

MEMORANDUM OF AGREEMENT
AMONG THE UNITED STATES GENERAL SERVICES ADMINISTRATION,
U. S. CUSTOMS AND BORDER PROTECTION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE RECONFIGURATION OF THE LAND PORT OF ENTRY,
SAN YSIDRO, CALIFORNIA

WHEREAS, this Memorandum of Agreement (“Agreement”) is made as of this 30th day of August, 2011, by and among the United States General Services Administration (“GSA”), U. S. Customs and Border Protection (“CBP”), the Advisory Council on Historic Preservation (“ACHP”), and the California State Historic Preservation Office (“SHPO”) (referred to collectively herein as the “Signatories” or individually as a “Signatory”), pursuant to Section 106 of the National Historic Preservation Act (“NHPA”), 16 U.S.C. 470f, and its implementing regulations at 36 CFR part 800 and Sections 110 and 111 of the NHPA;

WHEREAS, GSA shall reconfigure an existing Land Port of Entry (LPOE) (“Facility”), which consists of several acres of land and includes existing LPOE buildings, all located at 720 E. San Ysidro Blvd, 801 E. San Ysidro Blvd, and 406 Virginia Ave, San Ysidro, California;

WHEREAS, the LPOE Facility includes the United States Custom House (“U.S. Custom House”), which was built in 1933. The U.S. Custom House has undergone two major renovations, in 1960 and 1973, and many minor renovations, with multiple modifications to both the exterior and interior of the building. The essential architectural integrity of the original exterior design remains, however, the interior spaces have undergone extensive alterations of configuration and finish, and there is virtually no original fabric remaining on the interior. Nonetheless, the U.S. Custom House and was listed in the National Register of Historic Places (“NRHP”) in 1983. GSA has completed a Historic Structure Report (“HSR”) (Page, Anderson, and Turnbull, May 1, 1986) and a Historic Building Preservation Plan (“HBPP”) (Fields and Deveraux Architects, December 4, 1995) for the U.S. Custom House, both of which identify the features of the U.S. Custom House that are considered significant;

WHEREAS the reconfiguration of the Facility consists of acquisition of land and structures; demolition of some existing structures; renovation of some existing buildings; construction of new structures; redirection of roadways; installation of new landscaping features; and rehabilitation, adaptive use, seismic retrofit, and construction of an addition to the U.S. Custom House, and all of these activities will be referred to collectively herein as the Undertaking (“Undertaking”). See Attachment 1 (“Concept Design”) for further details of the Undertaking;

WHEREAS, the Undertaking will be completed in three (3) phases. See Attachment 2 for a graphic representation of phasing;

WHEREAS, GSA is the lead federal agency for this Undertaking, and CBP is the primary federal tenant of the Facility. Upon completion of the Undertaking, GSA intends to retain the Facility in the federal inventory and CBP will occupy the Facility;

WHEREAS, GSA and SHPO agree that the area of potential effects (“APE”) for the Undertaking is the area generally bounded by the U.S./Mexico international border to the south; Virginia Avenue to the west; Camino de la Plaza to the north; and East San Ysidro Blvd and railroad tracks to the east, as shown in Attachment 3;

WHEREAS, the Undertaking will have an effect on the U.S. Custom House as well as the International Building. The International Building is a privately owned property located adjacent to the project site at 751 East San Ysidro Boulevard that was constructed around 1930 and was determined by GSA as eligible for listing in the NRHP in consultation with SHPO. GSA informed the owner of the International Building regarding the determination of eligibility of the International Building;

WHEREAS, with the exception of the U.S. Custom House and the International Building, all other buildings within the APE were determined not eligible for listing in the NRHP in consultation with SHPO;

WHEREAS, cultural resources studies, which included records searches at the South Coastal Information Center and at the San Diego Museum of Man and intensive archaeological field survey of the undeveloped portions of the APE, have been conducted, and the results of these studies were negative; no prehistoric or historic sites were identified within the APE;

WHEREAS, communications with the California Native American Heritage Commission (“NAHC”) revealed that no known historic properties, to which tribes attach religious and cultural significance, were located in or within the vicinity of the project APE, and that in communication with tribes regarding this Undertaking, no tribal interest in the Undertaking or the Facility has been expressed to GSA;

WHEREAS, in accordance with 36 CFR § 800.6 and Section 110(f) of the National Historic Preservation Act (“NHPA”), 16 U.S.C. 470h-2(f), GSA, SHPO, and ACHP have consulted and agreed on the Concept Design, which addresses the entire Undertaking and detailed plans for the U.S. Custom House (Attachment 1) and on a process for review of ongoing design work, intended to fulfill GSA’s obligations under the NHPA;

WHEREAS, GSA has consulted with the City of San Diego – Historical Resources Board (“Historical Resources Board”) regarding the Concept Design and the effects of the Undertaking on historic properties, and it has been invited to participate in this Agreement as a consulting party (“Consulting Parties”);

WHEREAS, GSA invited the California Preservation Foundation (“CPF”), the San Diego Historical Society (“Historical Society”), and the owner of the International Building to participate in this consultation, but no interest was expressed by these parties;

NOW, THEREFORE, GSA, CBP, ACHP, and SHPO agree that the following stipulations shall be implemented in order to take into account the Undertaking’s effect on historic properties, and that these stipulations shall govern the Undertaking and all of its parts until this Agreement expires or is terminated.

STIPULATIONS

GSA shall ensure that the following stipulations are carried out:

I. DEFINITIONS

A. Unless otherwise noted, this Agreement utilizes the definitions found in 36 CFR § 800, and particularly 36 CFR § 800.16.

II. GENERAL REQUIREMENTS

A. **Applicable Codes and Standards.** The Undertaking shall be planned, developed and executed in consideration of the recommended approaches contained in the Secretary of the Interior's Standards for the Treatment of Historic Properties ("Secretary's Treatment Standards"), in accordance with the State Historical Building Code, Title 24, Part 8 of the California Administrative Code relating to Building Standards ("SHBC"), the HSR, the HBPP, GSA's Technical Preservation Guidelines (<http://www/gsa.gov/technicalpreservationguidelines>), prevailing applicable codes, and the Concept Design (Attachment 1).

B. **Qualifications.** GSA shall ensure that all historic preservation and archaeological work performed by GSA or on its behalf pursuant to this Agreement shall be accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary's Professional Standards [36 CFR 61 (1983)] in those areas in which the qualifications are applicable for the specific work performed.

III. DOCUMENTATION REQUIREMENTS

A. **Prior to selective demolition resulting in the removal or substantial alteration of historically significant features or spaces of the U.S. Custom House, GSA will ensure that the building is documented according to the National Park Service ("NPS") Historic American Building Survey/ Historic American Engineering Record/Historic American Landscape Survey ("HHH") program Level III.**

B. **Public Availability.** In addition to the requisite copies for final submission to NPS (2 archival, 2 non-archival), GSA shall, within 30 days after completion of the documentation, submit one (1) non-archival copy of the HHH to the SHPO and one (1) non-archival copy to an appropriate local archives designated by the SHPO.

IV. PROJECT DOCUMENTS

A. **Project Description.** The Undertaking is currently planned in three (3) phases and will be completed substantially in accord with the Concept Design (Attachment 1) as agreed to during consultation pursuant to this MOA, and recorded per the Project Documents. If there are material changes to the phasing for the Undertaking, as noted in Attachments 1 and 2, GSA will promptly provide relevant updates to the Signatories in writing. Material changes, if any, will

also be summarized annually per the reporting requirements outlined in Stipulation VIII of this agreement.

B. Project Document Security. Due to the sensitive nature of this Undertaking and its location, the Signatories to this Agreement hereby agree to comply with GSA Order PBS 3490.1A, entitled Document Security for Sensitive but Unclassified Paper and Electronic Building Information, dated June 1, 2009 (Attachment 4) regarding the dissemination of “sensitive but unclassified” documents for federal facilities only to persons on a “need to know basis.” GSA reserves the right to withhold, consistent with the terms of the GSA Order, any portion of the plans and specifications unrelated to the historic preservation aspects, of all construction work at the Facility, or anything unrelated to the historic character of the Facility. GSA shall provide the Signatory with a list of any plans or specifications that are being withheld pursuant to this provision. To the extent that any Signatory disagrees with GSA’s decision to withhold any such documents, then the Signatories shall meet to try and resolve the disagreement per Stipulation IX. Each individual representing a Signatory to this Agreement will be required to execute a Non-Disclosure Agreement, prior to being provided access to “sensitive but unclassified” documents, including but not limited to, the plans and specifications referenced in this Agreement.

C. Project Document Submission. GSA will prepare and submit to SHPO for review per this Stipulation the documents listed below, which are collectively referred to as the “Project Documents.” All submissions will include a historic properties protection plan, which will describe protection plans from surrounding construction and ground disturbance for the U.S. Custom House and the International Building during that phase. Per Stipulation IV.A above, Signatories will be advised of any material changes to the phasing described below in this Stipulation.

1. Phase 1 (Northbound Vehicular): A package of select relevant drawings related only to the historic architectural features, including those site plans necessary to provide context to such features, at the 100% Construction Documents stage.
2. Phase 2 (Northbound and Southbound Pedestrian): A package of select relevant drawings related only to the historic architectural features, including those site plans necessary to provide context to such features, at the 100% Design Development stage; drawings and specifications related only to the historic architectural features, including those site plans necessary to provide context to such features, at the 50% Construction Documents stage; and drawings and specifications related only to the historic architectural features, including those site plans necessary to provide context to such features, at the 100% Construction Documents stage.
3. Phase 3 (Southbound Vehicular): A package of select relevant drawings related only to the historic architectural features, including those site plans necessary to provide context to such features, at the 100% Design Development stage.

D. Project Documents Review and Comment by SHPO. SHPO will review the Project Documents to comment on their conformance with the Concept Design and the Secretary’s

Treatment Standards, and especially to comment on whether the work in the Project Documents may adversely affect the International Building or the U.S. Custom House beyond that which is contemplated in the Concept Design (Attachment 1). SHPO will provide written comments to GSA within thirty (30) calendar days of receipt of each submittal.

E. Project Documents Review and Comment by ACHP. ACHP may request, at its discretion, any or all Project Documents from GSA for review and comment purposes. ACHP's review and comment would then proceed in accordance with the timelines and protocols in this Stipulation IV.

F. Project Documents Review and Site Visits. When submissions are received by SHPO or ACHP, they may request, within five (5) business days of receipt of Project Documents, in writing to GSA, a meeting or a site visit to the Facility. Meeting minutes will be recorded by the Signatory who requested the meeting or site visit, and such minutes may be considered by GSA as part of the comments provided under Stipulation IV.D or IV.E, above, as long as minutes are received by GSA within five (5) business days of the site visit or are drafted by GSA.

G. Consideration of Written Comments and Approved Project Documents. GSA will consider incorporation of written comments, provided in accordance with this Stipulation IV, into the Project Documents, to the fullest, reasonable extent. GSA will then provide a written explanation to SHPO and, only as appropriate per Stipulation IV.D, ACHP, explaining how the Project Documents were or were not modified. Should GSA object to incorporating any comments into the Project Documents, GSA will provide SHPO and, only as appropriate per Stipulation IV.D, ACHP, with a written explanation of its objection, and will initiate consultation with the same to resolve the objection. If no agreement is reached within ten (10) business days following receipt of the objection, GSA will request ACHP review of this dispute pursuant to Stipulation IX. GSA will proceed in accordance with the Project Documents as finalized after no comments are received (see Stipulation IV.H, below), or after GSA has resolved the objections either informally or through the dispute resolution process in Stipulation IX. ("Dispute Resolution"). Project Documents which have been approved by SHPO and/or ACHP, Project Documents revised by GSA based on comments received, and Project Documents not revised but accompanied by the aforementioned written explanation from GSA, shall be considered as approved project documents ("Approved Project Documents") and shall be provided by GSA to the SHPO for their records at the conclusion of consultation for each of the three phases.

H. Failure to Comment. If SHPO, or ACHP as appropriate per Stipulation IV.D, do not provide written comments within the agreed upon timeframes noted above, GSA may assume that the same does not have any comments regarding the Project Documents, and GSA may proceed in accordance with the Approved Project Documents.

I. Distribution of Written Comments. All written comments referred to in Stipulation IV. of this Agreement will be made available within ten (10) business days by GSA to SHPO and ACHP, or any requesting Consulting Parties, upon their request to GSA in writing.

V. CONSTRUCTION MONITORING AND CHANGES TO SCOPE OF WORK

A. Construction Monitoring. During the period of construction, GSA Historic Preservation Staff members, who meet the professional requirements set forth in Stipulation II.B, will participate in project meetings once per month, or more often if deemed necessary by the GSA Regional Historic Preservation Officer.

B. Change to Approved Project Documents. GSA personnel, who meet the professional requirements set forth in Stipulation II.B, will determine whether any conflicting conditions discovered or changes proposed (e.g. change orders) to the work during implementation of the Undertaking may result in an adverse effect other than those contemplated in the Concept Design and Approved Project Documents. If the determination is that additional adverse effects may result, GSA will forward written documentation of the determination, along with proposed measures to resolve the adverse effects, to SHPO. Unless SHPO objects in writing within seven (7) business days of receiving such documentation, GSA may proceed with the work. Otherwise, GSA will resolve the objection through further consultation with the SHPO or in accordance with the Dispute Resolution process in Stipulation IX of this Agreement, before proceeding with the work.

C. Site Visits. SHPO or ACHP may contact GSA to schedule additional site visits during normal working hours, and such site visits will be scheduled by GSA for SHPO or ACHP in a timely manner.

VI. DISCOVERIES, UNANTICIPATED ADVERSE EFFECTS, AND EMERGENCIES

A. Discoveries. If, during the course of excavation and construction, any historic properties are encountered, all earth moving activity in the area of impact shall cease immediately, and GSA shall notify SHPO and ACHP within 48 hours of discovery. The notification shall describe GSA's assessment of the National Register eligibility of the property and proposed actions to resolve any adverse effects to that historic property(ies). Project delays will be authorized only in the event of a discovery as noted below:

1. an unusual, unexpected artifact, feature, or complex of artifacts and features, considered by GSA as historic property eligible for listing on the National Register, and of apparent great significance to archeological research or public interpretation; or
2. human skeletal remains; or
3. Native American cultural item(s) requiring compliance with Section 3 (d) of the Native American Graves Protection and Repatriation Act (PLIOI-601) (NAGPRA).

GSA shall consult on appropriate curatorial treatment of materials and records resulting from the implementation of this Agreement with the SHPO, relevant THPO, or federally-recognized tribe, whose agreement shall not be unreasonably withheld. If no specific curatorial treatment is determined through consultation, GSA shall ensure that such materials and records will be

curated in accordance with 36 CFR 79. Materials to be returned to tribes under NAGPRA or items subject to repatriation under NAGPRA will be maintained in accordance with 36 CFR 79. GSA shall ensure that any human remains encountered during the course of this Undertaking are treated in a respectful manner. A reasonable and good faith effort shall be made to identify the appropriate Native American tribe(s), or group(s), related to the human remains, if discovered, and consult with those tribe(s) concerning the treatment of such remains.

B. **Unanticipated Adverse Effects.** If GSA determines that the Undertaking has resulted in unanticipated adverse effects to historic properties prior to completion of the Undertaking, GSA shall ensure that SHPO and ACHP are notified of such unanticipated adverse effects within two (2) business days (not including a federal holiday) of GSA's learning of such unanticipated adverse effects, and shall comply with 36 CFR § 800.13(b).

C. **Emergencies.** GSA shall ensure that, in the case of an immediate rescue and salvage operation on the U.S. Custom House that is required because of an emergency (i.e., a disaster or emergency declaration by the President, Governor of California, or the Mayor of San Diego, or another threat to life or property) ("Emergency") that may adversely affect the U.S. Custom House, GSA shall use its best efforts to notify SHPO and ACHP of such operations within two (2) business days (not including a federal holiday) after the commencement of such operations. If GSA proposes such an emergency undertaking, which GSA determines may have an adverse effect on the U.S. Custom House, as an essential and immediate response to a Emergency declaration, GSA shall notify SHPO and ACHP and afford SHPO and ACHP an opportunity to comment within seven (7) business days (not including a federal holiday) of such notification. If GSA determines that circumstances do not permit seven (7) business days for comment, then GSA shall notify SHPO and ACHP and invite comments within the time available. GSA shall consider, as applicable in light of the urgency of the circumstances, any comments received in reaching a decision on how to proceed with the emergency undertaking.

These emergency procedures apply only to undertakings that may have an adverse effect on the U.S. Custom House and that will be implemented within thirty (30) calendar days after the Emergency occurs. GSA may request an extension of the period of applicability from SHPO and ACHP prior to the expiration of the thirty (30) calendar days.

Nothing in this Agreement shall be deemed to prevent GSA from taking immediate rescue and salvage operations to preserve life or property, such operations being exempt from Section 106 review per 36 CFR § 800.12(d).

VII. DURATION OF THIS AGREEMENT

This Agreement will be in effect for fifteen (15) years, or until all phases of the Undertaking reach substantial completion, whichever comes first, with periodic documented review by the Signatories of the planned duration every five (5) years. Any amendments to this Agreement shall be made according to Stipulation X below. The Signatories will be advised in writing by GSA when the Undertaking has reached substantial completion.

VIII. REPORTING

At the end of each calendar year following the execution of this Agreement until the end of the period of duration outlined in Stipulation VII or until this Agreement is terminated, GSA shall provide the Signatories with a summary report detailing work undertaken pursuant to its terms. Such report shall summarize any phasing changes proposed, problems encountered, and any disputes or objections received in GSA's efforts to carry of the terms of this Agreement.

IX. DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including the GSA's proposed resolution, to the ACHP. The ACHP shall provide GSA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, GSA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Consulting Parties, and provide them with a copy of this written response. GSA 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, GSA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, GSA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Consulting Parties, and provide them and the ACHP with a copy of such written response.

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

X. AMENDMENTS

Any Signatory to this Agreement may propose that this Agreement be amended, whereupon all Signatories will consult for no more than thirty (30) calendar days to consider such amendment. The amendment will be effective on the date a copy signed by all of the Signatories is received by ACHP.

XI. TERMINATION

A. Proposal to Terminate. If for any reason, GSA determines that it cannot implement the terms of this Agreement, or if SHPO or ACHP determines that this Agreement is not being properly implemented, such Signatory may propose to the other Signatories that this Agreement be terminated.

B. Notification. The Signatory proposing to terminate this Agreement shall so notify all other Signatories, explaining the reasons for the proposed termination and affording them at least thirty (30) calendar days to consult and seek alternatives to termination.

C. Termination Due to Failure to Agree. If such consultation fails and the Signatories cannot agree on an alternative to termination, this Agreement may thereafter be terminated by any of the Signatories. In the event of a termination, and prior to work continuing on the Undertaking, GSA shall notify the Signatories as to which of the following courses of action it will pursue:

1. GSA shall either ensure that each action that would otherwise be covered in this Agreement is reviewed in accordance with 36 CFR § 800.3 through 800.7; or
2. GSA shall pursue a new agreement developed per 36 CFR § 800.6.

XII. EFFECTIVE DATE OF THIS AGREEMENT


This Agreement will be executed and go into effect when it is signed by the Signatories and filed with ACHP. Execution of this Agreement and implementation of its terms by GSA, will evidence that GSA has afforded ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that GSA has taken into account the effects of the Undertaking on historic properties.

SIGNATURES ON FOLLOWING PAGE

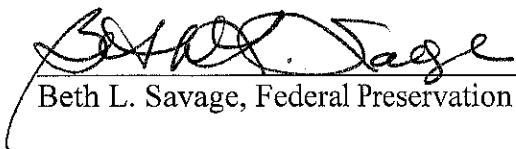
IN WITNESS WHEREOF, the Signatories hereto have caused this Agreement to be executed by their proper and duly authorized officers.

SIGNATORIES:

U.S. GENERAL SERVICES ADMINISTRATION

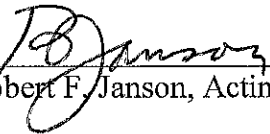
By: 
Jeffrey E. Neely, Regional Commissioner

Date: 6/24/2011

By: 
Beth L. Savage, Federal Preservation Officer

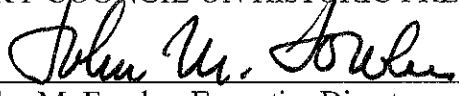
Date: 6/21/2011

U.S. CUSTOMS AND BORDER PROTECTION

By: 
Robert F. Janson, Acting Executive Director, Facilities Management and Engineering


Date: 8/4/11

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
John M. Fowler, Executive Director

Date: 8/30/11

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: 
Milford Wayne Donaldson, State Historic Preservation Officer

Date: 16 AUG 2011

ATTACHMENTS LISTED ON FOLLOWING PAGE