



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

September 28, 2012

Ms. Diana K. Alvarado  
Manager, Property Management  
Pacific Facilities Services Office  
United States Postal Service  
1300 Evans Avenue, Suite 200  
San Francisco, CA 94188

Re: Berkeley Post Office Relocation

Dear Ms. Alvarado:

The National Trust for Historic Preservation is deeply concerned about the proposed relocation of the Berkeley Main Post Office in Berkeley, California, and its potential effects on the historic building, including two noteworthy WPA murals located in the interior lobby. We are particularly alarmed by the recently stated intention of the U.S. Postal Service (USPS) to make a formal decision on whether to relocate the Berkeley Post Office pursuant to its internal regulatory process prior to initiating consultation under Section 106 of the National Historic Preservation Act (NHPA).

We believe it would be wholly inconsistent with the spirit and intent of the NHPA if the USPS were to make the consequential decision to sell a historic building to the highest bidder prior to initiating Section 106 consultation. Specifically, the Section 106 regulations instruct that federal agencies, including the USPS, may not take planning actions that “restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking’s adverse effects on historic properties” prior to completing Section 106 review. *See* 36 C.F.R. § 800.1(c). A formal decision to relocate operations from the historic facility would preclude viable preservation alternatives. As such, we believe the USPS would be in violation of Section 106 by postponing Section 106 review until after making a commitment to a formal relocation decision.

By means of this correspondence the National Trust formally submits our request to participate in the review process for the Berkeley Post Office as a “consulting party” under Section 106 of the NHPA, pursuant to 36 C.F.R. §§ 800.2(c)(5) and 800.3(f)(3).

### **Interests of the National Trust**

On June 6, 2012 the National Trust for Historic Preservation listed America’s Historic Post Office Buildings on its annual list of America’s 11 Most Endangered Places. As the USPS seeks to cut its operational costs in response to broad economic trends, the National Trust has committed to direct engagement and advocacy to ensure that more of the nation’s architectural gems and public works projects owned or leased by USPS will be protected for future generations. It is critical that the USPS follow a proper process in compliance with the NHPA to ensure that the public’s voice is heard prior to disposing of

its unique historic assets, which have served for generations as great repositories of our Nation's architecture, arts, and culture.

### **Historic Significance of the Berkeley Main Post Office**

The Berkeley Main Post Office at 2000 Allston Way was built in 1915 and is listed on the National Register of Historic Places as a contributing structure in the Berkeley Civic Center Historic District. It is a two-story building designed in the Italian Renaissance style by Oscar Wenderoth, who served as director of the federal Office of the Supervising Architect. Its appearance is essentially unaltered since it was built, with the exception of a rear addition for mail sorting, and the addition of WPA murals from 1936 and 1937 by Suzanne Scheuer and David Slivka. The murals include a finely painted allegory of Berkeley's history and a bas-relief commemorating the contributions of postal workers. More detailed information on the history and significance of the Berkeley Main Post Office can be found in Exhibit A.

### **Factual Background**

On September 13, 2012, National Trust staff attended a public meeting at Berkeley City Hall hosted by the Post Office Subcommittee of the Berkeley City Council. Diana Alvarado, property manager for Pacific Facilities Services Area and Gus Ruiz, Corporate Communications Manager for Bay-Valley District, gave a presentation on behalf of USPS and addressed questions from a panel of three City of Berkeley Council members, including Mayor Tom Bates.<sup>1</sup>

The representatives described a very detailed plan for relocation at the meeting. USPS clearly indicated its interest in selling Berkeley's historic Main Post Office. It would locate a new customer service facility nearby and transfer carrier operations to the existing delivery unit outside of the city center.

The USPS representatives also claimed that the public meeting satisfied a critical internal regulatory obligation under 39 C.F.R. § 241.4. Under this regulation, when considering the relocation of a customer service facility, the USPS must follow a specific process prior to making its final decision. The agency must accept public comment for a minimum of 15 days following a meeting noticed in accordance with the provisions of the regulation.<sup>2</sup>

The "purpose" of this internal process, as outlined in USPS regulations, is to

<sup>1</sup> The City of Berkeley has made the presentation publically available at [http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level\\_3\\_-\\_General/PO%20Subcommittee%20Communications%209-13-12.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_General/PO%20Subcommittee%20Communications%209-13-12.pdf)

<sup>2</sup> At the meeting USPS representatives indicated that they sufficiently notified the affected community by placing paper notices in the mailboxes of those who rent P.O. Boxes at the Berkeley Post Office. However, the USPS representatives conceded that they had not followed the proper notification requirements, after an audience member indicated that an incorrect address for the public meeting was listed on those notices. As such, we anticipate that another public meeting will take place in the near future, and that the 15-day timeline for public comments has not yet commenced.

assure increased opportunities for members of the communities who may be affected by certain USPS facility projects, along with local officials, to convey their views concerning the contemplated project and have them considered prior to any final decision to ... relocate.

39 C.F.R. § 241.4(b).

The full text of the regulation indicates a strong focus on community involvement in the relocation decision. Among USPS' obligations are to "solicit and consider input from the affected community," *id.* § 241.4(c)(1)(i), and at "one or more public hearings ... invite questions, solicit written comment, and describe the process by which community input will be considered." *Id.* § 241.4(c)(4)(ii). The regulations also require that the final decision on relocation "takes into account community input." *Id.* § 241.4(c)(5).

Critically, the regulations also indicate that any project that will have an effect on cultural resources will be undertaken in accordance with Board of Governors Resolution No. 82-7, which states that the USPS will comply with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, Executive Order 12072, and Executive Order 13006. 39 C.F.R. § 241.1(d)(1).

### **The USPS Has Failed to Comply with Section 106 of the NHPA**

As stated above, we are particularly concerned that the USPS has not properly coordinated its internal regulatory review process for the relocation of post offices with the agency's legal obligations under Section 106 of the NHPA. In a conversation with California Office of Historic Preservation (SHPO) staff on September 18, 2012, we learned that Section 106 consultation has not yet been initiated, despite the stated intent to initiate relocation procedures in a letter to the Berkeley Mayor in June.<sup>3</sup> Much like the intent of the USPS regulations as outlined above, Section 106 requires agency officials to seek the views of the public and interested parties prior to making any consequential decision that could adversely affect a historic property. 36 C.F.R. § 800.3(e)-(f).

***The Relocation of the Post Office Function has a Potential Adverse Effect on the Historic Berkeley Main Post Office Building, and Requires Prior Compliance with Section 106.*** First, 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 Berkeley, 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 action. 16 U.S.C. § 470f.

<sup>3</sup> Even though the USPS claims that this letter forms the basis of its outreach to local government, it has not been made publically accessible.

***The USPS Has Unlawfully Restricted the Consideration of Alternatives to Avoid, Minimize, and Mitigate Harm to the Berkeley 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).

***The Transfer or Sale of a Historic Post Office Building Subject to a Preservation Covenant—But Without a Third Party Able to Monitor and Enforce Compliance With the Covenant—Results in an Adverse Effect on the Historic Property.*** The USPS has generally attempted to rely on the placement of historic covenants on buildings in order to avoid adverse effects. In California, however, the SHPO has not been willing to agree with the USPS assumption that a piece of paper stapled to the back of a deed will automatically avoid adverse effects, because the SHPO lacks the staff to ensure that all USPS covenants in California can be effectively monitored and enforced. The USPS’ reliance on the creation of a covenant without a covenant holder has been strongly criticized by preservation professionals within the California SHPO office and the Advisory Council on Historic Preservation, and has been rejected by both agencies as a strategy to avoid adverse effects. At this stage it is unclear whether there is an entity that would be willing to take on such an obligation in Berkeley, particularly since the USPS has been unwilling to provide any funding for the management and administration of such an obligation.

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.

### **Other Federal Laws Discourage Federal Agencies from Moving Operations out of Historic Buildings**

On a broader level, we are concerned that the USPS has been deciding to transfer its operations from historic buildings at a rate disproportionate to non-historic buildings. This is a critical concern as it is far preferable to have buildings designed for public use remain publically accessible. The disproportionate emphasis on transferring historic buildings is heavily discouraged by two key Executive Orders by which USPS has committed to comply with in Board Resolution 82-7:

**Executive Order 12072**, issued in 1978, 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 (May 24, 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)).

### **The USPS Has Failed to Comply With Section 111 of the NHPA**

Prior to making a formal decision on the sale of the historic Berkeley Main Post Office, the USPS must take seriously its obligations to consider options to lease the facility rather than sell it outright. Section 111 of the National Historic Preservation Act states 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, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

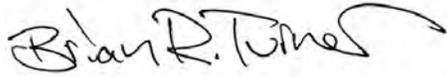
16 U.S.C. § 470h-3(a).

Recently a federal district court in Washington State concluded that the Federal Reserve Bank of San Francisco failed to comply with Section 111 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 Federal 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 comply with its legal obligations under Section 110 of the NHPA prior to proceeding down a path that would commit the agency to an outright transfer of a historic property out of federal control.

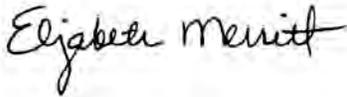
### **Conclusion**

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 for Section 106 of the NHPA.

Sincerely,



Brian R. Turner  
Senior Field Officer/Attorney  
CA State Bar #251687



Elizabeth S. Merritt  
Deputy General Counsel

Exhibit A – National Register nomination for Berkeley Main Post Office, June 24, 1980

cc: Ujwala Tamaskar, USPS Pacific Facilities Services Office  
Dallan C. Wordekemper, Federal Preservation Officer, USPS  
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