

**PROGRAMMATIC AGREEMENT
AMONG
REGION 9 OF THE GENERAL SERVICES ADMINISTRATION;
THE STATE HISTORIC PRESERVATION OFFICERS OF
ARIZONA, CALIFORNIA, HAWAII, AND NEVADA
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
PRESERVATION, MAINTENANCE, REHABILITATION, AND USE
OF HISTORIC PROPERTIES
AND CONSIDERATION OF HISTORIC PROPERTIES
IN PLANNING ACTIVITIES**

WHEREAS, General Services Administration's Pacific Rim Region (GSA-R9) owns, manages, leases or disposes of properties in four western states, including properties listed on, or eligible for inclusion in, the National Register of Historic Places (historic properties), and properties not yet eligible but potentially eligible for future inclusion in the National Register; and

WHEREAS, GSA-R9 continues to maintain an inventory of properties under its jurisdiction or control, or properties in which GSA-R9 has leased space, and has determined which of these properties are listed on, eligible for inclusion in, or potentially eligible for the National Register of Historic Places (Register); and

WHEREAS, GSA-R9 is in the process of completing National Register eligibility studies on all properties over 50 years old and potentially eligible properties that identify properties with historic significance, and will comply with Sections 106 and 110 of the National Historic Preservation Act in the nomination of eligible properties for inclusion in the Register; and

WHEREAS, GSA-R9 continues to maintain and produce Historic Structure Reports (HSR) for properties in Appendix I that identify character-defining materials, spaces, and features and that detail preservation treatments and provide contract specifications for routine maintenance, rehabilitation, and repair and alteration projects that may be performed therein; and

WHEREAS, GSA-R9 has determined that its program of preservation, maintenance, rehabilitation and use of historic properties under its jurisdiction or control (preservation and rehabilitation program), its program of constructing new space for tenant agencies (construction program), its program of leasing existing space for tenant agencies (leasing program), its program of disposing of surplus government property (disposal program), and the process by which individual projects carried out pursuant to these programs are approved and funded by GSA-R9, GSA's central office, and by the legislative process of the government of the United States (approval process) may affect historic properties; and

WHEREAS, GSA-R9 has consulted with the State Historic Preservation Officers of Arizona, California, Hawaii, and Nevada (SHPOs) who are a signatory to this Programmatic

Agreement (PA) and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14 of ACHP's regulations ("Protection of Historic Properties," 36 CFR Part 800), implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) [the Act]; and

WHEREAS, GSA-R9 has consulted with the SHPOs and the ACHP concerning its responsibilities pursuant to Section 110 of the Act (16 U.S.C. 470f-2), including, but not limited to, public participation, identification, evaluation, management, maintenance, registration, and protection of properties of historic, archaeological, architectural, engineering or cultural significance and has considered the Secretary of the Interior's recommendations for carrying out its responsibilities pursuant to the Act, published jointly by the Secretary of the Interior and the ACHP as "The Section 110 Guidelines: Annotated Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act"; and

WHEREAS, the Arizona, California, Hawaii, and Nevada SHPOs are authorized to enter into this agreement in order to fulfill their role of advising and assisting federal agencies in carrying out their Section 106 responsibilities under the following federal statutes: Section 101 and 106 of the National Historic Preservation Act of 1966, as amended 16 U.S.C. 470f, and pursuant to 36 CFR 800, regulations implementing Section 106, at 800.2(c)(1)(i) and 800.6(b); and

WHEREAS, the Arizona SHPO is authorized to advise and assist federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under A.R.S. § 41-511.04(D)(4)

WHEREAS, GSA-R9 has determined that its management of the preservation and rehabilitation program, the construction program, the leasing program, the disposal program, and its approval process may provide an opportunity for the parties to this PA to participate in a meaningful and timely manner to assist GSA-R9 in fulfilling its responsibilities to identify, evaluate and take into account the effect of its undertakings on historic properties pursuant to Section 106 of the Act, as well as providing an opportunity for the SHPOs and the ACHP to assist GSA-R9 in fulfilling its responsibilities pursuant to Section 110 of the Act;

NOW, THEREFORE, GSA-R9, the SHPOs and the ACHP agree that the preservation and rehabilitation program, the construction program, the leasing program, the disposal program and the approval process shall be carried out in accordance with the following stipulations in order that GSA-R9's Section 106 responsibilities may be initiated or completed in a timely manner and to establish a process to assist GSA-R9 in meeting its responsibilities pursuant to Section 110 of the Act.

STIPULATIONS

GSA-R9 shall ensure that the following measures are carried out:

I. Properties Covered by this PA

A. Appendix I: Appendix I lists all properties in GSA-R9 that are federally owned and under the jurisdiction and control of GSA-R9, or where GSA-R9 leases space. Said list includes the current name (and, where different, the historic name) of the building; its address or location; its approximate construction date; whether the building is actually listed on or has been determined potentially eligible for inclusion in the Register; and an indication, where known, of whether or not the building is included in an historic district (and, where known, whether or not said building is a contributing or non-contributing element to that historic district). This PA is understood to apply to all properties in Appendix I unless otherwise limited herein.

B. Determination of Eligibility for the Register

1. If any party to this agreement requests an evaluation of the historic significance of a building, GSA-R9 will address that request within 60 days. Further undertakings on that building will be reviewed under the terms of this PA.

2. Properties will be evaluated for eligibility for listing in the Register by the Regional Historic Preservation Officer (RHPO) in consultation with the appropriate SHPO, and the results of that evaluation shall be forwarded to the SHPO for evaluation and comment. If the SHPO opinion is not rendered within thirty days of receipt of adequate documentation, GSA-R9 will assume that the SHPO has concurred with GSA-R9's determination of eligibility. In the event that GSA-R9 and the SHPO cannot agree on the eligibility of a property, GSA-R9 shall request a Determination of Eligibility from the Keeper of the Register in accordance with 36 CFR Part 63.2. Documentation of all determinations will be retained by GSA-R9 and will be available to the SHPO for review.

C. Changes to Appendices

1. Additions: Whenever GSA-R9 proposes to acquire a property, GSA-R9 shall promptly comply with 36 CFR 800 with respect to its acquisition. If a property so acquired is determined, in accordance with 36 CFR §800.4(c), to be eligible for inclusion in the Register, GSA-R9 will consult with the SHPO for the state in which the property is located to determine whether the terms of this PA shall apply to the management of the property. If the consulting parties agree to the applicability of the terms of this PA to the management of the property, GSA-R9 shall provide to the SHPOs and ACHP a revised Appendix I reflecting this change in the Annual Report required by Stipulation XI.

2. Change in Status: Should GSA-R9 determine, in accordance with 36 CFR §800.4(c), that the Register-eligible status of a property included in Appendix I has changed and the property is determined to be ineligible for the Register, then the terms of this PA shall no longer apply to such building; GSA-R9 shall notify the appropriate SHPO and ACHP of such a finding and submit to the SHPOs and ACHP a revised Appendix I reflecting the change in the Annual Report. GSA-R9 acknowledges that the passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible, particularly those properties that were determined to be ineligible due in part to their age; GSA-R9 shall reevaluate properties in

accordance with 36 CFR §800.4(c) if requested to do so by the appropriate SHPO in whose state the property exists, or if requested by ACHP or the Keeper of the Register.

3. Changes to Appendix I: GSA-R9 will review Appendix I annually to determine if there are any changes pursuant to Stipulation 2, above. If there are any changes to the status of a property it will be highlighted in the Annual Report. Changes to appendices do not require changes or other amendments to this PA, unless otherwise appropriate to Stipulation X.

4. Changes to Other Appendices: Changes to any other appendices will be submitted as part of the Annual Report.

D. Disposal of Federal Properties: When GSA-R9 receives a Report of Excess (ROE) from another federal agency regarding a property handled through the disposal program, GSA-R9 will determine, in accordance with 36 CFR §800.4(c), if the property is eligible for inclusion in the Register. If the property is determined eligible for the Register, any proposed work for which GSA-R9 may be responsible will be handled in accordance with the terms of this PA. This PA refers only to disposal of properties in Region 9.

II. Historic Preservation Staff

A. Professional Qualifications: GSA-R9 shall employ a Regional Historic Preservation Officer (RHPO) and specialists (hereinafter “historic preservation staff”) who meet one or more of the professional qualifications standards enumerated within the Secretary of the Interior’s Professional Qualifications Standards (48 FR 44738-9, September 29, 1983). GSA-R9 shall ensure that the work of its historic preservation staff is carried out under the direct or indirect supervision of the RHPO, or his/her qualified designee. Where the required professional experience is not available within the historic preservation staff, GSA-R9 shall contract with additional, similarly qualified specialists whose services shall be provided to the historic preservation staff under the direction of the RHPO.

B. Compliance Responsibility: GSA-R9 shall assign to the RHPO the responsibility and authority to administer and manage its fulfillment of the terms of this PA. Internal review procedures are outlined in Appendix VI. Any changes to the procedures described in Appendix VI shall be highlighted in the Annual Report as set forth in Stipulation V.

C. Review by Historic Preservation Staff: GSA-R9 shall ensure that its historic preservation staff reviews and approves all routine maintenance, rehabilitation, repair and alteration undertakings planned for any historic building, archeology for any site subject to new construction, or effects within close proximity to cultural/historic resources. Historic preservation staff review will be undertaken at the earliest stages in planning, and may extend through the life of the undertaking.

III. General Standards for Maintenance and Rehabilitation Undertakings

A. Secretary of the Interior's Standards (36 CFR 68): GSA-R9 shall ensure that historic properties included in Appendix I which have been determined eligible for the Register will be maintained and rehabilitated in accordance with the recommended approaches in the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (Secretary's Standards).

B. Development of Historic Structure Reports (HSR): GSA-R9 shall ensure that the recommended procedures set forth in the HSRs are consistent with the Secretary's Standards outlined in III.A, above.

IV. Undertaking Review for Historic Owned and Leased Properties

A. Properties excluded from further review: GSA-R9 may carry out undertakings on properties determined not eligible for inclusion in the Register and on properties listed as non-historic without further review pursuant to 36 CFR 800.

This includes owned and leased properties that have been determined ineligible for the National Register and properties not yet 50 years old (Class 5 and Class 6).

B. Undertakings excluded from further review: GSA-R9 may carry out undertakings listed on Appendices III and IV without further review pursuant to 36 CFR 800, provided that GSA-R9 ensures that they are reviewed as provided in Stipulation II.B, above and that they are carried out in a manner consistent with the standards set forth in Stipulation III, above. All lease actions are subject to E.O. 12072 and E.O. 13006.

C. Undertakings in historic properties subject to review by the SHPOs: GSA-R9 shall ensure that any undertaking which consists of an interior or exterior alteration not otherwise excluded from review pursuant to Stipulations IV.A, and IV.B, above will be reviewed in accordance with 36 CFR 800.

D. Oversight of undertakings in historic properties: GSA-R9 historic preservation staff will provide training for all building management staff as necessary, in addition to telephone consultation and site visits, to ensure that undertakings carried out pursuant to this Stipulation comply with the standards for maintenance and rehabilitation listed in Stipulation III, above.

V. Management in Accordance with Accepted HSRs and BPPs

A. The HSRs that GSA-R9 has completed to date are listed in Appendix II. These HSRs will be submitted to the appropriate SHPO for review based upon an evaluation of the identification and evaluation of the significant materials, features, and areas of the historic properties, their original appearance and present condition, the appropriateness of the preservation zones that have been applied to the interior and exterior of the building, and the specifications enumerated for the preservation or rehabilitation of character-defining features and spaces.

1. Should the appropriate SHPO concur with the findings enumerated with the HSR, that SHPO shall respond with comments or notify GSA-R9 of its concurrence within 30 days;
2. If GSA-R9 has not received notification to the contrary from the appropriate SHPO in 30 calendar days of its receipt of a HSR, GSA-R9 shall assume that the SHPO has reviewed and accepted the HSR.

GSA-R9 shall provide to the SHPOs and ACHP a revised Appendix II of the PA as part of the Annual Report required by Stipulation IX to reflect new or revised HSRs that have been reviewed and accepted by the appropriate SHPO. The SHPOs shall retain a copy of the HSR for its future reference; GSA-R9 will provide updated information to the SHPOs for inclusion in its copy of the HSR as it becomes available. GSA-R9 will make the property that is the subject of a HSR available to the appropriate SHPO for an independent site visit by that SHPO.

B. Undertakings consistent with HSR recommendations: GSA-R9 will ensure that maintenance, rehabilitation and related management activities carried out on or in an historic building included in Appendix II will be in accord with the recommended approaches in that building's HSR, and will be reviewed in accordance with Stipulation II.C, above, thus GSA-R9 need not submit such activities for review by the SHPOs pursuant to 36 CFR 800.

C. Undertakings inconsistent with the HSR recommendations: GSA-R9 will ensure that maintenance, rehabilitation and related management activities carried out on or in an historic building included in Appendix II that are not in accord with the recommended approaches in that building's HSR, will be reviewed by the SHPOs in a timely manner in accordance with 36 CFR 800, unless said undertaking would otherwise be excluded from review pursuant to Stipulation IV, above.

E. Undertakings not delineated in HSR recommendations that must be reviewed by the SHPOs: GSA-R9 shall ensure that any undertaking which consists of an interior or exterior alteration, not otherwise excluded from review pursuant to Stipulation IV, above, will be reviewed in accordance with 36 CFR 800.

F. Undertakings not delineated in HSR recommendations but excluded from review by SHPOs: GSA-R9 may carry out undertakings listed in Appendix III without further review pursuant to 36 CFR 800, provided that GSA-R9 ensures that they are reviewed as provided in Stipulation II.C, above, and that they are carried out in a manner consistent with the standards set forth in Stipulation III, above.

VI. Undertakings Not Covered By This PA

A. Notification: GSA-R9 shall notify the SHPOs when planning for all other undertakings, which are not subject to the terms of this PA and have the potential to affect historic properties or sites. GSA-R9 shall notify the SHPOs in writing when it has initiated discussions or consultations with concerned parties potentially impacted by the project. Such notification shall include general information about the scope and nature of the project, its

potential effect on historic properties, and the status of GSA-R9's review of the project pursuant to Section 106 of the Act.

B. The following undertakings are not covered by this PA. GSA-R9 will comply with 36 CFR Part 800 with respect to each undertaking:

1. Undertakings on properties located in GSA-R9's Pacific Trust Territories, including but not limited to: Guam, American Samoa, Northern Marianas Islands, and Federated States of Micronesia;
2. Undertakings which call for the construction of new buildings or additions to historic properties included in Appendix I,
3. Undertakings which involve significant ground disturbance, archeological investigation, or take place on known archaeological sites,
4. Transfer of federal properties to nonfederal entities.

VII. Dispute Resolution

A. SHPO/ACHP objections: Should any SHPO who is a signatory to this PA or the ACHP object to any action or decision of GSA-R9 pursuant to this PA or relating to its subject matter, GSA-R9 will consult with the objecting party to resolve the objection. If GSA-R9 or the objecting party determines that the objection cannot be resolved, GSA-R9 shall forward all documentation relevant to the dispute to the ACHP, including GSA-R9's recommended resolution of the objection, and request ACHP comment. Within 30 days after receipt of all pertinent documentation, the ACHP will either:

1. Provide GSA-R9 with recommendations, which GSA-R9 will take into account in reaching a final decision regarding the dispute; or
2. Notify GSA-R9 that it will comment pursuant to 36 CFR §800.7(c), and proceed to comment.

Any ACHP comment provided in response to such a request will be taken into account by GSA-R9 in accordance with 36 CFR §800.7(c)(4) and §110(1) of the Act with reference only to the subject of the dispute; GSA-R9's responsibility to carry out all actions under this PA that are not the subjects of the objection will remain unchanged.

If the ACHP fails to provide recommendations or to comment within the specified time period, GSA-R9 may implement the undertaking subject to dispute under this Stipulation in accordance with its recommended resolution.

B. Arbitration: The parties agree to use any non-binding arbitration that is required under applicable state court rules.

C. Public objections: At any time during implementation of the measures stipulated in this PA, should an objection to any such measure or its manner of implementation be raised by a member of the public, GSA-R9 shall take the objection into account and consult with the objecting party, the appropriate SHPO and the ACHP to resolve the objection.

VIII. Public Outreach

GSA-R9 shall fulfill the requirements of Subpart A of 36 CFR 800 which requires federal agencies to involve consulting parties as described in 36 CFR §800.2(c) in findings and determinations made during the 106 process. GSA-R9 shall coordinate consultations as appropriate with the requirements of other statutes such as the National Environmental Policy Act (NEPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the American Indian Religious Freedom (AIRFA), the Archeological Resources Protection Act (ARPA), and agency-specific legislation.

IX. Emergencies

A. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and this PA.

B. In the event GSA proposes an emergency undertaking following a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, GSA-R9 shall:

1. Notify the appropriate SHPO/THPO and any Indian Tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and afford them an opportunity to comment within seven (7) days of notification. If GSA-R9 determines that circumstances do not permit seven days for comment, the agency official shall notify the SHPO/THPO, and any appropriate Indian Tribe or Native Hawaiian organization, and invite comments within the time available. GSA-R9 shall take into account any comments received in reaching a decision on how to proceed with the emergency undertaking.
2. These emergency or security procedures apply only to undertakings that will be implemented within 30 days after the disaster or the appropriate authority has formally declared an emergency. GSA-R9 may request an extension of the period of applicability from the SHPO/THPO prior to the expiration of the 30 days.
3. Within 30 calendar days following the emergency procedures, GSA-R9 will provide the SHPO/THPO and any appropriate Indian Tribe or Native Hawaiian organization with a written report documenting the actions taken to minimize effects, the work's present status, and the planned treatment of the property. This action will be included in the report developed in accordance with Stipulation XI, below.
4. These emergency procedures or security enhancements will be developed in consultation with the RHPO and designed to minimize harm to the property. They will

be reversible, temporary in nature, and may be installed for no more than three years. GSA-R9 will work in consultation with the SHPO during the three-year period to establish a proposed schedule for replacement of the temporary improvements with permanent improvements that meet the Secretary's Standards.

X. Discoveries

A. If it appears that an undertaking will affect a previously unidentified property that may be eligible for inclusion in the Register, or that may contribute to a National Register historic district, or affect a known historic property in an unanticipated manner, GSA-R9 will stop any potentially harmful activities in the vicinity of the discovery, take all reasonable measures to avoid or minimize harm to the property, and consult in accordance with Stipulations IV, V, and VI, above.

B. If a property discovered pursuant to Stipulation X.A, above, has not previously been included in or determined eligible for the Register and provisions for its treatment are not contained in an approved archaeological treatment plan, GSA-R9 may assume that the property is eligible for inclusion in the Register for purposes of this PA.

XI. Annual Report

A. Schedule and content: On or before November 30 of each year, GSA-R9 shall prepare and provide to the SHPOs who are signatory to this PA and to the ACHP an annual report for the previous fiscal year addressing, at a minimum, the following topics:

1. A general summary of how this PA has been implemented during the preceding year;
2. A listing of projects reviewed and carried out in accordance with Stipulation IV, above;
3. A listing of projects reviewed internally and carried out in accordance with Stipulation V, above;
4. A summary of any problems or issues relating to this PA that have arisen in the course of the year;
5. GSA-R9's assessment of the effectiveness of this PA;
6. Any recommendations GSA-R9 may have for improving the PA;
7. Up-to-date appendices, reflecting any changes incorporated pursuant to Stipulation I, II or V, above;
8. A summary of the training provided to GSA-R9 staff, including general training and undertaking-specific training provided pursuant to Stipulation IV.D.

B. Public Access: Subject to federal security requirements, GSA-R9 shall ensure that this annual report is available for public inspection, that potentially interested members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to GSA-R9, the SHPOs, and/or the ACHP regarding the maintenance and rehabilitation program, and the effectiveness of this PA.

C. SHPO and ACHP comments: At the request of the SHPOs or ACHP, GSA-R9 will provide access to reasonably available follow-up materials, and will consult with the SHPO and/or ACHP as necessary to answer questions about projects which are carried out pursuant to this PA and which are included in the annual report.

At the request of any party to this PA, GSA-R9 will meet to address questions or comments that the SHPOs, the ACHP, or the public may wish to make. Based on this discussion, the parties to this PA will determine whether this PA will continue in force, be amended, or be terminated.

XII. Funding Limitations

A. Limitations on Expending and Obligating Funds: In the event that GSA-R9 is unable to fulfill the terms of a Stipulation of this PA due to the provisions of 31 U.S.C. 1341, GSA-R9 shall advise the SHPOs and the ACHP of its inability to comply with the Stipulation and shall ensure that it fulfills its obligations pursuant to 36 CFR 800. GSA-R9's responsibility to fulfill its obligation for all other Stipulations of this PA that are not impacted by the provisions of 31 U.S.C. 1341 will remain unchanged, unless the parties to this PA agree to otherwise amend or terminate the PA.

B. Non-Availability of Funds: This MOA shall be subject to available funding, and nothing in this MOA shall bind the State or Federal agencies to expenditures in excess of funds authorized and appropriated for the purposes outlined in the MOA.

XIII. Miscellaneous

A. Effective Date of Programmatic Agreement: This PA shall take effect on the date of the last signatory hereto. The PA will expire in ten years from the date of its signing, or before if terminated in accordance with terms of this PA. If, after 10 years, this PA still meets the needs of GSA-R9, the SHPOs, and the ACHP, this PA shall continue upon written agreement of all parties.

B. Amendment: Any party to this PA may propose to the other parties that it be amended, whereupon the parties will consult in accordance with 36 CFR §800.14 to consider such an amendment.

C. Termination: Any party to this PA may terminate it by providing sixty (60) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination of the terms of this PA by a SHPO, GSA-R9, in consultation with

the ACHP, will fully comply with 36 CFR 800 with regard to undertakings covered by this agreement in consultation with the SHPO and carry out its responsibilities under Section 110 of the Act and all related authorities. GSA-R9's responsibilities pursuant to the terms of this PA for the remaining states shall remain unchanged.

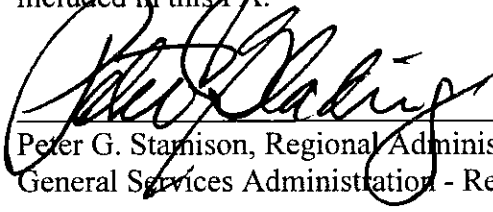
D. Definitions are listed in Appendix V.

E. Equal Opportunity/Non-Discrimination: The parties agree to comply with all applicable Federal or State laws relating to equal opportunity and non-discrimination. Notwithstanding the foregoing, each of the above provisions shall apply to the United States of America, including GSA, only to the extent consistent with federal law and practice, as such may be amended from time to time. The obligations under these provisions do not confer or create for any person or group any remedy or right against the United States of America not currently available under the United States Constitution, Title VII of the 1964 Civil Rights Act, or any other applicable federal law.

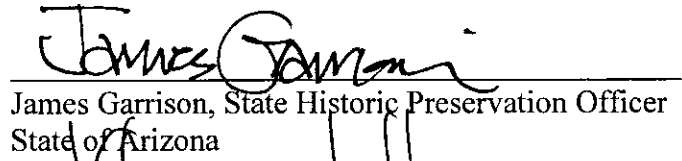
F. Conflict of Interest: One of the reasons SHPO may terminate this agreement would be upon finding that a SHPO employee that was significantly involved in the creation of this agreement is, at any time the agreement is in effect but no later than three years after its execution, an employee or consultant to any other party in the agreement.

SIGNATURES ON FOLLOWING PAGE

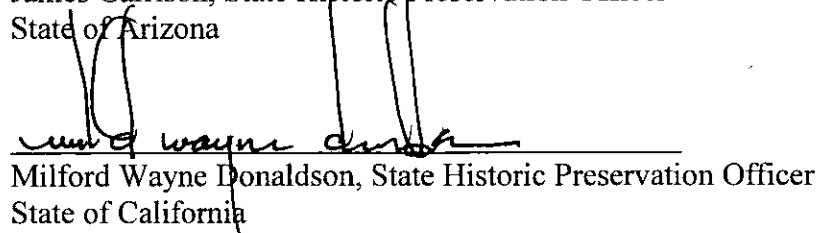
Execution and implementation of this PA evidences that GSA-R9 has satisfied and is satisfying its Section 106 responsibilities for all individual undertakings involving maintenance and rehabilitation of historic properties under its jurisdiction and control in GSA-R9 which are included in this PA.


Peter G. Starnison, Regional Administrator
General Services Administration - Region 9

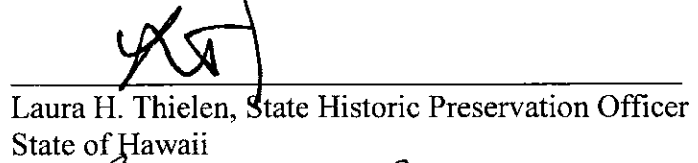
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Date


James Garrison, State Historic Preservation Officer
State of Arizona

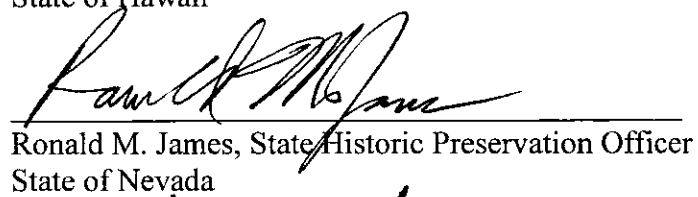
1 MAY 2008
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Milford Wayne Donaldson, State Historic Preservation Officer
State of California

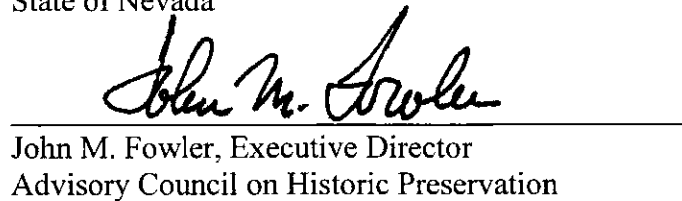
15 MAY 2008
Date


Laura H. Thielen, State Historic Preservation Officer
State of Hawaii

5/21/08
Date


Ronald M. James, State Historic Preservation Officer
State of Nevada

7-15-2008
Date


John M. Fowler, Executive Director
Advisory Council on Historic Preservation

8/28/08
Date