs to guide future management actions and to serve as the baseline for monitoring." The NPS should more clearly define the ORVs in Yosemite, in order to actually protect them. In 2004 we wrote:

"The National Park Service has stated that by being more general in their descriptions of the ORVs they can better protect the ORVs. On the contrary, in the River Plan, NPS needs to be transparent and specific in their description and discussion of the ORVs, their locations, interactions with other animals, plants, processes, etc. The public should understand the specifics of the ORVs in order to be able to help watch and follow and participate in working towards and monitoring their protection and enhancement ..."

There is a lingering problem in how the NPS has ill-defined ORV's, because lacking proper definition, quantification and protective measures do not follow. NPS should clearly define, quantify, locate, and establish protective measures for ORVs. One person wrote in 2004: "We urge the NPS to present thorough documentation and justification of ORVs. The often-repeated statement that ORVs may be in conflict appears to be a barrier to providing adequate protection for any of them: are there too many; do they need to be weighted; what are the specific measurable goals and objectives for each ORV that will guarantee their protection within each project and plan. Currently, it appears that the decision as to which ORVs are protected and which are pushed aside using the "net gain" argument is made in an arbitrary and inconsistent manner by the NPS to advance a predetermined agenda; there is no clear and objective methodology that is consistently applied. The issue of ORVs needs to be reexamined". (Comments of Jeanne and Lou Aceto, Merced CMP Scoping 2004).

While there is no common "definition" of an ORV, It is commonly agreed that an ORV should be that which is the very best of the best in terms of a river's values, and that it should be river-dependant or river-related. Do people travel a great distance to see or experience it because it is not available elsewhere? Is there anything comparable in the region or the nation? Is it unique and irreplaceable? NPS should look closely at the individual ORVs to determine exactly what is or is not an ORV, and what it must actually protect.

In drafting the CMP, and explaining it to the public, the NPS should recognize that there is a heirarchy or priority of values among ORVs: natural, scientific, cultural are prioritized logically. Some plans have "weighted" ORVs differently. We think this lends support to the idea that the listing of an ORV should not create a non-heirarchical, "flat" plane across which ORVs conflict. NPS should place more weight on the natural, scientific, scenic, and cultural ORVs than upon the

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recreational.

With that logical recognition, NPS should also consider a more "wholistic" view of the natural, scientific, scenic, and cultural ORVs. ORV's in Yosemite are interrelated in natural systems, aesthetic landscapes, and cultural landscapes.

It is clear that there is an assemblage of values which clearly fit the definition of ORV. Perhaps an "overview" of what truly matters in Yosemite is in order, in order to try to see this as an assemblage or a "whole". (This is not meant to suggest a definitive "list"; we hope that NPS will re-engage the question this way with its resource managers). One dimension of this assemblage is fundamentally natural; the scenic beauty, hydrologic function, biological value of areas of the corridor, and various special status species are all interrelated. To a great degree these things depend on one another, and their protection should re-inforce one another. The naturalness and productivity of meadows and wetlands, the flood regime, the water table, channel migration, are clearly related to the unique type of scenic beauty of Yosemite Valley, as well as to the quality of habitat for species. We see, as we would expect, a relationship between these values. We think it is therefore logical that NPS define, study, and protect and enhance these values individually and collectively. We should add that to the extent that any of these values are driven to extinction elsewhere, their importance in a protective system in Yosemite increases; such sensitivity to the regional or national setting and current change is important to understand with respect to El Portal, for example, where small wetlands and river-related features now figure very large. NPS should redefine its description of natural ORVs with this in mind.

Another dimension of Yosemite's ORV "assemblage" is fundamentally cultural: how the native inhabitants of the place have lived from and rendered the landscape sacred, and thus unique and irreplaceable. The Native American cultural landscape, ongoing through use of traditional plants, visits to sacred and ancestral locations, is truly unique to all reaches of the Merced. In turn, it is related to sacred burial sites of ancestors and sites of occupation, which are not to be disturbed. Prior plans engaged in a very unwise balancing of things which are not ORVs against those which are legitimate ORVs; the valorization of the Euro American tourism "landscape" as "cultural" was particularly ill-considered. That culture and landscape displaced and dispossessed native Americans from Yosemite in undeclared acts of war. This conflict continues to this day, as witnessed by the destruction of an ancestral gathering area at Lower Falls, and the ongoing intentional damage to the sub-surface remains throughout Yosemite fully contemplated, at this writing, in the build-out of Utilities Phase 1. ORV selection should not foolishly embrace a "culture" which is widespread but which stands in continual conflict with one which is legitimately native, rare, and threatened. The direction of WSRA is against this. The "tourism landscape" is also NOT unique by any measure. We think that this "ORV" is false, and needs to be pulled out of the ORV list, and scrapped. Doing so will add clarity to what cultural values are worthy of statutory protection in Yosemite, and hopefully deliver future managers from the gravity of a very slippery slope.

WSRA gives primary emphasis to protection of scenic, scientific, biological and cultural values. NPS should explicitly recognize that this provides needed direction, and hierarchy in order to identify ORVs, and to resolve conflicts between ORVs. To put the question of conflicts simply,

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we think NPS should adopt the principle that quality, river-related human use of the Merced River is dependent upon the protection and enhancement of the (natural/scientific / cultural) values. Because of this, the (natural/scientific / cultural ORV's should be weighted differently than those involving visitor experience.

We would like to point out that, with respect to those recreational activities NPS may inscribe in its WSR plan, not all of the activities discussed so far are "unique, exemplary, river-related". Recreation activities need to be scrutinized, and some of them very likely removed from the process. Recreation discussed in this plan should be nature-experience and river-experience oriented. Recreation as discussed in this plan should put the recreation-ist in close contact with a unique or exemplary river value. Having scrutinized individual recreational activity, we also think the NPS should exercise the judgment that, if a particular recreational activity truly rises to the status of unique or exemplary and is river related, that it also not conflict with natural/cultural ORVs so as to degrade them. A very unwise "balancing" was previously accepted between "recreation" and natural values. This led to latent conflicts which we do not think should be written into the plan. There should be inherent conflicts between values; this system -- a system of protection and enhancement of ORVs -- should be managed through a user capacity, and ORV conditions should thus be stable and improving. NPS should apply far more rigor to its selection of what "recreation" is unique and worthy of statutory protection in Yosemite.

**In considering what values to express in the CMP, WSRA directs ORV-relatedness. This should lead to decisions to validate camping, hiking, and other activities closely related to ORVs and the experience of natural resources of the Merced.**

For example, at the Subcommittee Hearing held in the Park on April 20, 2003, Paul Minault provided an excellent analysis on the value of camping as a resource-focused activity:

"National Park Service management policy is to "encourage visitor activities that . . . foster an understanding of, and appreciation for, park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources." Management Policy 2001- 8.2 Visitor Use (emphasis added). In our comments to the Valley Plan, we listed the ways in which camping enhances the visitor experience, furthers park values, and promotes the enjoyment of Yosemite National Park through a direct association with park resources. First, we pointed out that camping is a form of recreation, unlike lodging in developed accommodations, which is a form of leisure.

Second, camping promotes a closer relationship to park resources than any other form of overnight accommodation.

Third, camping distances the visitor from the commercial values of comfort and convenience and the expression of social status through consumption that pervade American society. Camping brings the visitor closer to nature, the simple necessities of daily life, and the way people lived in the past.

Fourth, camping is democratic. In campgrounds, social distinctions account for little, and camping has the potential to bring people together in shared appreciation of their natural surroundings in a manner that reduces social barriers. The nations' great parks present an opportunity to be a force for social equality. Unfortunately, the lodging picture in Yosemite preserves the social distinctions of the greater society, rather than leveling them, which we

believe should be a goal of the parks.

Fifth, camping is inherently communal. Campers have an enhanced opportunity to associate with other people, develop new relationships, and broaden their social horizons. Unfortunately, the Valley Plan largely ignored these values, with the result that camping suffered the loss of 300 campsites in the Valley. Instead, the park now emphasizes exclusive and expensive lodging over traditional camping accommodations that are more in line with NPS management policies."

**The CMP should express values opposed to commercialism:**

We note in passing what NPS already knows: the entire bluster of roads and transit and commerce and resort activity, dining, raft rentals, housing, support, administration and police activity is plainly not river related, and not unique or exemplary. It is still today, as the 1980 GMP declared it to be, the unwanted "fragments of suburbia". Thus, the natural and cultural ORVs of Yosemite, and even activities related to these ORVs which are worthy activities, are a subset of the overall landscape of the place and distinct from it. It is important that NPS grasp this fact; there are two sets of values on the move in Yosemite, and in this plan we can only offer protection to one. Otherwise incorrect values, which do not deserve protection under WSRA or this plan, will crowd out the real ones.

(We treat the topic of commercialism separately under "Capacity", below. NPS is required to differentiate commercial and non-commercial uses to establish capacity).

**IV) The NPS should document resource baseline conditions for ORVs, and establish a monitoring program including each of these conditions.** The NPS should immediately and diligently identify data needs, so that a truly effective ORV monitoring, protection, enhancement program can be enacted as a part of this CMP.

A recent (2002) technical assistance paper published by the Wild and Scenic Rivers Interagency Commission states as a management directive: "To achieve a nondegradation standard, the river-administering agency must document baseline resource conditions and monitor changes to these conditions." Such a scientific base of information would need to document the resources that are to be protected and preserved in the park; the condition of those resources; any changes in condition over time; and actions needed to ensure preservation (Natural Resource Challenge Action Plan, 1999). Such a program needs to be in place FIRST, to provide information critical to this planning process for the Merced CMP. While we hold out hope that the deficiencies will be remedied, we have great concern. For example, an ecological restoration report was released by the Park in June of 2003 which included details of a workshop held in November of 2002. Some very honest random comments by workshop participants included:

"Have monitoring plan in place before start of restoration: 1. Need adequate baseline information; a) Monitor migration of in-stream woody material; b) Soil compaction bulk density measurements"

"...park should collect reference data on existing conditions now for Tenaya and Merced, so have reference for future monitoring. Work on Tenaya Creek should be performed within first five years of project, so work can progress from upstream through downstream areas."

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"...noted that she doesn't feel it's possible to restore Valley to pre-Euro American contact because of the extent to which the landscape has changed"

"Don't want to keep doing what we've been doing just in case we are going on the wrong path"

"Experiment with small plots in every area. Monitor over 1 year and then proceed with area that does best"

Such comments imply that baseline information on condition of resources as well as a monitoring program are lacking.

However, the above-mentioned comments validate our concerns with respect to the lack of a sound scientific base of information with respect to resource conditions and monitoring. How can the Park hope to achieve the nondegradation standard mandated in WSRA without such documentation? How will this lack of information imperil the planning process? The NPS should identify those areas where it does and does not have data on the status of ORV, and correct deficiencies.

#### **V) ORV Data / Geography:**

We think that the baseline conditions of the Merced's ORVs should be quantified, and the ORV's themselves geographically located within the corridor. This is in order to create a system ongoing monitoring of conditions, and to build a capacity system which works well. The NPS should map the location of ORVs, so that they can be transparently understood by the public and agency personnel in terms of present and future management for protection and enhancement. (The normal statutory protection for Native American cultural properties is the exception, though NPS could create a data layer for this for non-public purposes).

To the extent that NPS may rely upon a geographic depiction of areas of the corridor and conditions, we think a map of ORV status, management, and monitoring oriented towards protection should replace the old "zoning" maps. We think that the "land use zoning" map adopted by the former CMP was completely misguided, because it completely lacked relationship to ORVs. It involved experiences, not ORVs. Instead, in this CMP (we hope) a geographic component of an ORV protection and enhancement program should replace the prior "land use zoning" map. We think a true focus on ORVs in this plan, and a geographic treatment of them, should completely re-focus any subsequent discussion of land use, or "visitor use" decisions, as the case may be.

We note in this regard that there is improved data for El Portal in terms of the location of ORVs. As we discussed before the District Court, the problem is that, despite improved knowledge of the condition and location of the resources, "zoning" still was not based upon this knowledge. 3C "zoning" sought to achieve radically different objectives than any depiction of ORV resources in El Portal. In all reaches of the Merced, noting the glaring disconnect in dealing with ORVs in El Portal, we ask that NPS develop geographic data related to status of ORVs, and dump e earlier "zoning" idea. We feel that the 3c zoning in El Portal is an ongoing disgrace. We look forward to the day when the ORVs of this reach are considered foremost in any and all land use decisions

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which follow the CMP.

#### VI) Zoning :

The former "zoning" should be scrapped and not re-proposed . It had nothing to do with the protection and enhancement of ORV's, and involved no study of the status of ORVs. The is CMP must protect and enhance ORVs, not establish the template for future (non-ORV-related) land use decisions. We defer to the excellent description of the problem of the earlier CMP's zoning articulated by Jeanne Aceto in 2004:

"WSRA Guidelines specifically state that "studies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area. Management of the river area can then be planned accordingly." The amount of use an area can sustain is inextricably linked to how the resource is to be managed. Adhering to hollow zoning delineations that were developed without resource and monitoring information coupled with a lack of user capacity research renders any new' Plan fatally flawed. Current land-use management zoning appears to have been designed to accommodate predetermined development projects rather than protection of natural resources as the primary focus.

#### VII) ORV Management Should Protect and Enhance ORV's, in keeping with WSRA :

The CMP should apply principles of protection and enhancement to management of ORVs. The NPS should elaborate a list of protection/enhancement principles with respect to ORVs. Below we have begun a list of some important principles which come to mind. (Again, we do not offer a definitive listing of every issue here; we hope NPS Resources Staff will elaborate on this or a similar list, and we will hope to comment further when the draft is prepared.)

\* NPS should immediately disown the idea of "net gain", which derives from mitigation.

Mitigation and "net gain" accept

the principle of loss and replacement. This is contrary to the very idea of an ORV : an ORV is unique and irreplaceable.

\* In the case of the cultural landscape: no new disturbance / avoidance / enhancement of biological or scenic aspects which would improve the ORV should apply.

\* Again in the case of the cultural landscape: full inclusion and consultation with any and all individuals, tribes and other

native american groups with ancestral ties to Yosemite. Real, meaningful consultation is doubly required because not

all of the cultural landscape in Yosemite has been disclosed to the NPS (which, based on the behavior of Euro-

Americans in Yosemite including NPS, has been a wise move by Native Americans).

\* Complete avoidance of archaeological sites / no digging or disturbance. The Natioanl Park Service should

immediately cease all ground-disturbing human activity on and around these sites.

\* No loss of wetlands; no construction in or adjoining wetlands.

\* No new construction of any kind outside of developed area footprints

- \* No construction of any kind within or adjoining meadows
- \* No loss of cultural plant resources.
- \* Based upon up-to-date study of conditions, no loss of special status/ t/e species or their habitat.
- \* Based upon up-to-date study of conditions, enhancement of special status/ t/e species or their habitat.
- \* No loss of sensitive plants or supportive soil types.
- \* Protection and enhancement of water quality in all reaches of Yosemite's Merced.
- \* Protection of sensitive plants or supportive soil types
- \* Enhancement of sensitive plants or supportive soil types.
- \* Demonstrable improvement in allowance of free-flow of the river (removal of some of the many mounds of riprap;
- \* Improvement in air quality through regulation and removal of local sources of pollution (diesel vehicles, campfires, generators, etc.).
- \* In terms of future levels of facilities and services, these should be limited to those which would guarantee both protection and enhancement of ORVs (see also our comments under "capacity").
- \* In terms of future levels of facilities and services; the NPS should explicitly give greater value to those which bring visitors into close connection with the unique and river-related values of the Merced. (See also our citation of a discussion of camping, below)
- \* This CMP should propose to restore Yosemite's Terminal Moraine as an enhancement of the Valley's hydrology.
- \* This CMP should comprehensively study and propose future enhancement of surface hydrology, particularly in Yosemite valley, through the removal of development, unnatural drainage features, riprap, and obstructions of free flow.

### VIII)

**Earlier management elements of the 2000 CMP should be eliminated, because they do not protect ORVs.**

The RPO allowed construction and development of a variety of amenities. We have discussed this elsewhere in comments on the prior plans.

Section 7 was proposed in the CMP to circumvent protections of the river channel and riparian areas.

We think these should be removed from the CMP until and unless they prove to serve the overarching goal of protecting the ORVs of the Merced River..

### VIV)

**Visitor Capacity:**

**The CMP should establish a user capacity for the Merced River Corridor which will protect and enhance the Merced's ORV's.**

According to the Wild and Scenic Rivers Interagency Guidelines (1982), user capacity is defined as:

the quantity of recreation use which an area can sustain without adverse impact on the outstandingly remarkable values and free-flowing character of the river area, the quality of recreation experience, and public health and safety."

This same definition was highlighted by the 9th Circuit, after applying the plain meaning of the terms "adness", "user", and "capacity within the language of the statute.

According to the 1982 WSRA Guidelines, management plans must state the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated. And though specific management strategies will vary according to classification they will always be designed to protect and enhance the values of the river area. The very definition of user capacity mandates no adverse impact on the ORVs.

**The CMP, operating as a plan to intentionally protect and enhance well-defined ORVs, should establish a quantity of recreation to support and achieve this objective.**

A new CMP should describe an actual level of visitor use for the Merced which will protect and enhance the river's ORVs. Capacity is a foundational element that impacts every other management element. The determination on capacity cannot be made in isolation and simply plugged into the invalid Merced River Plan. Instead such determination must be integrated in combination with other management elements. The new Merced River Plan should embrace the larger vision and responsibility of the Park Service to protect and enhance the Outstandingly Remarkable Values (ORV) of the Merced River corridor.

**The CMP user capacity discussion should specifically consider how much commercial use is appropriate and consistent with protecting the river's ORVs.**

There is a difference in impact to the river corridor between public users who do not use commercial services and those who do, and the commercial services themselves. For instance, commercial use requires more employees, more infrastructure, more asphalt and hardened structures and more maintenance to name a few. People who come to the Park and the River who are self sufficient have less of an impact. Thus, commercial services are intrinsically connected to user capacity and what is appropriate and necessary.

Once upon a time there was a goal that "visitors can step into Yosemite and find nature uncluttered by piecemeal stumbling blocks of commercialism, machines, and fragments of suburbia" (1980 GMP). Do swimming pools, pizza parlors, bars/liquor outlets, gift shops, equipment sales/rentals, 22-bay bus depot with expanded restaurant seating, never ending streams of buses, in-room TV, RV hook-ups, etc. contribute to the uniqueness of Yosemite Valley or are they intrusive "fragments of suburbia"? What is the base level of services to be provided in the Valley and what is the base level of employees required? Each employee needs housing, food, water, parking place, HR services and more, requiring an increased development footprint while adding to the capacity in the park. At present, it appears that 80% of the

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development footprint in the Valley is in support of the 20% of visitors who stay overnight in the park.

**Definition of a Visitor Capacity:**

Visitor capacity is defined as the supply, or prescribed number, of appropriate visitor opportunities that will be accommodated in an area. As discussed above, this quantity should be a prescription specifically arrived at to protect and enhance the ORV's for Yosemite's Merced River corridor.

The terms in the definition were chosen carefully. "Supply" means the quantity or amount available; "prescribed" means a decision by a person of authority; "number" means a specific number or numeric range; "appropriate" means in accordance with management direction (here the WSRA, non-degradation, and protection/enhancement standards, but also over-arching direction on river-relatedness and ORV-relatedness of visitor activities) ; visitor opportunity refers to the integrated package of activities, settings, experiences, and benefits; "accommodate" recognizes that there are conditions and considerations that influence a decision and implies that the use of public resources is a privilege and has responsibilities; and "area" is an inclusive term that can refer to a facility, program, recreation system, or any geographic scale such as a site, unit, designation, or region; here it means the Merced River corridor, and should include those locations adjoining the corridor containing ORV's.

**Purposes of a Visitor Capacity**

A capacity is a concept and tool with widespread application and purpose in our everyday lives – restaurants, airports, golf courses, concerts, classrooms, low-income housing, hotel occupancy, lobster harvests, annual timber cuts, ozone alerts, air-travel operations, water storage, mortgage loans, insurance policies, power grids, military response, landfills, welfare benefits, prison facilities, urban housing density, emergency medical response, sport hunting, sport fishing, museums, amusement parks, group tours, and countless other manifestations.

The overarching function of a visitor capacity is to serve as one tool to help sustain natural and cultural resources, as well as the recreation opportunities and other benefits these resources afford the public. As discussed above, a determination of visitor capacity is essential and necessary for a program of protection for the ORV's of Yosemite's Merced, including those related to visitor experience. The literature recognizes nine purposes of a visitor capacity.

1. a measurement of the supply of available opportunities
2. trigger for actions and resources
3. risk management tool
4. visitor trip planning
5. administrative and historic record (hindsight analysis)
6. regional recreation planning
7. recreation allocation decisions
8. private sector and community planning
9. managing public (recreation and non-recreation) use

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We would note, in relation to our introductory paragraph, that an important part of creating a visitor capacity is communication extrinsic to Yosemite itself. A capacity decision implies transparency for interagency recreation planning, regional planning, and even individual trip planning. As noted above, we also think that principled communication by NPS with stake-holders is necessary in arriving at a capacity decision.

### **The Substantive Standard for Visitor Capacities**

Recreation carrying capacities, or visitor capacities, are administrative decisions. Sound professional judgment is the substantive standard for decision making by responsible public officials. Sound professional judgment is defined as a reasonable decision that has given full and fair consideration to all the appropriate information, that is based upon principled and reasoned analysis and the best available science and expertise, and that complies with applicable laws.

As discussed, we believe that Yosemite has some but not all of the information it needs to make the decision required in his plan. Moreover, even when adequate information, the NPS must build a plan for the protection and enhancement of ORVs as outlined in the WSRA and the interagency guidelines, if a capacity decision is to escape from being arbitrary.

Sound professional judgment relies on many informational inputs. Those particularly relevant to a visitor capacity decision might include:

- \* management objectives (including all legislative and policy guidance; see discussion of WSRA-guided management, above) ;
- \* desired future conditions and quality standards (resource, social, management);
- \* current resources, conditions, uniqueness, capability, and trends; (see prior discussion of baseline conditions and monitoring)
- \* current management capability and suitability;
- \* current type, amount, and design of facilities and infrastructure;
- \* appropriateness (compatibility) of current or proposed recreation opportunities; (see discussions of commercialism, values above)
- \* regional supply of the same and similar recreational opportunities;
- \* foreseeable changes in recreation and nonrecreational uses;
- \* existing allocations to permittees and other land uses/users;
- \* significance of the visitation issues and concerns;
- \* potential for natural or cultural resource impairment, (and application of WSRA non-degradation standard);
- \* type and amount of best available science and information; (see above discussion)
- \* level of uncertainty and risk surrounding consequences of decision; and the
- \* expected quality of the monitoring program. (see above).

### **The Procedural Standard for Visitor Capacities**

While sound professional judgment is the substantive standard for visitor capacities, a rational public planning process is the procedural (process) standard for capacity decision making. The

procedural standard for visitor capacities for a Wild and Scenic River should be a NEPA-compliant planning process which leads to the river's comprehensive management plan. Visitor capacities decisions are made as part of this comprehensive, integrated, transparent, and deliberate public planning process. Each alternative should clearly compare and contrast the visitor capacity(ies) for the area or units within. Furthermore, in that visitor capacities are decisions made as part of a rational public planning process, such decisions should be guided by accepted principles. While it is true that alternatives can allow for varying intensities of use, alternatives should describe actual measures of visitor use which will protect and enhance the ORVs of the river. (It would be unacceptable to describe alternatives which allow degradation of river values). **Additionally concerning alternative development: in the development of alternatives, the CMP should include different user capacity limits that not only protect ORVs, but that would help restore degraded ORVs.**

### **Principles for Visitor Capacity Decision Making**

The Administrative Procedure Act (1946: 60 Stat. 237, 5 U.S.C.A.) set forth the legal standard that decisions must be principled and reasoned; that is, arbitrary decisions are in violation of federal law. Professional principles help meet this responsibility by clarifying institutional values, philosophy, and perspectives. They serve as a guide and rule of thumb for making decisions and taking action, and, very importantly, they help stakeholders understand and meaningfully participate in a planning process.

Below are principles that reflect important and central values for visitor capacity decision making. Full and deliberate consideration of these principles will contribute to a logical, reasoned, transparent, and defensible decision.

1. Management direction principally defines the visitor capacity, regardless of whether the management direction or visitor capacity is explicitly stated or not stated at all. The management of the Merced WSR remains subject to the non-degradation and the protection/enhancement standards.
2. A visitor capacity helps to sustain the integrity of natural and cultural resources, as well as the important recreational and nonrecreational benefits they afford to local, regional, and national publics.
3. A visitor capacity is a complex decision that is based upon sound professional judgment; i.e., defined as a decision that has given full and fair consideration to all appropriate information, that is based upon principled and reasoned analysis and the best available science and expertise, and that complies with applicable laws. Here we wish to emphasize the fundamental importance of establishing the baseline conditions of ORV's in making such a decision in Yosemite, and the central goals of the Merced CMP to legally protect and enhance the ORVs of the Merced WSR.
4. A visitor capacity decision is made by a responsible official as part of a public planning process; and in some instances, may benefit from the thoroughness and legal sufficiency afforded by a NEPA-compliant planning process. (As noted, the centrality of the NEPA process, and an anticipated dialogue with stake-holders are certain benefits to the development of Yosemite's CMP).
5. A visitor capacity quantifies the supply of available visitor opportunities that an area can accommodate, and may also address the allocation of opportunities across the variety of affected

visitors – types of recreationists, commercial operators, educational programs, scientists, and others.

6. A visitor capacity decision considers the larger regional landscape and system of opportunities affecting the particular area of recreation concern.

7. A visitor capacity provides clarity for focused dialogue and an analysis of consequences across the proposed management alternatives under consideration in a planning process.

8. A visitor capacity decision uses a sliding-scale rule, in which the level of analysis is commensurate with the potential consequence of the decision.

9. A visitor capacity serves as a trigger or signal for managers, permittees, the general public, and all stakeholders.

10. Visitor use approaching a capacity triggers consideration of a full range of reasonable management responses.

11. A visitor capacity decision needs to be adaptive to new science, information, uses, technology, trends, conditions, and other circumstances of importance.

12. The effectiveness of a visitor capacity depends on an adequate program of monitoring that is commensurate with the level of potential consequences, risk, and uncertainty. See above.

**Visitor Capacities Are Not the Same as VERP Monitoring:**

The Wild and Scenic River Act (1974) and the National Parks and Recreation Act (1978) require that managers address the visitor capacity for an area. We do not believe that monitoring, in and of itself, is an adequate replacement for addressing visitor capacity. We are not opposed to VERP as a monitoring program, but it is not a substitute for addressing visitor capacity.

We sharply contrast VERP type monitoring and visitor capacity as follows:

**A.** A visitor capacity is an administrative decision about the supply of available recreation opportunities in an area. VERP is a monitoring program of indicators, standards, and data collection protocols. A visitor capacity is not an indicator, a standard, a process, or a research finding. Conversely, VERP is not a visitor capacity decision.

**B.** Visitor capacities and monitoring are two different management tools. Visitor capacities and monitoring serve two different purposes. They do not substitute for one another.

**C.** The question of visitor capacities and monitoring does not pose an either/or option; that is, both visitor capacities and monitoring are important for park and visitor protection.

**D.** VERP, as with any monitoring effort and resultant data, can be helpful in making a visitor capacity decision. VERP can also be useful in adapting and refining a visitor capacity decision in the future. But again, VERP is not a visitor capacity.

**E.** Visitor capacities require the integrated consideration of many factors (e.g., goals, actions, desired future conditions, proposed actions, management capability). One

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important factor in the decision is the best available monitoring information and science, be it from VERP or any other monitoring effort. We have addressed this under "ORV's, above). VERP or another monitoring system can provide important information, but in and of itself, VERP information does not determine a visitor capacity.

F. Visitor capacities are typically made in an integrated comprehensive public planning process involving tier 1 or 2 general plans, whereas VERP is an internal technical management tool typically scoped out (e.g., standards, data collection tools, sampling locations and intensities, analyses) in tier 4 or 5 implementation plans.

G. A visitor capacity requires a supporting monitoring program, be it VERP or another program. Principle #12 from the Federal Interagency Task Force states the "effectiveness of a visitor capacity decision depends on an adequate program for monitoring that is commensurate with the level of potential consequences, risk, and uncertainty."

**NPS Would be Well-Served to Consult an Array of Capacity Experts in Developing a Capacity for the Yosemite Merced.**

We were happy to learn that the NPS is following up on including capacity experts from across the country in some form of symposium or consultation on this decision. (We were disappointed, however, that we were not previously asked to contribute names of people who might shed light on the problem, which we would like to do now). The NPS should invite credentialed experts to their workshop who have gone through a public planning process to make a visitor capacity decision (s); and not simply those who advocate a monitoring program like VERP.

Following, please find the names of Credentialed Experts in Addressing Visitor Capacity whose opinions should be sought in this process. the list includes experts who have worked on the legislative side, academic experts, and, importantly, administrative decision makers who have faced the same type of decision as for Yosemite's Merced:

1)

Mr. Lyle Laverty, nominated Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C.

Mr. Wayne Woodroof, Director of Planning, California State Parks

Mr. Clay Peters, senior professional staff and author of the visitor capacity section of the 1978 National Parks and Recreation Act.

Mr. Steve Martin, Superintendent of Grand Canyon National Park, former NPS Deputy Director

Mr. Keith Brown, Outdoor Recreation Planner, Prineville District, BLM

Dr. Robert Aukerman, Professor Emeritus, Colorado State University

Dr. Glenn Haas, Professor Emeritus, Colorado State University

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Dr. Jan W Van Wagendonk, USGS

Mr. Floyd Thompson, Director of Recreation Planning, USDA Forest Service

Mr. Bob Ratcliffe, Director of Recreation, USDI Bureau of Land Management

2)

Administrative decision makers of the 95 field units listed in Appendix B of the report entitled Visitor Capacity on Public Lands and Waters: Making Better Decisions (2002), prepared by the U.S. Department of the Interior's Federal Interagency Task Force on Visitor Capacity on Public Lands (this report was previously submitted and is part of the NPS's administrative record for the Merced River WSR)

3)

National Park Superintendents from:  
Yellowstone National Park  
Voyagers National Park  
Denali National Park  
Channel Islands National Park  
Rocky Mountain National Park  
Washington Monument  
Devils Tower National Monument

**Additional Comments:**

**Tuolumne CMP;**

We would like to re-iterate as a follow-up to last summer's comment that the Tuolumne CMP was scoped inappropriately. The representation that VERP would be the capacity mechanism available for discussion under all alternatives of the Tuolumne CMP replicates a glaring error of the 2005 Plan for the Merced, and improperly constrained scoping. We think the scoping should be re-opened, and the lessons of the failed Merced plan, including the direction of the court concerning VERP, incorporated into the public process for a new beginning on the Tuolumne.

**Prior Comments on the Yosemite Merced:**

We wish to incorporate by reference our administrative comments from the 2000 and 2005 Plans, as well as those discussions of CMP elements treated here, discussed in our court filings from 2000 to the present time.

**Conclusion:**

Thank you for the opportunity to participate in Scoping for the Merced River CMP.

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Gregory M. Adair, for FOYV

Bart Brown, for MERG

In Yosemite, 9 June 2007



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