

**PROGRAMMATIC AGREEMENT  
AMONG UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE,  
STANISLAUS NATIONAL FOREST,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE PROGRAM OF RIM FIRE EMERGENCY RECOVERY  
UNDERTAKINGS, TUOLUMNE COUNTY, CALIFORNIA**

WHEREAS, the United States Department of Agriculture, Forest Service, Stanislaus National Forest (Forest) proposes to conduct a program of recovery efforts following the Rim Fire Emergency (program) which the Forest may fund, permit, or otherwise approve in the Mi-Wok and Groveland Ranger Districts in Tuolumne County, California; and

WHEREAS, the program consists of undertakings to be implemented in a phased manner within the Rim Fire Emergency area including, but not limited to, meadow and habitat restoration; reforestation; prescribed fire; recreation improvements; weed abatement; timber harvest units by cable/skyline, helicopter, and tractor logging methods; existing road maintenance new and temporary road construction; skid trails outside of identified timber units; tractor landings, construction of helicopter landing zones and landings; water sources; and borrow pits; and

WHEREAS, the Forest has defined the program's area of potential effect (APE) as the 154,530 acres of National Forest System (NFS) lands within the perimeter of the Rim Fire on the Forest as described in Appendix A; and

WHEREAS, the Forest has determined that the undertaking may have an adverse effect on three (3) historic properties, which are listed in, and on 143 historic properties, which are eligible for listing in the National Register of Historic Places, and has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the Forest has also determined that the effects of the undertakings cannot be fully assessed prior to the approval of the program and proposes a phased process for identification and evaluation pursuant to 36 C.F.R. § 800.4(b)(2) in the Programmatic Agreement prepared in accordance with 36 C.F.R. § 800.14(b)(3); and

WHEREAS, the February 2013 *Programmatic Agreement Among U.S.D.A. Forest Service, Pacific Southwest Region (Region 5), California State Historic Preservation Officer, Nevada State Historic Preservation Officer, Advisory Council on Historic Preservation Regarding the Processes for Compliance with Section 106 of the National Historic Preservation*

*Act for Management of Historic Properties by the National Forests of the Pacific Southwest Region* (Region 5 PA) provides definitions of terms, roles and responsibilities, general program guidance, exemptions from review and a “screened” review process for routine forest undertakings which serve as the framework for this PA; and

WHEREAS, the Forest will consult with SHPO exclusively through the Regional PA or 36 C.F.R. § 800.5 regarding once-eligible or potentially eligible historic properties destroyed or damaged by the Rim Fire and/or suppression efforts; and

WHEREAS, the Forest has consulted with the Tuolumne Band of Me-Wuk Indians for which certain historic properties in the APE have religious and cultural significance, and has invited the Tribe to sign this Programmatic Agreement (PA) as a concurring party; and

WHEREAS, the Forest and the Tuolumne Band of Me-Wuk Indians have executed Memorandum of Understanding Between USDA-Stanislaus National Forest and the Tuolumne Band of Me-Wuk Indians dated April 30, 1999 which defines the Forest’s protocols for Section 106 consultation with the tribe; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Forest has notified the Advisory Council on Historic Preservation (ACHP) in a letter dated May 28, 2014 of its intent to prepare a Programmatic Agreement with specified documentation and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, the Forest’s plans for the initial phase of the program has been disclosed to the public in the May 2014 *Rim Fire Recovery Draft Environmental Impact Statement*, which proposes 30,000 acres of timber salvage, and future phases will be disclosed in appropriate environmental documents meeting the Forest Service standards under the National Environmental Policy Act (NEPA); and

NOW, THEREFORE, the Forest, SHPO, and ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

### STIPULATIONS

The Forest shall ensure that the following measures are carried out:

#### I. FRAMEWORK OF THE REGION 5 PA

A. The Forest will maintain qualified personnel fulfilling the roles and responsibilities defined in stipulation 2.0 of the Region 5 PA.

B. The Forest will fulfill its procedural obligations defined in stipulation 4.0 of the Region 5 PA for each undertaking in the program.

C. The Forest will fulfill its curation, data sharing, and information management commitments defined in stipulations 5.2 and 5.3 of the Region 5 PA for each undertaking in the program.

D. The Forest will consult with Indian tribes in accordance with stipulation 6.0 of the Region 5 PA and, specifically, will continue to consult with the Tuolumne Band of Me-Wuk Indians in accordance with the Memorandum of Understanding Between USDA-Stanislaus National Forest and the Tuolumne Band of Me-Wuk Indians dated April 30, 1999.

E. The Forest will fulfill its commitments for qualified staff in stipulation 10.0 of the Region 5 PA.

F. The Forest will maintain its "certified" status defined in stipulation 11.0 of the Region 5 PA for the duration of this PA. Should the Forest become "decertified" during the duration of this PA, one or more of the parties to this PA may seek to terminate it (see stipulation IX of this document).

## II. REVIEW PROCESS

Undertakings in the Program include Recovery, Reforestation and Restoration activities. Recovery activities include, but are not limited to timber harvest by cable/skyline, helicopter and tractor methods, existing road maintenance, construction of temporary road, skid trails outside of timber units, tractor landings, helicopter landing zones, water sources, and borrow pits. Reforestation and Restoration activities may include, but are not limited to meadow and wildlife habitat restoration, recreation improvements, prescribed fire, and weed abatement.

The Forest will apply the exempt, screened, and consultative review processes defined in stipulations 7.0, 8.0, and 9.0 of the Region 5 PA to each of the undertakings in the program (including, but not limited to Rim Recovery, Reforestation, and Restoration) with the following amendments:

- A. For convenience, Appendix B of this document presents a flow chart summarizing the review process.
- B. For each undertaking, the Forest will ensure that identification and inventory needs will follow stipulation 7.4 of the Region 5 PA and that all identification and inventory will be completed prior to undertaking implementation.
  - (a) All previously adequate surveys completed after 1986 are depicted in Appendix C.
  - (b) Any areas not previously surveyed from other fires or other areas that have undergone substantial changes that would make previous surveys inadequate

(Stipulation 7.4(b) of the Region 5 PA) will be inventoried prior to any implementation in accordance with Stipulation IIB.

- C. For each undertaking, the Forest will ensure that the Section 106 process is completed through the appropriate finding of no effect or no adverse effect (with or without commitment to Standard Protection Measures (SPMs) prior to implementation of ground disturbing activities.
- D. If adverse effects are found, the Parties will consult to resolve adverse effects through the development of a Historic Properties Treatment Plan (HPTP).

(a) The Forest shall prepare a Historic Properties Treatment Plan (HPTP) for review and written approval by all the Parties for those specific properties. An HPTP may address individual or multiple historic properties. An HPTP shall stipulate those actions the Forest shall take to resolve the adverse effects of the undertaking on historic properties. The Forest shall ensure that all provisions of an HPTP are carried out in a timely manner. Copies of all reports pertaining to the treatment of historic properties shall be submitted to all the Parties to this agreement. Individual HPTPs may be submitted simultaneously.

(b) The Parties shall have 30 calendar days to review and comment upon in writing any HPTP submitted by the Forest. The Parties shall indicate in their review that they find the HPTP either acceptable or not. In the event that comments are not made by the Parties within 30 calendar days, the Forest may finalize the HPTP as submitted and move forward. In the event a Party provides written comment within the 30-day period, either the Forest shall accept the comments and revise the HPTP accordingly, or the Forest may object to some or all comments. Comments from a Party that are not acceptable to the Forest shall be resolved by consultation among the Party and the Forest for a period of not more than 15 calendar days. Should the Party and the Forest be unable to resolve any dispute regarding the comments, the Parties shall precede in accordance with Stipulation VII (Dispute Resolution) of this agreement.

(c) The Forest shall submit to the Parties for review and comment any amendment, addendum, revision or other change to an HPTP. The Forest shall proceed to make changes to an HPTP as per the procedure and schedule for the review and approval of an original HPTP. If a historic property is discovered within an expanded APE subsequent to an initial inventory effort for a phase, and the Forest agrees that the Project may adversely affect the property, the Forest shall submit an addendum to the HPTP or a new HPTP. The review schedule for this submittal follows the provisions in Stipulation IID(b).

(d) Within one year after the completion of all work performed as part of the

undertaking, the Forest shall submit to all Parties a final report documenting the results of all work prepared under the HPTPs. This report shall be submitted for review and comments, which the Forest shall incorporate.

E. The Forest may determine that undertakings may have “no adverse effect” to historic properties through the application of SPMs listed in Appendix E and in accordance with stipulation 7.8(b) of the Region 5 PA. The Forest may apply the following additional SPMs in the same manner:

(a) Alternative Timber Harvest Methods within Site Boundaries – A limited number of historic properties, due to their site type and burned condition level, are at risk due to the presence of dead and dying trees. If left to fall on their own, the trees would likely cause an adverse effect to fragile features and overall site integrity. At the request of the Forest Heritage Resource Program Manager (HRPM) and with required monitoring, the following harvest methods within site boundaries will be used:

(1) One-End Suspension - Where full suspension is not feasible, use of a rubber tired skidder or tracked feller buncher to transport timber out of the site boundary to designated landings will be utilized. Use of this method will be minimized. All site features and artifact concentrations will be avoided. Any resulting ground disturbance left by the dragging of logs will be restored using hand tools. At no time will this method be used within lithic artifact concentrations.

(2) Use of Historic Routes - Intact historic routes (consisting of unsurfaced railroad grades, roads, and trails etc.) would be used as transportation routes for log removal when alternate routes are not prudent or feasible. Rubber tired or tracked vehicles capable of one-end or full suspension shall be used. Use of this method will be minimized. Routes will be used as is and will not be bladed or widened. Any resulting ground disturbance left by the dragging of logs will be restored using hand tools.

(3) Use of Rubber Tires - When hazard trees cannot be directionally felled away from sensitive areas such as lithic scatters, use of rubber tires to protect the site surface during felling operation will be utilized. This method involves the laying of used tires on the ground in the direction the tree is to be felled. Once the tree is cut, the tires absorb the impact and protect the underlying surface. The tree will then be removed by either pulling it along the tires and out of the site boundary or be felled in such a way that a rubber tired skidder or tracked feller buncher can remove the tree without causing damage to the sensitive areas of the site.

(4) Where deemed necessary or beneficial by the HRPM, small diameter trees will be felled or wood chips distributed within site boundaries to enhance soil stabilization.

- F. The Forest may make expedited ineligible determination in accordance with stipulation 7.7(c) of the Region 5 PA and Appendix F of the Region 5 PA and this PA. The Forest will apply the additional protocols for the West Side Discontiguous District and other resource types in Appendix D and D-1 of this PA in the same manner.

#### IV. DURATION

This PA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the Forest may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation VIII below.

#### V. POST-REVIEW DISCOVERIES

(a) In the event that either cultural resources are discovered, or historic properties are inadvertently affected, during implementation of an undertaking which has been duly considered under the terms of this PA, the Forest will submit written notification describing the circumstances of the discovery to the Regional Heritage Program Leader and SHPO within two working days (e.g., letter or email notification). The Forest will provide written reports describing the status or resolution of the discovery/inadvertent effect every six months until it is resolved.

(b) In the event that properties are discovered during implementation of an undertaking which has been duly considered under the terms of this PA and in which the property cannot be protected, the Forest shall address the discovery in accordance with the provisions of 36 CFR 800.13. In consultation with the SHPO, ACHP and Indian tribes attaching religious and cultural significance to the property, the Forest shall select the appropriate mitigation option.

(c) In the event that properties are discovered during implementation of an undertaking which has been exempted under Stipulation 7.1 of the Region 5 PA, the HRPM may recommend the use of standard protection measures (Appendix E) where appropriate based on professional judgment. If standard protection measures are not adopted as recommended by the HRPM, the Forest shall consult with the SHPO, ACHP, consulting parties, and Indian tribes which may attach religious and cultural significance to the property to identify appropriate mitigation measures.

(d) Where properties are inadvertently encroached on by project activities, and the HRPM determines that no effects or no adverse effects to historic properties have occurred (e.g., trees felled into site boundaries or vehicles driven onto sites), SHPO and ACHP notification are

not required provided that HRPM recommendations are limited to non-disturbing treatment measures (e.g. hand cutting of the tree and rolling it out of the boundary, piling brush over tire tracks) and these recommendations are implemented as prescribed. Once these treatment measures are implemented, the case will be considered resolved (Stipulation 7.10(d) of the Region 5 PA). If HRPM recommendations will not be implemented, the Forest shall consult with the SHPO on effects and possible resolution, and with the ACHP, Indian tribes and consulting parties as appropriate if an adverse effect has occurred.

(e) If consultation under 7.10 of the Region 5 PA determines that an adverse effect has occurred, the Forest will then consult with other consulting parties or Indian tribes as appropriate to identify acceptable mitigation or treatment measures. The results of any interested party or Indian tribe consultation will be included in further consultation efforts with the SHPO and/or ACHP to resolve the inadvertent effects.

(f) In instances where the involvement of the SHPO occurs after appropriate steps have been taken under the stipulations of this PA, the Forest Supervisor or other Line Officer shall not be required to reconsider previous findings or determinations unless those findings or determinations are the subject of unresolved disputes or disagreements.

#### A. HUMAN REMAINS

(a) The Forest shall ensure that in the event human remains are discovered during implementation of the Undertaking, all work within 300 feet of the discovery will cease, the area will be secured, and the Forest authorized officer (Forest Supervisor) will be immediately contacted. The Forest shall notify the Tuolumne County Sheriff's Office and Coroner's Office of the discovery.

(b) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR Part 10). The Forest recognizes that any human remains, funerary objects, sacred objects, or items of cultural patrimony encountered during project operations shall be treated with dignity and respect.

#### VI. PERFORMANCE

Each February 1 following the execution of this PA until it expires or is terminated, the Forest shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Forest's efforts to carry out the terms of this PA.

#### VII. DISPUTE RESOLUTION

Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Forest shall consult with such party to resolve the objection. If the Forest determines that such objection cannot be resolved, the Forest will:

A. Forward all documentation relevant to the dispute, including the Forest's proposed resolution, to the ACHP. The ACHP shall provide the Forest with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Forest shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Forest will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Forest may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Forest shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

C. The Forest's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

#### VIII. AMENDMENTS

Any signatory to this PA may propose amendment at any time. The proposed amendment shall be submitted in writing to each party whereupon the Signatories shall consult to consider such amendment within 30 days of receipt. This PA will be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

#### IX. TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately notify in writing and consult with the other parties to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on any undertaking in the program, the Forest must either (a) follow the Section 106 review process in 36 C.F.R. §§ 800.3 – 7 for the undertaking or (b) execute a PA pursuant to 36 C.F.R. § 800.14(b)(3) and implement its terms for the undertaking. The Forest shall notify the signatories as to

the course of action it will pursue.

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

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UNDERTAKINGS, TUOLUMNE COUNTY, CALIFORNIA**

**SIGNATORY:**

**State of California, Office of Historic Preservation**

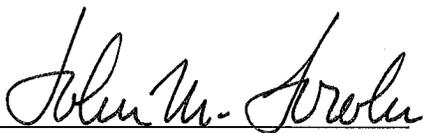
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Carol Rowland-Nawi, Ph.D.  
State Historic Preservation Officer

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Date

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**SIGNATORY:**

**Advisory Council on Historic Preservation**

  
\_\_\_\_\_  
John M. Fowler  
Executive Director

  
\_\_\_\_\_  
Date