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April 10, 2013

SENT BY EXPRESS MAIL

Tom A. Samra  
Vice President, Facilities  
Facilities Implementation  
2 Congress Street, Room 8  
Milford, MA 01757

RE: Bronx Post Office Relocation and Sale of Property  
Appeal of USPS Decision of March 14, 2013

Dear Mr. Samra:

On behalf of Julio Pabon and the National Post Office Collaborate, we are writing to request that the United States Postal Service ("Postal Service") reconsider the proposed decision of March 14, 2013, to relocate the Bronx Post Office, currently located at 558 Grand Concourse, Bronx, New York. The Postal Service's decision further indicates that its plans "also include marketing the sale of the property."

We have several problems regarding this proposed decision, in addition to those raised by others. Specifically, we request that the Postal Service comply with proper procedures and studies regarding the impact of the relocation of postal services and sale of the existing property on the Bronx community and on the nation as a whole.

First, under the National Environmental Policy Act ("NEPA"), all federal agencies must consider the environmental effects of any major federal action.<sup>1</sup> When considering proposed actions, the Postal Service has a stated policy to "[e]mphasize environmental issues and alternatives," and particularly where a decision affects "the quality of the human environment," to "[e]ncourage and facilitate public involvement" in those decisions.<sup>2</sup>

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<sup>1</sup> 42 USC §4321, *et seq.*

<sup>2</sup> 39 CFR 775.2 (c) and (d).

Although the closure<sup>3</sup> and disposal<sup>4</sup> of post office facilities may be “categorically excluded” from environmental evaluations under NEPA, under “extraordinary circumstances” where an excluded action is connected with “other proposed actions with potentially significant impacts,” then the proposed closure and disposal of a post office facility can no longer be categorically excluded.<sup>5</sup>

The Postal Service has a stated policy to prepare an EIS whenever a proposed action is “significant” either in context or intensity.<sup>6</sup> Both forms of significance exist here. Closing historic post offices is contextually significant<sup>7</sup> on a local as well as national level, and the effects are potentially permanent, particularly where the Postal Service does not intend to preserve the historic post office. Additionally, the effects of the proposed closure and disposal of the Bronx Post Office has greater potential intensity, including a *cumulatively* significant impact because multiple other historic post offices are being closed and sold; this post office is listed (or eligible for listing) in the *National Register of Historic Places*; and the closure and disposal of the Bronx Post Office “*may cause loss or destruction of significant...cultural, or historical resources.*”<sup>8</sup> Under the NEPA regulations, an EIS must be prepared for intensely significant action even if the beneficial effects outweigh the adverse effects, and “[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”<sup>9</sup>

The Postal Service’s policy is to prepare an Environmental Assessment for the disposal of real property where there will be a “known change in use to a greater environmental intensity.”<sup>10</sup> The intent to sell the property for large urban development is clearly a “known change in use to a greater environmental intensity.” At a minimum, replacing the relatively small structure with a multi-story, high rise office building or other similar structure will create greater levels of pollution and will change the skyline, pose a safety threat from increased traffic, and impact “housing, community services, and the area’s economic condition.”<sup>11</sup> There will also likely be a concomitant “effect on the level of noise, smoke, dirt, obnoxious odors, sewage, and solid waste removal.”<sup>12</sup>

The Bronx already has the highest asthma rate in the country. The relocation and sale the Postal Service proposes will increase truck traffic as more trucks will be taking Bronx mail out of the GPO and bringing it back again the next day to be delivered. This creates additional truck traffic in a community that has the worst asthma in the country. Plus, the transfer of 1,400 employees will lead to increased commuter traffic and loss of job opportunities.

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<sup>3</sup> 39 CFR 775.6 (b)(15).

<sup>4</sup> 39 CFR 775.6 (e)(4).

<sup>5</sup> 39 CFR 775.6 (a).

<sup>6</sup> *Id.*, citing 40 CFR 1508.27.

<sup>7</sup> 40 CFR 1508.27 (a).

<sup>8</sup> 40 CFR 1508.27 (b).

<sup>9</sup> 40 CFR 1508.27 (b)(1) and (7).

<sup>10</sup> 39 CFR 775.5 (b)(10).

<sup>11</sup> 76 ALR Fed 279 at 297, citing *S.W. Neighborhood Assembly v. Eckard* 445 F.Supp. 1195 (DC Dist Col, 1978).

<sup>12</sup> 76 ALR Fed 279 at 298, citing *Hanly v. Kleindienst*, 471 F.2d 823 (CA2 NY, 1972).

These impacts will clearly be the result of the Postal Service's decision to sell its federal land, land that the Postal Service has held in trust for the American people for many years.<sup>13</sup> Such a sale of public land constitutes a "major federal action."<sup>14</sup> It is clear that the Postal Service does not intend to retain this post office facility, and the decision has been made to sell its historic post offices, constituting an "irretrievable commitment of resources."<sup>15</sup>

The Postal Service's regulations are clear that the potential environmental issues for a proposed action be properly considered with "[e]arly planning and coordination among postal functional groups," and early planning entails cooperation during the "early concept stages of a program or project."<sup>16</sup>

Our clients have already made a formal request to the Postal Service to provide all environmentally-related documents under FOIA for all historic post offices affected by prospective closure and sale;<sup>17</sup> the deadline to respond to the FOIA request has now passed and they have received no response from the Postal Service. As an "interested community organization," our clients hereby request notice of all EAs, EISs, FONSI, Notices of Intent, and any scheduled NEPA-related hearings,<sup>18</sup> as well as any informal internal documents, such as checklists,<sup>19</sup> that have been used to determine that an EA or EIS is unnecessary. As National Post Office Collaborate's name suggests, they are interested in all historic post offices that are or may be eligible to be listed on the National Register of Historical Places. To date, the Postal Service is clearly considering or in the process of closing 40 such historic post offices nationwide. With such a large number of protected buildings at risk, our clients request updated notices on a continuous basis of closures and prospective sales of all historic post offices, local<sup>20</sup> and nationwide.<sup>21</sup> Our clients request that these documents be mailed in a timely manner and in good faith, with a meaningful opportunity for public input.

The Postal Service's intent to sell the historic Bronx Post Office is definite and, in the context of a clear nationwide plan to save costs and dispose of these historic properties, the Postal Service is clearly aware that the demolition of these historic post offices to make way for urban development is imminent. Where the disposal of federal property is part of a "comprehensive

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<sup>13</sup> 76 ALR Fed 279 at 287, citing Davis v. Morton, 469 F.2d 593 (CA 10 NM, 1972), addressing the issue of whether NEPA applied to the lease of restricted Indian lands where the federal government was clearly an interested party to the lease with significant influence and control.

<sup>14</sup> 53 ALR Fed 2d 489 at 540-41, citing Environmental Rights Coalition, Inc., v. Austin, 780 F. Supp. 584 (S.D. Ind. 1991).

<sup>15</sup> 76 ALR Fed 279 Supplement at 96, citing United States v. 27.09 Acres of Land, 760 F. Supp. 345 (SD NY, 1991).

<sup>16</sup> 39 CFR 775.7

<sup>17</sup> Jill Korte letter to Federal Preservation Officer Dallin Wordekemp, February 13, 2013.

<sup>18</sup> 39 CFR 775.13(a)(1)

<sup>19</sup> 39 CFR 775.9(a)

<sup>20</sup> 39 CFR 775.13(a)(3)

<sup>21</sup> 39 CFR 775.13(a)(2)

new program<sup>22</sup> that has a “cumulative or synergistic environmental impact”<sup>23</sup> the Postal Service must also prepare a “comprehensive”<sup>24</sup> or “programmatic environmental impact statement”<sup>25</sup> in addition to the “site specific” environmental evaluations.<sup>26</sup>

The Postal Service must consider the environmental effects and consequences of the potential uses for the federal property after it is sold, particularly where the redevelopment plans are known with relative certainty, and it must do so prior to the sale of the property.<sup>27</sup>

“If NEPA is allowed to be a mere formality which busy bureaucrats can treat as an annoyance rather than as a vital aid in true decision making, the clear intent of Congress will be frustrated, for the act involves not a matter of doing paperwork to satisfy form, but rather a matter of placing before the decision maker, ever conscious of efficiency and cost, the equal if not greater need to weigh factors affecting the quality of life on this ‘overcrowded and rapidly deteriorating continent.’”<sup>28</sup>

The Postal Service is also under a similar, but separate and distinct, obligation to comply with the National Historic Preservation Act (“NHPA”). It has entirely failed to do so regarding the Bronx Post Office. There can be no reasonable dispute that the Bronx Post Office is itself historic, particularly including the magnificent Ben Shahn mural cycle in its lobby. That mural cycle is among the most significant works of art commissioned by the Treasury Department’s Section of Fine Arts on behalf of the public. The Postal Service has failed to comply with Sections 106 and 111 of the NHPA by taking no steps to ensure continued public access to this public art, by proposing to completely change the function of that building, by failing to consider the full range of alternatives available, and by its erroneous determination that its action will have no “adverse effect” on this historic property.

The Postal Service is proceeding on a mistaken assumption that it has the equivalent of unencumbered fee simple title to the historic public art in the Bronx Post Office. That art was created and paid for from public, not postal, funds for the benefit, improvement, and enjoyment of the public which funded it. When the Bronx Post Office building, and certain other GSA-owned properties used by the Post Office Department were transferred to the Postal Service through the subsequent Postal Reorganization Act, that may have effected a transfer of the title of that building, but the art passed subject to the obligations and requirements of a public trust. This public trust creates rights in the public to the art created by it, and for it, in addition to, and over and above the obligations imposed by NHPA. The Postal Service plans show no consideration of, or plans to recognize and protect, this public trust interest.

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<sup>22</sup> 76 ALR Fed 279 at 306, citing Conservation Law Foundation, Inc. v. Harper, 587 F. Supp. 357 (DC Mass. 1984).

<sup>23</sup> 76 ALR Fed 279 at 307, citing Conservation Law Foundation, Inc. v. General Services Admin., 707 F.2d 626 (CA1 R1, 1983).

<sup>24</sup> Id.

<sup>25</sup> 76 ALR Fed 279 at 306, citing Conservation Law Foundation, Inc. v. Harper, 587 F. Supp. 357 (DC Mass, 1984).

<sup>26</sup> 76 ALR Fed 279 at 305, citing Conservation Law Foundation, Inc. v. General Service Admin., 707 F.2d 626 (CA1 R1, 1983).

<sup>27</sup> Id. at 314.

<sup>28</sup> 76 ALR Fed. 279 at 314, citing Prince George’s County v. Holloway, 404 F. Supp. 1181 (DC Dist Ct, 1975).

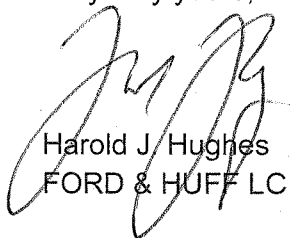
In addition, there is no showing that the Postal Service has followed the procedures, or given consideration to the factors identified in 39 USC §404(d), including consideration of the effect of such closing on the community, and on the employees, as well as in regard to the Postal Service's obligation to provide a "maximum degree of effective and regular postal services," or a facility-specific consideration of any imagined economic savings from the proposed closing. Similarly, the Postal Service has failed to follow its internal regulations and procedures in regard to the closing or relocation of the Bronx Post Office. See, 39 CFR Part 241.

The terse tone of the March 14 determination letter gives every indication of a rush to judgment on a public issue which certainly deserves better and more thorough consideration. Accordingly, we respectfully request that the Postal Service reconsider its hasty decision to relocate postal services away from the Bronx Post Office, and to 1) prepare and submit an environmental impact statement to the Environmental Protection Agency for review, 2) comply with the full requirements of the NHPA, and 3) gather additional data and fully consider the objections and concerns raised in this appeal, and by members of the Bronx community.

Our firm, and our clients, would be willing to meet with you to elaborate on these concerns and legal requirements, and to cooperate in seeking alternatives which might assist the Postal Service in meeting its goals while protecting the public interest.

Thank you for your consideration.

Very truly yours,



Harold J. Hughes  
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