



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

November 16, 2012

Mr. Dallan C. Wordekemper, CCIM
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United States Postal Service
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Washington, DC 20260-1862
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VIA Certified Mail & Email

Re: La Jolla Post Office Relocation and Sale

Dear Mr. Wordekemper:

The National Trust for Historic Preservation is deeply concerned with the proposed relocation and sale of the historic La Jolla Post Office located at 1140 Wall Street in La Jolla, California. Both the relocation of the retail post office function and the disposition of the building have the potential to adversely affect this historic property, including a significant WPA mural in its interior lobby. We are writing to object to the position taken by the U.S. Postal Service (USPS), which we believe would subvert the legal process required under Section 106 of the National Historic Preservation Act (NHPA) by proposing to transfer the historic property out of federal control without adequate legal protections or meaningful consultation with interested parties.

In particular, we strongly disagree with the USPS's conclusion that the relocation of postal services and the sale of the historic building to a private entity will cause "no adverse effect" on historic properties. The California State Historic Preservation Office (SHPO), the La Jolla Historical Society, and the Save Our La Jolla Post Office Task Force have all raised formal objections to this determination as well. As a practical matter, this unilateral determination will have the consequence of silencing productive discussions about how to protect this iconic building and its artwork for future generations.

Interests of the National Trust. Pursuant to its Congressional Charter, the National Trust is committed to promoting public participation in the preservation of our nation's heritage, and to furthering the historic preservation policy of the United States. *See* 16 U.S.C. § 468. Congress has also designated the Chairman of the National Trust as a member of the federal Advisory Council on Historic Preservation, *id.* § 470i(a)(8), and thus we have an especially strong interest in ensuring that federal agencies comply with Section 106 of the NHPA. We have been particularly concerned with the threats facing the nation's post office facilities as many of these iconic buildings around the nation are being targeted for sale to the highest bidder. As a result, in 2012 we placed historic post office buildings on our list of America's Most Endangered Places.

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We are aware that, by letter dated October 23, 2012, the USPS has formally requested the views of the Advisory Council on Historic Preservation (ACHP) regarding the disagreement between the USPS, the SHPO, and the consulting parties concerning the USPS determination of “no adverse effect” for the La Jolla Post Office. Pursuant to 36 C.F.R. §§ 800.5(c)(2)(i), the Postal Service is required to make this documentation available to the public. Accordingly, the National Trust is submitting these comments in our capacity as a member of the Advisory Council on Historic Preservation, and as the leading national advocacy group to enforce compliance with the National Historic Preservation Act.

I. The Transfer of the La Jolla Post Office Would Result in an Adverse Effect on a Historic Property

We disagree with the statement by the U.S. Postal Service (USPS) to the Advisory Council on Historic Preservation in a letter dated October 23, 2012 that the transfer of the historic La Jolla post office building from federal control will not cause an “adverse effect” to a historic property under Section 106 of the NHPA. USPS has taken the position that a “no adverse effect” determination is warranted based on (1) the imposition of a preservation covenant as part of the disposition, even though the entity designated to enforce the covenant has warned that it has no capacity to do so; and (2) the retention of the mural under USPS ownership, subject to a loan agreement with the building’s new owner. We disagree with this position for the following reasons.

a. Serious Questions Remain as to the Legal Enforceability of the Preservation Covenant

The proposed covenant cannot be legally valid if USPS grants it to an entity unwilling to monitor and enforce that agreement. The California Office of Historic Preservation has made clear that it has neither the financial capacity nor the legal authority to accept the obligation as a covenant holder for this, or any other historic post office building. The USPS has made no attempt to address this concern, which might be cured, for instance, by finding a local government willing to monitor and enforce the covenant, or by dedicating a small percentage of the revenue earned from the sale of the building to cover the financial burden imposed by covenant monitoring and enforcement. Without a willing enforcement entity, however, the public has no assurance that any violation of the covenant will be cured.

The Section 106 regulations clearly establish that the “[t]ransfer, lease, or sale of property out of Federal ownership or control *without adequate and legally enforceable restrictions or conditions to ensure long-term preservation* of the property’s historic significance” constitutes an adverse effect on a historic property under Section 106. 36 C.F.R. § 800.5(a)(2)(vii) (emphasis added). A preservation covenant without anyone in the role of “ensuring” its enforcement simply does not satisfy this requirement.

b. USPS Has Provided the Public No Guarantees as to the Extent of Public Access to the Historic Mural

While the La Jolla Post Office mural will technically remain in public ownership, the USPS has made no commitment about the extent to which the public will actually be able to view this remarkable work of public art. The original design of the La Jolla Post Office building was to host the public as a recognized center of community life. A central feature of the building's historic character, therefore, is the public purpose it was intended to serve. Its interior lobby was always intended to be a public space and its artwork, unique to the history of La Jolla, is a defining feature. To curtail public enjoyment of the artwork would profoundly affect the feeling of the site, an impact clearly recognized by the Section 106 regulations in defining "adverse effect." The Section 106 regulations make clear that

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's, design, setting, materials, workmanship, ***feeling***, or association.

36 C.F.R. § 800.5(a)(1) (emphasis added)

Rather than admit that the removal of postal services from the building would impact the feeling of the site, the USPS seeks to cut off that discussion completely by simply declaring that no adverse impact would result. The USPS would maintain ownership of the mural, but decide on the extent of public access in private discussions with a new owner. In our view, the USPS's position on this issue is a blatant disregard for the regulations it is charged with observing.

c. The Relocation of the Post Office Function has a Potential Adverse Effect on the Historic La Jolla Post Office Building, and Requires Prior Compliance with Section 106.

The USPS refuses to comply with Section 106 prior to making decisions to move the post office function out of a historic post office building, apparently based on the false assumption that this federal action has no potential to affect historic properties. This assumption is inconsistent with the Section 106 regulations, which clearly state that a "[c]hange of the character of the property's use . . . that contribute[s] to its historic significance" is an adverse effect. *Id.* § 800.5(a)(2)(iv) (emphasis added).

When a historic building was designed specifically for use as a post office, and says "POST OFFICE" on the front, and has been used as a post office since its construction, as is the case in La Jolla, the "[c]hange of the character of the property's use" that is the direct result of the relocation decision by the USPS clearly has the potential to adversely affect the historic property, and requires compliance with Section 106, "*prior to*" the agency's decision to remove that historic use from the building. 16 U.S.C. § 470f.

II. The USPS Has Failed to Comply with NHPA Because it Has Unlawfully Restricted the Consideration of Alternatives to Avoid, Minimize, and Mitigate Harm to the La Jolla Post Office.

The Section 106 regulations also state that “[t]he agency official shall ensure that the section 106 process is initiated early in the undertaking’s planning so that a broad range of alternatives may be considered during the planning process for the undertaking.” 36 C.F.R. § 800.1(c). To our knowledge, the USPS has not explored any alternatives to relocation of the La Jolla Post Office. Rather, it has simply declared that sale is the only option, against considerable objection from community leaders.

III. Other Federal Laws Discourage Federal Agencies from Moving Operations out of Historic Buildings

On a national level, we are concerned that the USPS has been deciding to transfer its operations out of historic buildings at a rate disproportionate to non-historic buildings. This is a critical concern as it is far preferable to have buildings that were historically designed for public use remain publically accessible. The disproportionate focus on abandoning and disposing of historic buildings is contrary to the policy reflected in two key Executive Orders, which the USPS has committed to comply with in Board Resolution 82-7:

Executive Order 12072 states that “Federal space shall conserve existing urban resources.” Section 1-101. Further, it indicates that “[p]rocedures for meeting space needs in urban areas shall give serious consideration to the impact a site selection will have on improving the social, economic, environmental, and cultural conditions of the communities in the urban area.” Section 1.102. In conducting processes to meet federal space needs “[a]gencies must consider the “utilization of human, natural, cultural, and community resources.” Section 1-104(c). The agency is required to consider “[u]tilization of buildings of historic, architectural, or cultural significance” and “[o]pportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.” Section 1-105(b),(e).

Executive Order 13006, issued in 1996, directs federal agencies not only to locate their operations in established downtowns, but to give first consideration to locating in historic properties within historic districts (*See* 61 Fed. Reg. 26,071 (1996).) The order requires the federal government to “utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in central business areas.” It also directs federal agencies to give “first consideration” to historic buildings when “operationally appropriate and economically prudent.” The order was codified into law as an amendment to the NHPA on May 26, 2000. *See* Pub. Law No. 106-208 (Section 4) (amending 16 U.S.C. § 470h-2(a)(1)).

Section 111 of the NHPA

Prior to making a formal decision on the sale of the historic La Jolla Post Office, the USPS must take seriously its legal obligations to consider options to lease the facility rather than sell it outright. Section 111 of the National Historic Preservation Act requires that

any Federal agency ... shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization...

16 U.S.C. § 470h-3(a).

Recently a federal district court in Washington State found that the Federal Reserve Bank of San Francisco failed to comply with Section 111 of the NHPA by authorizing the sale of a historic federal building without considering adaptive use, lease, or exchange. The court stated that “[t]he congressional directive to at least consider, if not implement, adaptive use or lease strategies to protect historic properties is clear ... and the failure to do so would constitute a violation of NHPA.” *Comm. for Preservation of the Seattle Fed. Reserve Bank Bldg. v. Fed. Reserve Bank of San Francisco*, 2010 U.S. Dist. LEXIS 26084 at 19 (W.D. Wash. Mar. 19, 2010). The USPS must consider its obligation under this law prior to proceeding down a path that would commit it to transferring a historic property out of federal control.

Conclusion

It is critical that the USPS follow a proper process to ensure that the public’s voice is heard prior to disposing of its unique historic assets, which serve have served for generations as great repositories of our Nation’s arts and culture. We ask that the USPS reconsider and reverse its “no adverse effect” determination for the La Jolla Post Office and follow a process consistent with the spirit and intent of the National Historic Preservation Act to ensure that many of the nation’s architectural gems and public works projects owned or leased by USPS are protected for future generations.

Thank you for the opportunity to comment on this issue. We request that these comments be considered part of the record both for the USPS’ internal regulatory process as well as Section 106 of the NHPA. In addition, please include the following email addresses on your distribution list for further notices related to this La Jolla Post Office relocation: bturner@savingplaces.org; emerritt@savingplaces.org.

Sincerely,



Brian R. Turner
Senior Field Officer/Attorney



Elizabeth S. Merritt
Deputy General Counsel

Cc (Via Email):

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Pacific Facilities Services Office, U.S. Postal Service
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