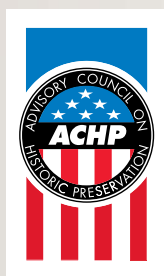
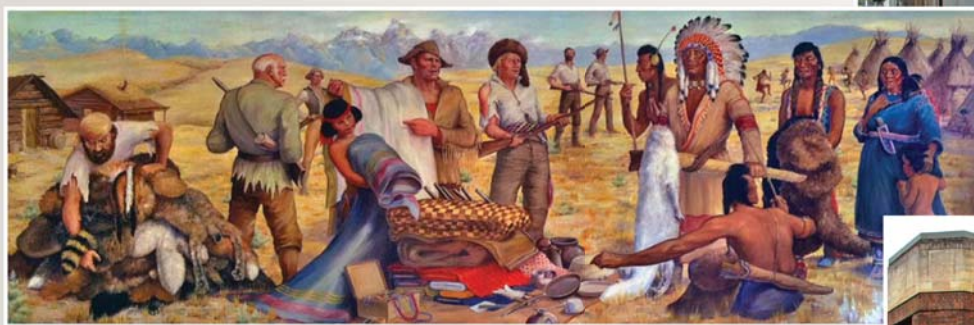


Preserving Historic Post Offices: A Report to Congress



ABOUT THE ACHP

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources and advises the President and Congress on national historic preservation policy. The ACHP also provides a forum for influencing federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the Preserve America program.

Milford Wayne Donaldson, FAIA, of Sacramento, California, is chairman of the 23-member ACHP, served by a professional staff in Washington, D.C. For more information about the ACHP, contact:

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

Phone: 202-606-8503

Fax: 202-606-8647

Web sites:

www.achp.gov

www.preserveamerica.gov

» Front cover: Spanish Colonial Revival, 1930s, Redlands, California, (Wikipedia); "The Fur Traders," Elizabeth Lochrie, 1938, St. Anthony, Idaho (National Postal Museum/Smithsonian Institution); Art Deco, 1935, Milton, Pennsylvania (Evan Kalish); Colonial Revival, 1938, Lakewood, New Jersey (*The Lakewood Scoop*); retail counter, Bronx, New York (USPS)

» Back cover: postboxes at Old Post Office and Courthouse, Little Rock, Arkansas (Carol M. Highsmith, Inc./GSA); cancelled stamp (iStockphoto)

» **WASHINGTON, D.C.**
OLD POST OFFICE BUILDING,
ACHP HEADQUARTERS
ROMANESQUE REVIVAL, 1892



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USPS REPORT PANEL

Milford Wayne Donaldson, FAIA, ACHP Chairman

Teresa Isabel Leger de Fernandez, Citizen Member

Stephen T. Ayers, Architect of the Capitol

Beth L. Savage, General Services Administration

Elizabeth Hughes, National Conference of State Historic Preservation Officers

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler, Executive Director

Reid J. Nelson, Director, Office of Federal Agency Programs

Caroline D. Hall, Assistant Director, Office of Federal Agency Programs (report author)

Najah Duvall-Gabriel, Historic Preservation Specialist

Kirsten Kulis, Program Analyst, GSA Liaison

Susan Glimcher, Director, Office of Communications, Education, and Outreach

Shayla Shrieves, Senior Writer-Editor

ACRONYMS AND ABBREVIATIONS

ACHP	Advisory Council on Historic Preservation
CATEX	Categorical Exclusion under the National Environmental Policy Act
CEQ	White House Council on Environmental Quality
CLG	Certified Local Government
CFR	Code of Federal Regulations
CRP	Community Relations Program
eFMS	USPS Electronic Facilities Management System
EO	Executive Order
FPO	Federal Preservation Officer
FR	Federal Register
FSO	Facility Service Office
GAO	Government Accountability Office
GSA	General Services Administration
HPC	Historic Preservation Coordinator
MOA	Memorandum of Agreement
NCSHPO	National Conference of State Historic Preservation Officers
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act of 1966
NPS	National Park Service
NRHP	National Register of Historic Places
NRIS	National Register Information System
NTHP	National Trust for Historic Preservation
OIG	USPS Office of Inspector General
PA	Programmatic Agreement
Section 106	Section 106 of the National Historic Preservation Act of 1966
Section 110	Section 110 of the National Historic Preservation Act of 1966
Section 111	Section 111 of the National Historic Preservation Act of 1966
SHPO	State Historic Preservation Officer
SOI	Secretary of Interior
THPO	Tribal Historic Preservation Officer
USC	United States Code
USPS	United States Postal Service
WPA	Works Progress Administration



CHAIRMAN'S MESSAGE

The Advisory Council on Historic Preservation (ACHP) is pleased to present this report on compliance by the U.S. Postal Service (USPS) with Section 106 of the National Historic Preservation Act for the closure and disposal of its historic postal facilities. The report responds to the request by Congress in the explanatory statement of the Consolidated Appropriations Act of 2014, Division G.

The USPS has disposed of post offices throughout its history. However, the rate of disposals began to increase in 2008 as declining mail volumes along with increased automation and worker productivity led to a determination by the USPS that many facilities are larger than operations require. Given the number of historic properties in the USPS real property inventory, it is inevitable that historic post offices and facilities would be among the properties considered for disposal. Section 106 consultations on a number of high profile disposals across the country have demonstrated that the preservation community and the public have significant concerns about the potential closure of these historic facilities, including the loss of public use of the buildings, the risk posed to the integrity of historic buildings and the artwork they contain, and the potential loss of public access. The limited consideration of the historic values of these iconic buildings along with the lack of transparency in Section 106 consultation further exacerbates these problems.

This report makes specific findings and recommendations that would improve USPS compliance with Section 106, while building collaborative relationships with communities and historic preservation stakeholders. These recommendations are the result of thoughtful consideration of information provided to the ACHP by State Historic Preservation Officers, communities, preservation advocates, the public, and the USPS itself. Awareness of and appreciation for the value of these important community resources under federal ownership can foster better management practices that will benefit the USPS, the historic properties, and the communities in which they reside.

The ACHP stands ready to work with the USPS and historic preservation partners to implement the recommendations of this report and chart a course for improved Section 106 compliance and better historic preservation outcomes for communities.

Milford Wayne Donaldson, FAIA
Chairman



EXECUTIVE SUMMARY

Many post offices have operated for decades as the civic core of their communities. These structures, while often functioning as community meeting places, were constructed with public funds and serve as an integral part of the governmental presence in the community, providing not only a functional role but a symbolic federal presence. Since 2008, the rate of post office disposals has increased in response to a determination by the United States Postal Service (USPS) that many facilities are larger than current operations require.

Many of these disposals have targeted historic post offices. Consultations on a number of high profile disposals across the country under Section 106 of the National Historic Preservation Act (NHPA) have demonstrated that the preservation community and the public at large have significant concerns about the closure of these historic facilities and the potential loss of access to these places of such importance to local communities. In response, Congress directed the Advisory Council on Historic Preservation (ACHP) to “provide, within 90 days of enactment of this Act, a report on how the Council will ensure compliance by the USPS of Section 106 responsibilities for these historic properties.” (Explanatory Statement, Consolidated Appropriations Act of 2014, Division G).

Development of this report was informed by the ACHP’s long history of working with the USPS on Section 106 compliance for a number of USPS undertakings, including rehabilitation, new construction, the sale of air rights, and demolition. With the increase in disposals, the ACHP continues to consult with the USPS encouraging proactive planning and the use of programmatic approaches to compliance for the disposal of historic postal facilities. In addition, the ACHP visited Oakland, California, to gather information and hear from stakeholders who have been directly involved in Section 106 consultations on a number of USPS disposals in California. The ACHP also solicited written comments from stakeholders and the public on the USPS disposal of historic postal facilities and its compliance with Section 106.

This report provides summary information on the USPS’s historic properties, disposal procedures, and Section 106 compliance to date. It also discusses the concerns expressed by stakeholders regarding these undertakings and the USPS’s conduct of the Section 106 process. Finally, this report makes 15 specific findings and conveys related recommendations for Congress and the USPS. The report presents actions the ACHP will take, within the scope of its authorities, to ensure that the USPS more effectively considers historic preservation values in the process of evaluating postal facilities for closure and disposal, and improves historic preservation outcomes.

THE RECOMMENDATIONS ARE AS FOLLOWS:

- ✦ Congress should clarify that the NHPA and its implementing regulations apply to all programs of the USPS, in order to remove any doubt that the USPS is legally obligated to comply with Sections 106, 110, and 111 of the NHPA.

- + The USPS should suspend any further actions to relocate services out of historic postal facilities and dispose of these historic facilities until such time as it fully implements the recommendations of this report.
- + The USPS should define the undertaking for Section 106 purposes as both the proposal to cease/relocate postal services and operations and the subsequent proposal to dispose of the historic property.
- + The USPS should initiate Section 106 consultation at the time relocation or cessation of services at a historic postal facility is considered, rather than waiting until disposal is proposed.
- + The ACHP will work with the USPS, the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (NTHP), and other stakeholders to develop a model covenant to serve as the basis for all future covenants used for historic post office disposal.
- + The USPS must correctly apply all of the Criteria of Adverse Effect found in the Section 106 regulations (36 CFR § 800.5) to determine when a finding of no adverse effect or adverse effect is warranted.
- + The USPS should explore partnerships with Certified Local Governments (CLGs) to facilitate the use of local ordinances as mitigation for adverse effects when the SHPO concurs.
- + The USPS should evaluate the benefits of utilizing the General Services Administration's (GSA) Office of Real Property Disposal to conduct disposal activities, including Section 106 compliance.
- + The USPS should consider use of the Historic Surplus Property Program for select historic properties where protection of the property is tantamount and a state or local government is interested in acquiring the property.
- + The ACHP should continue to work with the USPS, NCSHPO, and other stakeholders to identify a program alternative appropriate to the scope and duration of the disposal program and work with the parties to develop such an approach.
- + The USPS should expand and reorganize its historic preservation program.
- + The USPS, in cooperation with the ACHP, should work with NCSHPO and other stakeholders to develop guidance and training for USPS employees on the process, procedures, and special considerations of disposal of historic post offices.

- + The USPS, in cooperation with the ACHP, should work with NCSHPO and other preservation partners to develop guidance for developers on covenants and historic property stewardship.
- + The USPS should evaluate the viability of leasing historic properties, or portions thereof, in accordance with Section 111 of NHPA as an alternative to disposal.
- + The USPS should develop language for inclusion in covenants attached to historic properties or other legally binding mechanisms that makes an effective commitment for the USPS and a binding obligation for the new owner to ensure protection and access to murals and other artwork located within historic post offices.

The findings and recommendations in this report offer a range of actions for Congress, the USPS, the ACHP, and its partners. These will make significant improvements to the USPS planning and compliance for its historic preservation and disposal programs. As the USPS continues its efforts to comply with Section 106, the ACHP is committed to assisting the USPS in moving forward with these recommendations so that future disposals are better informed by sound planning and meaningful consultation with communities and stakeholders.

INTRODUCTION

Few would deny that the local post office is a key component of the civic heart of communities across the nation. These structures have served for decades as centers of commerce and communication as well as valued community meeting places. They also form an integral part of the government presence in the community, providing both a functional role and a symbolic federal presence. Understandably, the disposal by the U.S. Postal Service of these public assets often raises significant concerns within communities, not just for the loss of postal services but also for the preservation of the historic buildings and the artwork they contain, the continuing vitality of a facility that generates foot-traffic in downtown areas, and a diminished federal government presence as part of the community fabric.

The public has expressed concerns to Congress, the Advisory Council on Historic Preservation, State Historic Preservation Officers (SHPOs), and the USPS itself regarding the effects of disposal of historic postal facilities on the buildings themselves as well as surrounding historic districts and the broader local community. Further, the House of Representatives and the Senate have discussed legislation to address concerns with regard to the decision-making process for the disposal of USPS's historic facilities.

The proposed disposal of historic postal facilities must first be subject to a historic preservation review, in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C § 470f. The ACHP administers the Section 106 process through its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). The ACHP has been advising the USPS and consulting parties on questions regarding the conduct of the Section 106 process for proposed disposal undertakings for several years. Recognizing this critical role, Congress has tasked the ACHP to prepare this report focusing on how the USPS could improve its Section 106 compliance process for disposal of historic post offices.

This report provides background information on the USPS's historic properties, disposal procedures, and Section 106 compliance to date. It also discusses the concerns expressed by stakeholders regarding these undertakings and the USPS's conduct of the Section 106 process. Finally, the report makes specific findings and conveys related recommendations for Congress and the USPS, as well as actions the ACHP will take, to ensure that the USPS more effectively considers historic preservation values in the Section 106 process and thereby improves historic preservation outcomes.

BACKGROUND

The ACHP is an independent federal agency, established by the NHPA in 1966, that promotes the preservation, enhancement, and sustainable use of the nation's diverse historic resources. The ACHP's 23 statutorily designated members address policy issues, direct program initiatives, and make recommendations regarding historic preservation to the President, the Congress, and heads of other federal agencies. A principal goal of the NHPA is to have federal agencies act as responsible stewards of the nation's historic resources. The ACHP seeks to advance this goal through its oversight of the Section 106 process and through policy recommendations to improve federal agency implementation of the NHPA's mandates.

Consolidated Appropriations Act, 2014

Responding to the significant public concerns about widespread closure of historic post offices, the Congress included language accompanying the ACHP's FY 2014 appropriation:

"Although the Council has made significant efforts to work with the United States Postal Service (USPS) for almost two years to develop a consistent, transparent, and consultative process to preserve historic post offices, no comprehensive process has been developed. In light of this, the Committees direct the Council to provide, within 90 days of enactment of this Act, a report on how the Council will ensure compliance by the USPS of Section 106 responsibilities for these historic properties." (Explanatory statement of the Consolidated Appropriations Act of 2014, Division G)

National Historic Preservation Act and Section 106

In the NHPA, Congress established a comprehensive program to preserve the historic and cultural foundations of the nation as a living part of community life. Section 106 of the NHPA is a crucial part of that program that requires federal agencies to consider the effects of their actions on historic properties and to engage in a consultative process to resolve negative impacts.

All federal agencies are subject to the requirements of Section 106, including independent regulatory agencies. Complying with Section 106 is a federal agency responsibility and while applicants for federal permits or purchasers of federal properties may be asked to carry out some of the tasks for completing a Section 106 review, the federal agency remains legally responsible for all findings and determinations.

It should be noted at the outset that there is some uncertainty as to whether the USPS believes its Section 106 compliance is legally required or voluntarily assumed. The USPS has adopted a resolution establishing that "it is the policy of the Postal Service to abide by the general policies and requirements for historic preservation" under Sections 106, 110, and 111 of the NHPA. ("Policy on Historic Preservation." Resolution of the Board of Governors of the United States Postal Service No. 82-7 [November 9, 1982]).

The USPS is an "independent establishment of the executive branch of the Government of the United States," 39 U.S.C. § 201. While such designation clearly fits the NHPA definition of an "agency" subject to Section 106 (see 16 U.S.C. § 470w(1)), the Postal Reorganization Act (PRA) has exempted the USPS from federal laws "dealing with public or federal contracts, property, works, officers, employees, budgets, or funds." 39 U.S.C. § 410. The ACHP is not aware of any court opinions discussing whether the PRA exempts the USPS from the requirements of Section 106. However, existing court opinions have found that the PRA does not exempt the USPS from complying with the National Environmental Policy Act (NEPA), an environmental review law that is usually coextensive in its coverage with Section 106. See *Chelsea Neighborhood Ass'ns v. United States Postal Serv.*, 516 F.2d 378 (2nd Cir. 1975), and *City of Rochester v. United States Postal Serv.*, 541 F.2d 967 (2nd Cir. 1976).

Section 106 requires federal agencies to consider the effects on historic properties of projects they carry out, assist, permit, license, or approve. Federal agencies must also provide the ACHP a reasonable opportunity to comment on such undertakings before the approval of the expenditure of any federal funds on the undertaking or before the issuance of any license, permit or approval. Agencies comply with Section 106 through the process in the

implementing regulations, “Protection of Historic Properties” (36 CFR Part 800). The regulations implementing Section 106 can be found on the ACHP’s Web site at <http://www.achp.gov/regs-rev04.pdf>. A fundamental goal of the Section 106 process is to ensure that federal agencies consult with interested parties to identify and evaluate historic properties, assess the effects of their undertakings on historic properties, and attempt to negotiate an outcome that will balance project needs and historic preservation values.

Section 106 review encourages, but does not mandate, a preservation outcome and recognizes that sometimes there is no way for a project to proceed without affecting historic properties. Based on the information gathered through the Section 106 process, a federal agency may make an informed decision to approve, change, or cancel a project. Therefore, the outcome of Section 106 reviews can range from avoidance of historic properties to the acceptance of extensive adverse effects to historic properties. The Section 106 process ensures that a federal agency assumes responsibility for the consequences of its undertakings on historic properties.

Although the Section 106 regulations specify timeframes for most steps in the review process, some steps (like consultation on measures to resolve adverse effects) do not have a specified deadline. While the specific time needed to complete the Section 106 review for a particular project is not predetermined, the federal agency customarily allocates sufficient time to complete the review as part of the overall project planning process. Depending on the circumstances and the consultation process, a federal agency may conclude its Section 106 review with a finding of “no historic properties affected” or “no adverse effects to historic properties.” If the proposed project may pose adverse effects to historic properties, the agency must consult to attempt to reach an agreement on how to resolve those adverse effects. Under the regulations, consultation means “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.” (36 CFR § 800.16(f)) The Secretary of the Interior’s (Secretary) “Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act” provides further guidance on consultation.

The Section 106 regulations identify consulting parties as SHPOs, Tribal Historic Preservation Officers (THPOs), federally recognized Indian tribes, Native Hawaiian organizations, local governments, applicants for federal assistance or approval, and individuals and organizations with a demonstrated interest in the undertaking. The agency must also seek the views of the public, which are essential to informed federal decision making in the Section 106 process. The federal agency is to carry out its public engagement in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the federal involvement to the undertaking. (36 CFR § 800.2(c))

Consulting parties also participate with the federal agency in the preparation of an agreement document, typically a Memorandum of Agreement (MOA) or Programmatic Agreement (PA), which establishes the agreed upon measures to resolve the adverse effects of the undertaking and the roles and responsibilities of the agency and the consulting parties. If the signatories cannot come to an agreement, the head of the agency must request, consider, and respond to the formal comments of the ACHP members. If an agreement is reached, the agency must implement all agreed upon measures set forth in the resulting agreement.

EO 13287: “Preserve America”

Executive Order 13287: “Preserve America,” (EO) addresses the state of the federal government’s historic properties and their contribution to local economic development. Issued in 2003, the EO reaffirmed the federal government’s responsibility to show leadership in preserving America’s heritage by “actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the federal government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties.”

Section 3 of the EO established an accountability system to gauge agency implementation of the mandates of NHPA and the EO. It requires the ACHP to prepare a report to the President every three years on the current state of the federal government’s historic properties and their contribution to local economic development. The ACHP’s reports incorporate data submitted by real property managing agencies in accordance with Sections 3(a), (b), and (c) of the EO. The USPS submitted its baseline report in accordance with Section 3 of the EO to the ACHP and the Secretary of the Interior in 2004 and submitted progress reports in 2005 and 2008. However, the USPS failed to submit a report in 2011 as required.

THE CHALLENGE

Although the USPS has disposed of post offices throughout its history, the rate of disposals began to increase in 2008. Declining mail volumes, increased automation of mail sorting, and increased worker productivity led to a determination by the USPS that many facilities are larger than operations require. Given that, the USPS increased efforts to analyze its properties to identify opportunities to optimize its facilities network. This was initially a slow and labor-intensive process, requiring site visits and physical measurements of space. Subsequently, the USPS developed a computer model that analyzes space needs and optimization opportunities.

The goals of the USPS, in response to its current financial crisis, are to increase revenue and decrease costs. Property disposals are just one of the tools the USPS employs in pursuit of those goals through optimization of the USPS’s facilities network, taking into account each facility’s size, location, costs and revenue, and the operations housed there.

Given these goals and the USPS inventory of historic properties, it is inevitable that historic post offices and facilities would be among the properties considered for disposal. However, Section 106 consultations on a number of high profile disposals across the country have demonstrated that the preservation community and the public have significant concerns about the potential closure of these iconic facilities, including the loss of public use of the buildings, the risk posed to the historic architecture and art, and the potential loss of public access to these places of importance to local communities. In addition, these concerns include not just the decision to close the facilities, but the manner in which the USPS is conducting its decision-making process, the transparency of that process, and how it conducts the Section 106 consultation process.

REPORT METHODOLOGY

On behalf of the ACHP membership, a panel of ACHP members oversaw the development of this report and its recommendations. The panel included ACHP Chairman Milford Wayne Donaldson, FAIA; Teresa Isabel Leger de Fernandez (citizen member); Stephen T. Ayers (Architect of the Capitol); Beth L. Savage (representing the Administrator of the General Services Administration) and Elizabeth Hughes (President, NCSHPO).

Development of this report was informed by the ACHP's long history of working with the USPS on Section 106 compliance for a number of USPS undertakings including rehabilitation, new construction, and demolition of postal facilities. Spurred by the increase in disposals, the ACHP has been consulting with the USPS since 2012 to encourage proactive planning and programmatic approaches to compliance for the disposal of historic postal facilities. However, recognizing that the ACHP has been directly involved in consultation on only a small number of USPS disposal cases, the ACHP visited Oakland, California, to gather information and hear from stakeholders who have been directly involved in Section



» **BERKELEY,
CALIFORNIA**
RENAISSANCE REVIVAL,
1915
Credit: Wikipedia Commons,
Noah Salzman

106 consultation on a number of USPS disposals in California. The site visit enabled the panel members and staff to hear from USPS officials, the California SHPO, the NTHP, local organizations, and local government officials. The visit offered the ACHP the opportunity to learn about stakeholders' experiences in attempting to reach agreement on appropriate measures to avoid adverse effects to historic facilities and opportunities for improving USPS compliance with the requirements of Section 106 for these actions. It also afforded the panel members the opportunity to view firsthand the facility in Berkeley that is the subject of ongoing disposal efforts by the USPS.

In addition, the ACHP solicited written comments from stakeholders and the public on the USPS disposal of historic postal facilities and its compliance with Section 106. Notice of the opportunity to comment to the ACHP was posted on the ACHP Web site; e-mailed to SHPOs, nationwide, state, and local preservation organizations; federally recognized Indian tribes and Native Hawaiian organizations; as well as distributed to attendees of the Oakland meeting.

This report has been further informed by an online survey developed by NCSHPO at the request of the ACHP in August 2013. Twenty-one SHPOs responded to this survey, which asked eight questions covering SHPO experiences working with USPS in the Section 106 process for historic post office disposals and the use of covenants in these cases. Further, on March 3, 2014, NCSHPO sponsored a discussion among SHPOs, the USPS, and the ACHP to review the disposal program to date, to discuss challenges and successes, and to confer on a path forward.

In development of the report ACHP staff coordinated with congressional staff, the USPS, NCSHPO, the NTHP, the USPS Office of the Inspector General (OIG), and the White House Council on Environmental Quality (CEQ). The ACHP also consulted with Steve Roth, Executive Advisor for Realty Asset Analytics, and former director of Realty Asset and Lease Management for the USPS.

USPS HISTORIC PROPERTIES

The USPS's inventory of historic properties spans two centuries. The architectural styles of the post offices, the fine art they house, and the function the buildings provide in the community tell the history of the agency and of rural and urban development in 19th and 20th century America. This history is important to understanding not just the architectural significance of these facilities, but also their value and their significance to the communities they have served for decades.

HISTORY

Post offices constitute the most common form of federal government buildings in the nation. Located in large cities, small towns, and rural areas, post offices are an important presence of the federal government in communities. They play an essential role in facilitating communication and promoting economic development, reducing the isolation of rural locales,



» **ANNAPOLIS, MARYLAND**
GEORGIAN REVIVAL,
1901
Credit: Wikipedia Commons

and disseminating products, information, and ideas across geographical areas. Historically, in times of economic stress, the construction of post offices has stimulated local economic recovery and provided work.

Many post offices are significant civic monuments that beautify the cities and towns in which they are located. Architecturally, post offices have served as symbols of the federal government's authority, conveyed regional historical themes, and exemplified high art forms. Some post offices were designed in an "official" national style and serve as notable examples of classicism in their respective communities. During other phases in the federal government's public building program, post offices were designed to reflect regional styles and influences.

For much of the 19th century and throughout the Depression, artwork, such as ornamental sculptures and murals, was integrated into the architectural design of post offices.

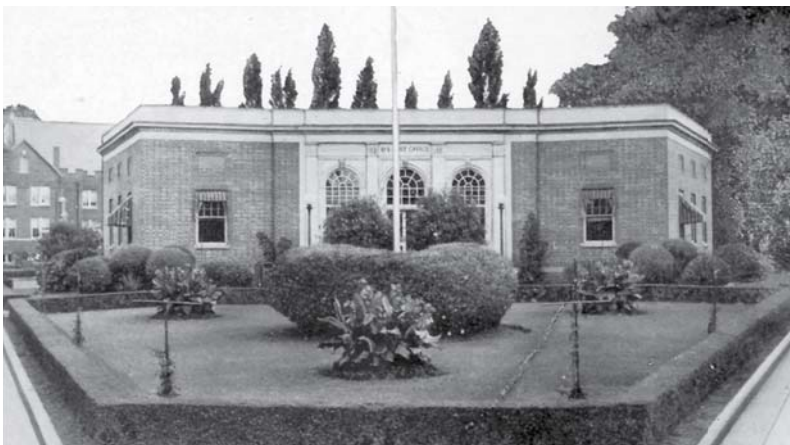
While many post offices functioned as community meeting places, they are also an integral part of the governmental presence in the community, providing not only a functional role but a symbolic presence. In some communities, post offices, along with a courthouse, city hall, or other public buildings, collectively form a civic core that generates pedestrian traffic, contributes to the vitality of the downtown area, and provides a sense of community identity and civic pride. For many of America's smaller towns the post office remains the only federal presence in the community.

Historically, governments have maintained control over postal systems, since the effective organization and control of society depend upon the ability to communicate. The United States government also assumed control over mail service, but incorporated democratic principles by constitutionally placing the power to establish post offices and post roads in the hands of Congress (U.S. Constitution, Article 1, Section 8). The establishment of the postal service throughout the country provided an example of democracy at work: citizens petitioned Congress, which established post roads and instructed the Postmaster General to provide postal service along the routes. (National Park Service. National Register Bulletin 13: How to Apply the National Register Criteria to Post Offices. Washington, DC: 1984. Revised 1994.)

The buildings constructed for use as post offices have reflected various government and architectural philosophies. From the establishment of the Office of the Supervising Architect of the Treasury in the 1850s until the 1890s, the style of federal buildings tended to follow the favorite style of the incumbent Supervising Architect. During the tenure of James Knox Taylor (1897-1912) as Supervising Architect of the Treasury, the federal government promoted the concept that government buildings should be monumental and beautiful, and should represent the ideals of democracy and high standards of architectural sophistication in their communities. Taylor preferred styles derived from classical or early American traditions. Believing that federal buildings should be built to last, he also emphasized the use of high quality construction materials. Private architects worked on many of the larger projects, but the Office of the Supervising Architect produced smaller buildings, including many of the post offices that are found in small towns across the nation. The buildings were individually designed; Taylor firmly resisted suggestions that designs be standardized.

After 1913, federal construction policy changed in response to concerns over the cost of public buildings projects and controversy over whether all the buildings authorized by Congress were truly needed. The 1913 Public Buildings Act, which authorized the construction of a large number of public buildings, also prohibited the construction of new post office buildings in communities whose postal receipts totaled less than \$10,000. In the interest of economy and efficiency, the Department of the Treasury instituted a classification system under which a post office's structural and ornamental qualities were functions of the value of real estate and postal receipts in the city where it was to be located. First class post offices in large cities would still be monumental and elaborate, but for a small town, the standards specified an "ordinary class of building, such as any businessman would consider a reasonable investment." In contrast to the earlier policy of designing post offices individually, the Supervising

Architect's Office used the same design and floor plan whenever possible, and rarely employed private architects during this period, which continued through the 1920s.



The emphasis on economy and efficiency continued during the Depression, when the government rapidly expanded its public works program as a means of stimulating economic recovery and providing work for the unemployed, almost one third of whom were in the building trades. The number of public buildings constructed in the 1930s increased dramatically. Approximately three times the number of post offices were built

» FRANKLIN, TENNESSEE

COLONIAL REVIVAL, 1925

Credit: Heritage Foundation of Franklin and Williamson County

in this period as had been built in the previous 50 years. The construction of these post offices was funded through a number of different programs and authorizations but remained the responsibility of the Treasury Department until 1939.

Nearly a quarter of the post offices built during this period were authorized by the Public Works Administration (PWA), established in 1933 to oversee the planning and construction of federal and non-federal public works projects. The planning required by the 1926 Public Buildings Act and the 1931 Federal Employment Stabilization Act enabled the PWA to begin its program with a minimum of delay by starting with federal projects such as post offices. The Bureau of Labor Statistics maintained statistics on employment, wages, cost of materials, and other data on PWA projects. Although the 406 post offices built under this program composed only a small portion of the approximately 34,000 PWA construction projects completed or in progress in virtually every county in the nation by 1939, they were among the most familiar to the general public. Despite the desire to complete projects rapidly, the PWA also stressed the importance of high quality in order to ensure “public works of an enduring character and lasting benefits,” according to its 1939 report.

The government once again employed private architects after 1930, but this practice was ended with an order of June 29, 1934, that all remaining federal buildings be designed by the Office of the Supervising Architect. The Treasury Department determined that it was not economical for private architects to handle small architectural projects. It was felt that the expeditious placement of buildings under contract and the putting of men to work in the shortest time possible facilitated employment in the construction field, and outweighed the benefits of procuring designs from a comparatively small number of architectural firms. A limited number of private architects were associated with the Treasury Department’s building program on a consulting basis. In March 1939, however, the Treasury Department reversed its policy and decided to select private architects by means of regional competitions. This new policy was barely announced when the public buildings program was removed from the Treasury Department in July of 1939 and merged into the Federal Works Agency (FWA). Although some variations to facades were allowed, standardized interior plans were well established by this time, and outlined in a publication entitled “Instructions to Private Architects Engaged



» **CHERAW, SOUTH CAROLINA**

GREEK REVIVAL, 1933

Credit: Arcadia Preservation, LLC/Gardiner Hallick

» INDEPENDENCE,
IOWA
“POSTMAN IN STORM”
MURAL, ROBERT TABOR,
1938
Credit: USPS



on Public Building work under the Jurisdictions of the Treasury Department.” The most commonly used styles were the Colonial Revival style or a simplified classical style blending modern and classical elements, characterized by symmetrical massing and plain surfaces.

Many of the post offices constructed during the 1930s were adorned with murals or other forms of artwork commissioned by the federal government. Of the four government programs supporting graphic arts during the Depression, the Treasury Department’s Section of Painting and Sculpture (later the Section of Fine Arts) was the principal sponsor of art for federal buildings, primarily post offices. Funds for artwork were based on 1 percent of the total appropriation for the building’s construction. Unlike another major program, the Works Progress Administration’s Federal Art Project, the Section’s program was one of patronage rather than relief and stressed quality over mass production. Artists were selected through blind competitions, whose standards encouraged realism as the most appropriate style and scenes of everyday American life as suitable subjects. Placement of the commissioned murals and sculptures in public buildings resulted from the desire of leaders in the Administration to make original, quality art accessible to those who otherwise had little or no opportunity to see it.

When the public buildings design function was transferred from the Treasury Department to the FWA in 1939, its vision was altered as well. In its 1940 annual report, the FWA described itself as “primarily an organization for building,” concerned with providing facilities for persons engaged in military readiness. By 1943, temporary war-related construction was completed, and the Supervising Architect’s staff was reduced by nearly one-half. Construction of non-military buildings, especially post offices, was virtually at a standstill. However, the FWA planned for a post-war public building program. The agency studied the character of building materials, designs, and construction methods used during the war years, and gauged the adaptability of the new materials and methods to post-war federal construction.

After the war, federal architectural activities were well diffused throughout military and civilian agencies. The FWA—with its public buildings design function—was subsumed into the new General Services Administration with the enactment of the Public Buildings Act of 1949. The Office of the Supervising Architect increasingly relied on private architectural firms to carry out public building designs. The Office continued, however, to provide standard designs and guidelines for post office buildings, although the nature of those buildings changed remarkably after World War II. Post offices became prominent examples of the architectural tenet “form follows function.” Postmaster General Arthur Summerfield called for utilitarian post office designs with no architectural adornment. New post offices had clean lines and standardized designs for lobby windows, counters, lock boxes, and letter drops.



» HOUSTON, TEXAS

1951

Credit: USPS

lease-purchase program. This program provided for private investors to finance and construct public buildings according to federal government requirements. The government would lease the buildings for a specified number of years and then, according to a prearranged purchase contract, become owner of the building. The architectural treatment of the exterior was left to the decision of the building owner and the architect, but interior spaces had to conform to accommodate specific postal functions. In 1954, all exclusively post office projects were removed from GSA and transferred to the U.S. Post Office Department. GSA was left with most of the remaining civilian federal buildings, including those that combined post offices with other federal functions.

INVENTORY

Section 110 of the NHPA requires each federal agency to establish a program for the identification, evaluation, and nomination of properties in their ownership or control to the National Register of Historic Places (NRHP). Despite this requirement, USPS policy does not support the development of a comprehensive inventory of the historic properties in their stewardship. However, USPS policy states that identification and evaluation of historic properties is carried out during Section 106 consultation processes for individual undertakings. There are no other USPS policies related to the identification and evaluation of historic properties, and the agency has not established goals for these purposes.

The USPS reports that it is challenged by its fiscal constraints and its ongoing efforts to modernize its procedures to better carry out its core mission, and is therefore presently unable to devote the necessary budget to carry out a comprehensive historic property identification and evaluation program, or to update the USPS Electronic Facilities Management System (eFMS) on a regular, full-time basis. The eFMS database is the official U.S. Postal Service record for real property inventory, used to manage all property-related projects including acquisition, disposal, and repairs.

Despite these challenges, over the years the USPS has produced a number of historic context studies and inventories of its historic properties. Historic contexts are those patterns or trends in history by which a specific occurrence, property, or site is understood and its meaning (and ultimately its significance) within history or prehistory is made clear. Historic context studies develop a “context” within which properties can be evaluated for National Register eligibility.

Another significant difference between pre- and post-war post offices was site design relative to automobile accessibility. After World War II, post offices were located near major roadways or automobile traffic intersections, rather than along railroads or in town centers. The new pattern emerged as post-war development spread out from central cities. Site plan concerns included adequate parking, tail-gate space, rail sidings, and drive-through service.

With private architects or architectural firms designing most post offices after the war, GSA encouraged standardized designs by providing prescriptive drawings and specifications and through an ambitious

The significance of a historic property can be judged and explained only when it is evaluated within its historic context.

In 1981, the USPS produced the “History of the U.S. Postal Service, 1775-1980.” Subsequently in 1982, it developed a historic context on post office construction between 1900 and 1940. Most recently in 2012, the USPS contracted for the preparation of a historic context of USPS buildings dating from the period between 1940 and 1971. The “History and Context Study of Postal Facilities Constructed or Occupied Between 1940 and 1971” was designed to guide future protection and utilization or sale of USPS properties.

As part of the most recent historic context study and inventory (completed in 2012), the USPS contracted with URS Group, Inc., who surveyed 98 postal facilities throughout the United States, representing approximately 7 percent of the 1,461 properties in the eFMS property database that were built or occupied between 1940 and 1971. The USPS determined that comprehensive National Register evaluation materials for post office facilities dating from this period were necessary due to the initiation of the “Mail Processing Network Rationalization Initiative,” a major step to reduce costs. Development of a nationwide context study would further facilitate the evaluation of the NRHP eligibility of these buildings.

USPS HISTORIC PRESERVATION AND DISPOSAL PROGRAMS

At the request of the ACHP, in order to facilitate preparation of this report, the USPS provided the background information in this section of its historic preservation and disposal program policies and procedures. As discussed above, according to the USPS, its policy, by a resolution of the Board of Governors, (Resolution No. 82-7, dated November 9, 1982) is to abide by the general policies and requirements for historic preservation applicable to the federal government, including the NHPA and Executive Orders 11593 (Protection and Enhancement of the Cultural Environment), 12072 (Federal Space Management), 13006 (Locating Federal Facilities on Historic Properties in our Nation's Central Cities), and 13287 (Preserve America).

The USPS has developed standard requirements with respect to how agency personnel address historic properties as they carry out their specific responsibilities. The U.S. Postal Service Facilities Guide to Real Property Acquisitions and Related Services (Handbook RE-1, <https://about.usps.com/handbooks/re1.pdf>) and the Facilities Environmental Guide (Handbook RE-6, www.apwu.org/dept/ind-rel/re6/re6c3.pdf) are the agency's internal guidebooks that outline USPS policy regarding historic properties. The USPS reports that postal employees responsible for historic properties use these guides as tools for the management of facilities, including historic properties. The guides provide standard

RESOLUTION OF THE BOARD OF GOVERNORS OF THE UNITED STATES POSTAL SERVICE

Resolution No. 82-7 Policy on Historic Preservation

RESOLVED:

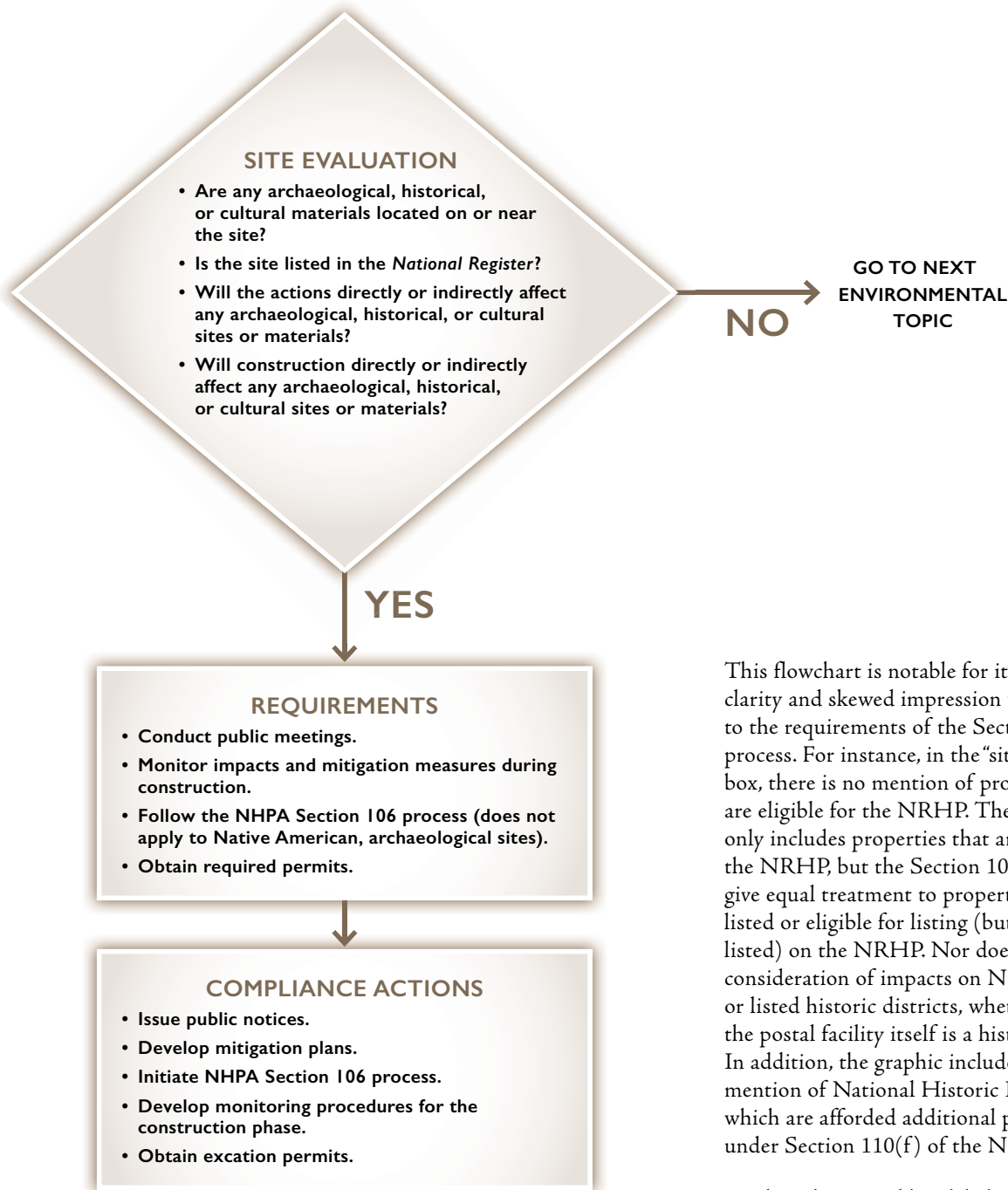
The Postal Service in [sic] one of the largest organizational holders of Real Estate in the United States. The Postal Service's activities in the areas of property acquisition, management, and disposal often affect historic properties and historic districts. The Postal Service, as a good neighbor in communities throughout the Nation and as an agency of the Federal government should acquire, manage, and dispose of its real property with due regard to the impact these activities may have on historic properties and historic districts.

In light of the foregoing, the Board of Governors of the United States Postal Service affirms that it is the policy of the Postal Service to abide by the general policies and requirements for historic preservation applicable in the Federal government. These are set out in Section 106 of the National Historic Preservation Act of 1966; section 110 and 111 of the National Historic Preservation Act Amendments of 1980; and in Federal regulations issued to carry out these provisions of law.

The foregoing Resolution was adopted by the Board of Governors on November 9, 1982.

/s/ Louis A. Cox
Secretary

operating procedures and other information about how USPS employees will carry out their responsibilities to ensure compliance with historic preservation laws and regulations. However, the handbooks are in many ways inconsistent with the Section 106 regulations, as discussed below. In addition, while the RE-1 handbook included an entire chapter dedicated to historic preservation at one time (1996 Edition, Chapter 9), the current version of the handbook has deleted this chapter. The flowchart from Handbook RE-6 (below) is an example of the types of specific cultural resource management guidance that is contained in these documents.



This flowchart is notable for its lack of clarity and skewed impression with regard to the requirements of the Section 106 process. For instance, in the “site evaluation” box, there is no mention of properties that are eligible for the NRHP. The graphic only includes properties that are listed on the NRHP, but the Section 106 regulations give equal treatment to properties whether listed or eligible for listing (but not formally listed) on the NRHP. Nor does it afford consideration of impacts on NRHP eligible or listed historic districts, whether or not the postal facility itself is a historic building. In addition, the graphic includes no mention of National Historic Landmarks, which are afforded additional protection under Section 110(f) of the NHPA.

Further, the second box labeled “requirements” includes “public meetings.” Under the Section 106 regulations, this

USPS Handbook RE-6, Exhibit 3-4.1, Page 3-78

is not a requirement. While consultation is a requirement, it may or may not include “public meetings.” In addition, it states that following the Section 106 process does not apply to “Native American archaeological sites.” This is inaccurate; the Section 106 process is required for all federal undertakings, and consideration of effects must be given to all resources meeting the definition of a “historic property” (any property listed on or eligible for listing on the NRHP). Any archaeological site that meets the definition of historic property must be considered in the Section 106 process. When an undertaking may affect a historic property of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency is required by statute to consult with such entities.

Finally, the box entitled “compliance actions” lists “initiate NHPA Section 106 process” after “issue public notices” and “develop mitigation plans.” It is unclear if this list of actions is intended to be conducted in the order listed (this is the impression given), but if so, it directs the initiation of Section 106 far too late in the decision-making process. Section 106 requires that agencies consider alternatives that will avoid, minimize, or mitigate adverse effects. If an agency initiates Section 106 after development of “mitigation plans,” it implies that an alternative has been chosen without the benefit of consultation in accordance with the Section 106 process and creates the risk that the opportunity for meaningful consideration of alternatives, and comment by the ACHP, may be foreclosed. In such cases, an agency may be unable to complete the Section 106 process as required by law.

DISPOSAL PROCEDURES

To address an ongoing pattern of operating budget deficits caused by declining first-class mail volume, competition from other private mail and parcel delivery firms, and the requirement to pre-pay retiree health benefits and pension funds, the USPS initiated the “Mail Processing Network Rationalization Initiative” to create a more streamlined processing and distribution network that is intended to use fewer facilities to handle an existing and projected decline in national mail volumes. An important component in the USPS projected downsizing is the sale of excess post offices and related building types.

According to the USPS, it initiates the process by looking at optimizing its facilities network with “node studies” of geographic areas throughout the nation. This computer modeling tool looks at various information, including the following:

- size of the existing facilities;
- excess space in the facilities;
- optimal size required for operations;
- lease costs of the existing sites (if leased) and alternative sites;
- estimated net sale revenue of owned facilities, if sold after consolidation or relocation;
- construction costs for moving or consolidating operations to an alternate location;
- transportation costs associated with moving the carriers; and
- operating costs at the existing facilities.

The USPS indicates that it has conducted node studies first in areas of the country with the most vibrant real estate markets, so that if a property is ultimately sold, the USPS will receive the highest values for its assets in the shortest time period. A node study may also be initiated in response to a lease termination or changing operational needs.

At the conclusion of a node study, USPS management reviews the analysis and conclusions and if the study's recommendations are approved, then the USPS Implementation Team begins to implement the recommended plan of action, subject to compliance with Section 106 and other regulatory requirements. Although the USPS may begin marketing a property while certain regulatory requirements are still underway, it indicates that the USPS will not sell a property until it has fully complied with all applicable regulatory requirements.

Properties identified for disposal are first offered to GSA in accordance with the agreement between GSA and the USPS covering real and personal property relationships and associated

services (July 1985) and the accompanying letter of understanding (February 1985). If that agency does not have a use for the property, the USPS next offers the space to prospective lessors or buyers in the following order:

- Other federal agencies
- State government agencies
- County government agencies
- Municipal government agencies
- Private sector

Upon selection of a transfer partner, the USPS negotiates the terms and conditions of the sale or lease with the prospective owner or tenant. The USPS indicates

that the contracts include clauses that protect historic building elements from removal, alteration, or destruction, and are designed to protect the building's most significant architectural elements. The contracts also require that the USPS continue ownership of New Deal Arts Collection items after the property transfer.

The USPS acknowledges the requirements of Sections 110 and 106 of the NHPA are intended to maintain and reuse its historic real estate, and, when the need to transfer a

property to a new owner arises, to ensure the property's legal protection in the future. It indicates that the USPS Federal Preservation Officer (FPO) works in conjunction with the USPS Facilities and Real Estate departments to help identify historic properties for which redevelopment is the most problematic, either because of the nature of the property itself or its surrounding neighborhood or community, and to support Section 106 consultation efforts to avoid, minimize, or mitigate adverse effects that arise from the transfer.



» **SOMERVILLE, MASSACHUSETTS**
CLASSICAL REVIVAL,
1936

Credit: Evan Kalish



» **PHILADELPHIA, PENNSYLVANIA**
NEOCLASSICAL, 1935
Credit: J. Brough Schamp
(Bohlin Cywinski Jackson)

When selecting a buyer or developer for a historic property, the USPS reports that it seeks an entity that can afford to redevelop the property, has a redevelopment plan that retains the important historic characteristics of the property, and is willing to accept legal restrictions for the long-term preservation of the property. The USPS asserts that it strives to find a balance between historic preservation and property disposal goals when making property sale decisions. Further, the USPS states that it is often in the best interest of the USPS to retain ownership of a vacant or underutilized property until the surrounding neighborhood can support the sale and redevelopment of large buildings. In some cases, it can take several years for a neighborhood to become economically viable enough to support a sale. According to the USPS, in the case of historic properties, the agency's preference is to retain ownership for as long as it deems necessary in order to ensure the building's preservation and to protect the USPS's property interests.

SCOPE OF THE DISPOSAL PROGRAM

To support development of this report, the USPS provided a table listing all historic post offices sold since 2012 (below). In all but one of these instances, the Section 106 process was concluded by a finding of “no adverse effect.” Under the Section 106 regulations, when a federal agency makes a finding of “no adverse effect” and neither the SHPO nor any of the consulting parties objects to that finding, the agency is not required to notify the ACHP about the finding, and the process concludes without the need for an MOA or PA.

The USPS made a finding of “no adverse effect” in 13 of the 14 cases listed below based on the use of a preservation covenant that it deemed would ensure the long-term preservation of the property's historic significance. These preservation covenants are held either by the SHPO, a CLG, one or more private preservation organizations, or by a city approved by the applicable SHPO to hold a preservation covenant. In the last case where a covenant was not attached to the property (Annapolis, Maryland), the Maryland SHPO and consulting parties concurred with the USPS's finding of “no adverse effect” based upon the requirements of state law that obligated the purchaser, the State of Maryland, to consult with the SHPO to determine whether subsequent plans would adversely affect the historic property and then consult to “determine whether a practicable plan exists to avoid, mitigate, or satisfactorily reduce a significant adverse effect.” Failure to agree on such measures would result in further consultation but, like Section 106, the project would be able to proceed without any such measures.

» **BURLINGAME,
CALIFORNIA**
SPANISH ECLECTIC
AND SPANISH
COLONIAL REVIVAL,
1941
Credit: USPS



HISTORIC POST OFFICES SOLD SINCE 2012

ID NUMBER	PROPERTY NAME	106 PROCESS CONCLUSION
CALENDAR YEAR 2012		
046408-G01	North Little Rock Main Street Station, Little Rock, AK	No Adverse Effect - Covenant Recorded
058022-G01	Ukiah, CA MPO	No Adverse Effect - Covenant Recorded
058106-G01	Venice, CA MPO	No Adverse Effect - Covenant Recorded
082550-G01	Fairfield, CT MPO	No Adverse Effect - Covenant Recorded
251830-G01	Chelsea, MI MPO	No Adverse Effect - Covenant Recorded
366040-G01	Pinehurst Village Station, Pinehurst, NC	No Adverse Effect - Covenant Recorded
317280-G01	Reno, NV DTS	No Adverse Effect - Covenant Recorded
CALENDAR YEAR 2013		
054182-G07	Santa Monica, CA MPO	No Adverse Effect - Covenant Recorded
105000-G02	Georgetown Station, Washington, DC	No Adverse Effect - Covenant Recorded
230216-G01	Annapolis, MD MPO	No Adverse Effect - Transferred to state; Maryland Historical Trust Act of 1985, as Amended (State Finance and Procurement Article § 5A-325 of the Annotated Code of Maryland)
268361-G01	St. Paul, MN MPO and Customs House	No Adverse Effect - Covenant Recorded
419492-G01	York, PA MPO	No Adverse Effect - Covenant Recorded
474704-G01	La Follette, TN MPO	No Adverse Effect - Covenant Recorded
CALENDAR YEAR 2014		
469810-G01	Yankton, SD MPO	No Adverse Effect - Covenant Recorded

The USPS also provided a table of historic post offices currently on the market for sale (below). In these cases, the USPS initiated the Section 106 compliance process once a decision had been tentatively made to dispose of a historic post office. The USPS must satisfy a number of regulatory requirements before making a final decision to sell a retail post office, whether or not it is historic. Until those requirements are completed, the USPS indicates that it does not make a final decision to sell. After making a final decision to sell, if operational needs change or the USPS is unable to find an alternative location to provide service, then the sale process stops, as well as any compliance processes underway (including Section 106).

HISTORIC POST OFFICES CURRENTLY FOR SALE

ADDRESS	106 STATUS	COVENANT HOLDER
2000 Allston Way, Berkeley CA	ONGOING	To Be Determined
220 Park Rd, Burlingame CA	COMPLETE	City of Burlingame
380 Hamilton Ave, Palo Alto CA	COMPLETE	City of Palo Alto
74 Olivia St, Derby CT	COMPLETE	CT SHPO
27 Masonic St, New London CT	COMPLETE	CT SHPO
421 Atlantic Street, Stamford CT	COMPLETE	CT SHPO*
321 E Kenilworth Ave, Villa Park IL	COMPLETE	IL SHPO
237 Washington St, Somerville MA	ONGOING	MA SHPO
860 Penniman Ave, Plymouth MI	COMPLETE	MI SHPO
2421 13th Street, Gulfport MS	COMPLETE	MS SHPO
20 Palmer Square, Princeton NJ	ONGOING	NJ SHPO
558 Grand Concourse, Bronx, New York NY	ONGOING	New York City Landmarks Preservation Commission & New York Landmarks Conservancy
435 Wyoming Avenue, Kingston PA	COMPLETE	PA SHPO
401 Franklin Street, Houston TX	ONGOING	MOA**
440 NE 5th Ave, Camas WA	COMPLETE	MOA***

* Stamford originally involved an MOA drafted in 2007. However, the USPS made a finding of “no adverse effect” in 2011, despite indication by the developer purchasing the post office of their intent to demolish a 1939 addition and build two high-rise residential buildings immediately behind the post office. Litigation challenging the project under the NHPA and NEPA remains pending.

** USPS reports that the Section 106 consultation for the Downtown Main Post Office in Houston, Texas, will be concluded with an MOA, but that the consultation is ongoing. The ACHP has not yet been notified of this consultation and development of the MOA, as required by 36 CFR § 800.6.

*** USPS reports that the Section 106 consultation for the Camas, Washington, Post Office was concluded with an MOA in 2010. However, the ACHP has no record of being notified of this consultation and development of the MOA, as required by 36 CFR § 800.6. According to the USPS, the facility has not yet been sold as of the date of this report.

The USPS anticipates continuing to review its facilities network across the United States, but due to the large number of post offices, this review will take a number of years to complete. As noted above, the USPS reports that it is first focusing on those real estate markets that would yield the most revenue in the least amount of time for properties that are sold. The USPS reports that several areas are currently under study but did not disclose the location of those areas. Further, it indicates that because the results of those studies are not yet available, the USPS cannot identify the number or location of future disposals. The USPS does not have a numeric goal for future disposals.

USPS COMPLIANCE WITH SECTION 106

At the request of the ACHP in order to facilitate preparation of this report, the USPS provided the description of its program to comply with Section 106. USPS compliance is guided by internal agency policies regarding historic properties and compliance procedures. These policies apply to more than the disposal of historic properties; they govern the manner in which USPS conducts Section 106 review for all activities potentially affecting historic properties in its stewardship, including maintenance, repair, new construction, and demolition. While issues regarding disposals have risen to the forefront in recent years, USPS's record of compliance with Section 106 for all types of activities has been inconsistent. As such, the policies and guidance available to USPS personnel are of a broader concern and would benefit from updating and improvement.

Policies concerning historic properties and related USPS responsibilities are outlined in the USPS guidance documents "Handbook RE-1, Realty Acquisition and Management" (updated June 2008) and "RE-6, Facilities Environmental Handbook." These documents describe USPS procedures regarding cultural resources, including Section 106 compliance, identification and evaluation of historic properties, preparation of National Register nominations, and disposition of items from the New Deal Arts Collection. These guidance documents are provided to USPS facilities employees via hardcopy and/or online via the USPS internal network.



» WESTPORT,
CONNECTICUT
CLASSICAL REVIVAL,
1935
Credit: Evan Kalish

Although not required by the regulations, for some properties, the Postal Service hires a qualified contractor to conduct further investigation to assist with that determination. If the Postal Service determines the property is historic, then the Postal Service begins consultation with the requisite consulting parties it has identified, including those parties identified in consultation with the applicable SHPO. The Postal Service provides the SHPO and other consulting parties with a letter detailing information about the property, the findings of the Postal Service and other requisite information to commence the consultative process. Additionally, the Postal Service notifies the public and considers all public comments and input that it receives. The USPS then engages in further communications with the SHPO and applicable consulting parties with respect to its finding, and if applicable, proposed

The following is the description provided by the USPS of its disposal procedures:

"With respect specifically to Section 106 procedures for a property tentatively designated for disposal, as you are aware, the Postal Service first determines whether the property is historic, as defined in the Section 106 regulations. The Postal Service makes this determination using internal Postal Services resources as well as outside resources, such as the National Register of Historic Places and the National Archives.



» **NORTHFIELD, MINNESOTA**
COLLEGIATE GOTHIC,
1936
Top Credit:
John Twohig ©2012
Bottom Credit:
Construction of the
post office/Northfield
Historical Society

purchasing parties and regulatory agencies, are also consulted, historic preservation advocacy groups have advised the ACHP that their requests for consulting party status have routinely been ignored, sometimes for months or even years.

The USPS indicates that its process includes public hearings in the community to provide local stakeholders with an opportunity to express concerns about the proposed project. It recognizes that suspending service and selling USPS property, especially properties that represent the historic character of a community, are often contentious. The USPS states that it is committed to evaluating the needs of the community at large while balancing agency responsibilities with its mission as it makes decisions about property disposition.

The USPS indicates that if a property is proposed for transfer to a party that is not a federal agency and the property is listed in or eligible for listing in the NRHP, the USPS carries out Section 106 consultation as required. On those rare occasions when the USPS determines that the transfer will result in an adverse effect, the USPS will enter into an MOA with the SHPO and other appropriate consulting parties. The MOA will require that protective covenants or a property easement is included as a legal requirement of the sale or transfer to ensure protection of the property after it is transferred. The USPS states that the ACHP is notified of a property transfer by the USPS to another party if an MOA is developed under Section 106 of the NHPA. However, it is important to note that the Section 106 regulations actually require a federal agency to notify the ACHP of an adverse effect finding before starting to negotiate an MOA. This is to provide the ACHP an opportunity to join the consultation if it believes such engagement is warranted.

The USPS indicates that it will not lease or exchange a historic property to any party if the USPS determines that the proposed lease or exchange will not adequately ensure the preservation of the historic property. However, the USPS provided no information on what constitutes adequate assurance of preservation for its agency.

The procedures described above by the USPS may appear reasonable to meet the requirements of Section 106. But in practice, numerous flaws have become evident as individual disposals have been undertaken. The following section discusses these issues.

actions to avoid, minimize, or mitigate any adverse effect(s). Consultation continues until the Section 106 process concludes. With respect to a historic property that is ultimately determined to be sold, the Postal Service implements the agreed upon plan for the property, such as a preservation covenant, preservation easement or MOA, at such time as the property sale closes.” (Correspondence from Daniel Delahaye, USPS to Reid Nelson, Director, Office of Federal Agency Programs, ACHP, February 20, 2014)

The USPS asserts that it involves community stakeholders through its Community Relations Program (CRP) during the planning phase of projects that include the sale or transfer of properties to new owners. While the USPS indicates that other stakeholders, including leasing or

ISSUES IN THE SECTION 106 REVIEW OF DISPOSAL OF HISTORIC POSTAL FACILITIES

The ACHP has found a number of issues related to USPS compliance with Section 106 for the disposal of historic postal facilities. These issues have been identified through the ACHP's own interaction with the USPS, both programmatically and on a number of specific disposal cases, and through input from stakeholders solicited for this report.

TRANSPARENCY

In both project specific consultations and programmatic assessment of the USPS Section 106 compliance for the disposal program, the ACHP has observed significant issues with regard to the transparency and timeliness of the USPS information sharing and decision-making process. This has been reinforced by written comments and testimony provided at the March 11, 2014, meeting in Oakland by stakeholders involved in numerous disposal undertakings. This is especially troubling in light of the finding by the Government Accountability Office (GAO) in 2007 regarding communication by the USPS when implementing "mail processing realignment". GAO found that while the USPS had made improvements to its communication practices, it continued "to have gaps related to engaging stakeholders and the public in the realignment process and effectively communicating decisions." GAO further found that the process did not "provide adequate notification to stakeholders, lacked transparency into how public input is considered" and that the USPS provided only "limited information to the public after decisions are made."

Similar concerns were expressed by the USPS OIG some six years later in its March 27, 2013, report entitled "Lessons Learned from Mail Processing Network Rationalization Initiatives". In that report, the USPS OIG recommended that "management improve communications with stakeholders by ensuring they share accurate and consistent information on consolidation impacts."

This pattern of shortfalls in USPS communication practices and procedures continues to the present with regard to decision making in the Section 106 process. It particularly affects Section 106 compliance since the foundation of the process is consultation, defined as the "process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process" (36 CFR § 800.16).

In a description of the Section 106 compliance process for disposal of historic post offices provided to the ACHP, the USPS indicates that "public hearings are held in the community to provide local stakeholders with an opportunity to express concerns about the proposed project." The USPS further indicates that it notifies "the public and considers all public comments and input..." (Correspondence from Daniel Delahaye, USPS to Reid Nelson, Director, Office of Federal Agency Programs, ACHP, February 20, 2014) However, the opportunity to "express concerns" and the collection of "public comments and input" are not synonymous with the consultation process required by Section 106.

» **BRONX, NEW YORK**
COLONIAL REVIVAL,
1936
Credit: USPS



Reasonably foreseeable effects, for example, include transferring a historic post office building out of federal ownership as a consequence of deciding to relocate the post office function.

In addition, when discussing the nationwide disposal program with the ACHP and others, the USPS has been unwilling or unable to share information with regard to the future scope and duration of the program. In an attempt to assist the USPS to establish a more effective and efficient compliance process, the ACHP, SHPOs, and the NTHP have repeatedly requested information from the USPS to aid in understanding how many more historic postal facilities may be subject to disposal, how long the program may continue, and the geographic distribution or concentration of future disposals. Whether this information is lacking due to poor planning or purposefully withheld, the result is the same: the USPS cannot or will not accept overtures of assistance from the ACHP and others who could improve the process, establish efficiencies in process and personnel, and develop partnerships that would strengthen relationships and communication channels with stakeholders.

TIMELINESS

The Section 106 regulations define adverse effects to include “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative.” (36 CFR § 800.5(a)(1)). Reasonably foreseeable effects, for example, include transferring a historic post office building out of federal ownership as a consequence of deciding to relocate the post office function. They also include plans of a private developer when such plans have been disclosed to the USPS in advance of the sale of the historic property. These reasonably foreseeable and cumulative effects must be assessed by the USPS before making a decision to relocate functions and cannot be delayed until later when deciding how exactly to dispose of the no longer needed property.

In correspondence regarding several post office dispositions, the USPS has dismissed the notion that it should comply with Section 106 at the time of its decision to cease or relocate postal services by stating that it would comply with Section 106 at some time in the future if the USPS decides to sell the building. These two decisions, however, are inextricably linked, not two separate, unrelated actions. This was especially evident in the final determination letter regarding the Bronx Post Office. In this case, the USPS announced its “determination to proceed with the relocation of retail services” from the Bronx Post Office, and confirmed in the next sentence that the “plans also include marketing the sale of the property.” (Correspondence from Joseph J. Mulvey, Real Estate Specialist, USPS, to Ruben Diaz, Jr., Bronx Borough President, March 14, 2013)

The USPS position that the cessation or relocation of services and the sale of buildings are not interrelated and that compliance with Section 106 is not necessary prior to USPS’s final decision to relocate post office functions is unfounded as its actions and words clearly illustrate that these decisions are directly related. In addition, postponing initiation of Section 106

consultation risks the possibility that the Section 106 process will be “blamed” for delaying the sale of the building, when, in fact, implementation of the process by USPS is at fault. In such cases, the Section 106 process may be rushed or truncated to accommodate project timelines, rather than allowing full, meaningful consultation with all parties.

INCLUSIVENESS

The ACHP and stakeholders in numerous disposal cases have observed significant flaws in the USPS consultation practices. This includes the exclusion of potential consulting parties from the Section 106 consultation process, without reasonable explanation. In a number of cases, the USPS declined to provide consulting party status to organizations that had a clear interest in the process. The ACHP understands from some consulting parties and preservation advocates that in recent months USPS has shown more willingness to engage with constituents and consulting parties, facilitating the Section 106 process. This is an encouraging development that, if adopted as a widespread agency practice, will reflect positive change.

The USPS has a legal obligation in accordance with the Section 106 regulations to identify and invite certain consulting parties (SHPOs, tribes, Native Hawaiian organizations, applicants, and local governments) into the Section 106 consultation and consider requests from other potential consulting parties for individual undertakings. In addition, the USPS would benefit from proactive and consistent outreach to preservation stakeholders regarding the overall post office disposal program, not just for specific cases. Such outreach would facilitate a consultative process that builds relationships and results in a more transparent and effective compliance process.



» TERRE HAUTE,
INDIANA
NEO-CLASSICAL,
1934
Credit: USPS

COVENANTS

The ACHP and preservation stakeholders continue to have a number of concerns regarding the use of preservation covenants as a mechanism to make a finding of no adverse effect. Specifically, the ACHP shares the concerns of others that the language in a number of proposed covenants may not be sufficient to ensure long-term preservation of the historic property, as required by the Section 106 regulations for a finding of no adverse effect. For example, a number of covenants have been proposed and enacted that broadly allow for the termination of the covenant “for good cause”. This ability to remove the long-term protection of the property (in many cases with little recourse for the public or preservation community) undermines the effectiveness of the covenant and therefore cannot ensure the long-term preservation of the historic property. In addition, the USPS relies on a model or template covenant in nearly every Section 106 consultation that contains significant flaws. Reliance on this flawed document has resulted in considerable conflict in a number of cases. While some more recent covenants have seen improvement with regard to these issues, many covenants previously enacted remain in force, potentially placing those historic properties at risk despite the fact that the USPS placed a covenant upon them.

In the case of USPS disposal of historic post offices, disputed findings of effect have become commonplace.

An additional concern is that the USPS provides no financial assistance to potential covenant holders for the enforcement of the covenant. The acceptance of a covenant imposes an affirmative responsibility on the holder, both procedural and fiscal. Enforcing a covenant requires routine monitoring of the building, review of plans or alterations that may be proposed by the owner, and the ability to legally force compliance with the terms of the covenant if necessary. This requires the holder to make a commitment of human and financial resources. As such, it is a common preservation practice to create covenants with a lump sum payment paid by the conveyer of the property to the holder of the covenant or a commitment by the new building owner to pay a monitoring fee.

To date, the USPS has been unwilling to commit any funds to covenant holders, instead asking those accepting the covenants to bear the entire financial burden. While the USPS’s financial constraints are well known, they could pass along the financial responsibility to the new building owner. The majority of potential covenant holders are non-profit organizations, many small, operating within fiscal limitations. As a result of this issue, a number of potential, technically well-qualified covenant holders have declined to accept covenants on historic post offices, being unable to bear the financial burden without compensation.

When an agency proposes a finding of “no adverse effect” based on a covenant, it requires the concurrence of the SHPO. If a SHPO disagrees with that finding due to the sufficiency of the covenant provisions, and the SHPO and the federal agency are unable to resolve their differing opinions, then the dispute is referred by the agency to the ACHP for comment. This scenario is known as a “disputed finding of effect” (36 CFR Part 800.5(c)(2)). The ACHP provides its opinion to the agency, which is required to consider the ACHP’s views but can reach its own final determination as to adverse effect.

While the Section 106 regulations make provision for disputed findings of effect, they are rare in the overall universe of Section 106 cases. In the case of USPS disposal of historic post offices, disputed findings of effect have become commonplace. This pattern indicates a basic problem with the USPS approach to meeting its Section 106 obligations.

Further, in those cases where the USPS has referred a disputed finding of effect to the ACHP in accordance with the Section 106 regulations, in all cases the ACHP has provided an opinion consistent with the SHPO; that is, the ACHP has advised the USPS that the finding of no adverse effect was not appropriate and recommended changes to the proposed covenant that

would ensure protection of the historic property. In all cases however, the USPS has indicated that while it took the ACHP opinion into account, it disagreed with that opinion and proceeded with its initial finding without further consideration for the concerns of consulting parties. Despite the ACHP's consistent recommendation to change its practices regarding covenants to avoid future disputes, the USPS has not done so.

Although USPS has been able to work through some of the questions on the use of covenants for particular disposals, these issues have resulted in a number of consultations stalling or concluding without clearly successful preservation outcomes.

ALTERNATIVES TO COVENANTS

If a covenant is not feasible but the postal facilities are located within municipalities that have been designated as CLGs in accordance with the NHPA, adverse effects could be mitigated by utilizing the CLG review process as an alternative to the attachment of a covenant, provided that the SHPO concurs with this approach. While the USPS would need to ensure that local review processes did apply to the subject property, this arrangement could effectively provide for ongoing oversight of the historic property. In some cases, the USPS or the new developer/owner may need to work with the CLG to designate the property under the local ordinance. Since local review ordinances typically do not mandate preservation in the way that a covenant would, agreeing on such a process may not support a no adverse effect finding since the long-term protection of the property could not be guaranteed. However, the Section 106 agreement could refer to that process as part of the resolution of adverse effects.



» **PINEHURST, NORTH CAROLINA**
COLONIAL REVIVAL,
1935
Credit: *The Pilot*,
March 20, 2014

The ACHP is aware that several communities have expressed interest in acquiring their community's historic post office. During the visit to Oakland in preparation for this report, as well as through written comments provided, the ACHP was informed that local governments offering to purchase the post office at fair market value (and potentially lease back space for the USPS to continue retail operations) have been rebuffed by the USPS. The USPS has provided no explanation for this apparent unwillingness to entertain local government overtures. Recognizing that communities often have a strong interest in maintaining historic post offices

COMMUNITY IMPACTS

In the USPS's 2008 report to the ACHP under EO 13287, it acknowledged that most historic post offices that remain in federal ownership are located in small town centers or dense urban cores. The importance of these downtown post offices was reflected in their design, often ranking them among the finest buildings in a community. As such, these post offices have occupied key roles in community identity and remain prominent buildings within their communities. The specter of the vacancy of a key resource in a historic district raises concerns of community viability and vitality. In addition, the potential disappearance of a federal presence in communities is often viewed as a significant loss for the community.

for community use, eliminating them as a potential recipient excludes them from being an effective partner in the long-term preservation of historic post offices. Unfortunately, it also puts some of these communities in an adversarial role with the USPS.

MISINTERPRETING THE ROLE OF CERTIFIED LOCAL GOVERNMENTS

The 1980 amendments to the NHPA established the CLG program to “encourage the direct participation of local governments in the identification, evaluation, registration, and preservation of historic properties within their jurisdictions.” They also established a set of requirements and standards for CLGs, assuring some degree of consistency and further defining the process for local involvement and review. These include the duty to:

- enforce appropriate state and local laws and regulations for the designation and protection of historic properties;
- establish a historic preservation review commission by local ordinance;
- maintain a system for the survey and inventory of historic properties;
- provide for public participation in the local preservation program; and
- satisfactorily perform responsibilities delegated to it by the state.

It is not the prerogative of a federal agency to choose which entity within a state will fulfill the responsibilities of the SHPO.

The USPS has incorrectly interpreted the role of CLGs in the Section 106 process. Based upon the foregoing criteria, the USPS determined in several cases that the CLG “shall act as the agent” of the SHPO. However, these criteria are unrelated to the Section 106 process. Rather they are federally delegated functions tailored to state and local historic designation, survey, and protection. While a CLG can act as the agent of the SHPO in certain circumstances, such delegation is by mutual agreement between the SHPO and the CLG and does not automatically forfeit the former’s responsibilities in favor of the latter. It is not the prerogative of a federal agency to choose which entity within a state will fulfill the responsibilities of the SHPO.

The Section 106 regulations do mandate that a CLG be invited to the table (36 CFR § 800.2(c) (3)), where it can participate in the process and contribute significantly to seeking resolution to issues. But the CLG cannot act in lieu of the SHPO in the Section 106 process absent a formal delegation of such responsibilities through a Programmatic Agreement developed in accordance with 36 CFR § 800.14(b).

CONSIDERATION OF ALTERNATIVES

Nationwide, the USPS gives no special consideration in the disposal decision-making process to the historic significance of a post office when determining if the facility is a viable candidate for relocation or cessation of services and disposal. This is a critical concern as it is far preferable to have buildings that were historically designed for public uses remain publically accessible. Such consideration is supported by federal 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 “procedures 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 agencies must consider the “utilization of human, natural, cultural, and community resources.” (Section 1-104(c)).

The agency is required to consider “utilization of buildings of historic, architectural, or cultural significance” and “opportunities 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 also to give first consideration to locating in historic properties within historic districts. 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 substance of the Executive Order was codified into law as an amendment to the NHPA in 2000. (16 U.S.C. § 470h-2(a)(1)).

In addition, prior to making a formal decision on the sale of a historic 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 NHPA 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 a historic property owned by the agency to any person or organization...”

In 2010, a federal district court in Washington 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 legal obligations prior to proceeding down a path that would commit it to transferring a historic property out of federal control.

ALTERNATIVE APPROACHES TO SECTION 106 COMPLIANCE

Since 2012, the ACHP has consistently encouraged the USPS to consider programmatic approaches to Section 106 compliance for the disposal program as an effective mechanism to uniformly address consideration of alternatives and establish procedures for consultation with the public. A PA could govern a number of disposals within a geographic area; such an area could be defined as a single state, a region, or nationwide. This approach would allow the USPS to front load consultation on disposal undertakings, resulting in efficiencies in the Section 106 process and the identification of mitigation measures that could be applied regionally or nationally. A PA could also establish standard practices for the use of covenants and set in place agreements with other organizations on holding covenants. In addition, consultation for development of a PA could include all the parties who would likely have an interest in each individual undertaking, thereby identifying issues and concerns of consulting parties early on and enlisting all the parties in problem solving. Such a programmatic approach would allow the USPS to conclude Section 106 responsibilities for all undertakings covered in the PA, focusing agency resources elsewhere.

A Programmatic Agreement could also establish standard practices for the use of covenants and set in place agreements with other organizations on holding covenants.

USPS STAFF CAPABILITIES

In June 2012, the USPS FPO indicated that he was involved in more than 70 separate Section 106 undertakings nationwide. Clearly, current reduced USPS staffing levels cannot fully meet the needs required to adequately carry out this responsibility. USPS cultural resource responsibilities were previously carried out by staff at both the national level by the FPO and at the USPS Facility Service Offices by Historic Preservation Coordinators. Through reorganization, all responsibilities are now consolidated into 1½ positions at the national level. According to the USPS, until recently, none of the staff assigned cultural resource duties met the Secretary's Professional Qualification Standards (48 FR 22716). It is a positive step that the incoming USPS FPO does meet these Standards. However, the overall manpower assigned to manage USPS compliance responsibilities for its historic properties is inadequate to meet the need for community interaction and meaningful consultation required under Section 106.

In addition, in information provided by the USPS to the ACHP for preparation of this report, the USPS characterizes the conduct of public hearings and request for public comment as the core of its Section 106 consultation process. As previously noted, these efforts are inadequate for purposes of Section 106 and represent a fundamental misunderstanding of the requirements of Section 106 and the meaning of consultation. It further demonstrates the need for additional qualified staff that is well versed in the intent and requirements of the Section 106 process.

Finally, the USPS FPO position is organizationally located within Facilities Implementation (Design and Construction). Previously, this position was located in Realty Assets (Asset Management). As a result of this change, the FPO position has no input into disposal analyses.

Absent clear mandates and guidance to USPS personnel, implementation of the Section 106 regulations will remain inadequate.

USPS POLICY AND PROCEDURES

In its 2008 report to the ACHP under EO 13287, the USPS indicated that it had completed the update of its procedural handbooks and manuals to correlate current federal laws with existing USPS procedures and regulations. These revised handbooks address current regulations for protecting historic resources and their correlation with USPS policies. The revised documents are reportedly available to all USPS employees on the internal Postal Blue network and include the following:

- F-6, General Investment Policies and Procedures
- FE-1, Realty Acquisition and Management
- RE-1, Facilities Guide to Real Property Acquisitions and Related Services
- RE-5, Building and Site Security Requirements
- RE-6, Facilities Environmental Guide
- RE-12, Repair and Alteration Surveys
- RE-13, Repair and Alteration of Real Property Facilities
- RE-14, Design and Construction Handbook

Review of Handbook RE-6 indicates inaccurate interpretation of the Section 106 regulations and inadequate guidance on their implementation. Absent clear mandates and guidance to USPS personnel, implementation of the Section 106 regulations will remain inadequate.



» **BRONX, NEW YORK**

"RESOURCES OF AMERICA" MURAL

BEN SHAHN AND BERNARDA BRYSON, 1938-39

Credit: USPS

PROTECTION OF AND ACCESS TO MURALS AND OTHER ARTWORK

Images on the walls of 1930s post offices have captured the American scene and transformed the post office into a truly democratic art gallery. During the Great Depression, Americans searched for images that could serve as beacons of hope during a time of economic and emotional despair. Many of the post offices constructed during the 1930s were adorned with murals or other forms of artwork commissioned by the federal government. Placement of the commissioned murals and sculptures in public buildings resulted from the desire to make original, quality art accessible to those who otherwise had little or no opportunity to see it. Today, these works of art remain prized community resources, often housed within historic post offices.

While the USPS indicates its intent to retain ownership of artwork following disposal of historic buildings, the long-term care and public access often remains in question. During the Oakland meeting, testimony was presented that asserted the deterioration of artwork, removal of murals from post offices, and little or no access afforded to the public following disposal of the historic buildings.

COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

A number of organizations have expressed concern with regard to the USPS process for complying with the NEPA. While the ACHP has no jurisdiction over an agency's compliance with NEPA (NEPA assigns CEQ the task of ensuring that federal agencies meet its requirements), issues raised regarding NEPA are of concern, as NEPA requires consideration of cultural resources. The concepts of "coordination"

and “integration” are found in both the CEQ NEPA regulations and Section 106 regulations, because they provide efficiencies, improve public understanding, and lead to more informed decisions. The ACHP and CEQ recently jointly published a handbook encouraging such coordination: “NEPA and NHPA: A Handbook for Integrating NEPA and Section 106” (available at <http://www.achp.gov/nepa106.html>).

Effective NEPA review is expected to integrate other planning and environmental reviews, including impacts to historic properties. NEPA and Section 106 have independent statutory requirements, and compliance with NEPA does not in itself satisfy an agency’s obligations under Section 106. If the proposed action is the type of undertaking with the potential to affect historic properties, the agency must initiate the Section 106 consultation process, and the findings of the Section 106 process are often reported in the NEPA review.

A “categorical exclusion” (CATEX) is the least intensive form of NEPA compliance and is defined in NEPA as “a category of actions which do not individually or cumulatively have a significant effect on the human environment.” A CATEX is concluded with the determination that a proposed action falls within the category of actions and there are no extraordinary circumstances that indicate environmental concerns merit further environmental review (40 CFR § 1508.4). Potential impacts to historic properties may constitute an extraordinary circumstance that renders the use of a CATEX inappropriate for NEPA purposes.

The USPS NEPA procedures state that “To be categorically excluded, it must be determined that a proposed action fits within a class listed and there are no extraordinary circumstances that may affect the significance of the proposal” (39 CFR § 775.6(a)). When there are no clear opportunities to avoid or mitigate impacts to historic properties, the potential impact would be considered an extraordinary circumstance. An effective process for complying with Section 106 of the NHPA is therefore essential for proper compliance with NEPA.

In January 2014, the USPS published an Interim Final Rule substantially revising its criteria for use of a CATEX for disposition of facilities (<http://www.gpo.gov/fdsys/pkg/FR-2014-01-13/html/2014-00324.htm>). Prior to the interim final rule making, the USPS CATEX for dispositions of facilities provided for a CATEX in the following circumstance:

“Acquisition and disposal through sale, lease, transfer, or exchange of real property that does not involve an increase in volumes, concentrations, or discharge rates of wastes, air emissions, or water effluents, and that under reasonably foreseeable uses, have generally similar environmental impacts as compared to those before the acquisition or disposal. A determination that the proposed action is categorically excluded can be based upon previous “reference actions” documented under § 775.6(b)(17).6.”

Under this CATEX, the agency would focus on the property proposed for disposition, examine the development plans of its potential buyers, and make specific determinations that the environment would not be harmed by its action. However, under the interim final CATEX, the USPS could bear a substantially lighter burden to consider how the environment would be affected by the disposal. The interim final CATEX could be used, absent extraordinary circumstances, in the following circumstance:

Disposal of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current and reasonable anticipated uses are or would be similar to current surrounding uses (e.g., commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, row house or vacant lot in an urban area).

The USPS however, stops short of reproducing GSA's best practices regarding the management of historic buildings, a critical factor in GSA's overall approach to NEPA and Section 106 obligations.

This would seemingly divert the analysis from the property itself and whether its disposal would cause an environmental impact, to focus instead on surrounding development that has already occurred.

The USPS uses as its principal rationale for its amended CATEX procedure that it seeks to be consistent with other agencies, such as GSA, which implemented a similar rule change in 2000. In the Interim Final Rule, the USPS finds GSA's experience and consideration to be a useful guide in how it manages its own NEPA process. The USPS however, stops short of reproducing GSA's best practices regarding the management of historic buildings, a critical factor in GSA's overall approach to NEPA and Section 106 obligations.

In addition to its much more thorough analysis of extraordinary circumstances, GSA has a detailed process for consideration of alternatives prior to disposal of federal property, as required by the NHPA. Its Federal Management Regulations contain specific provisions for historic properties that have not been comparably adopted by the USPS. For this reason, the USPS must be distinguished from GSA, which has policies in place to ensure that a full range of alternatives are considered before historic buildings are offered for sale.

FINDINGS AND RECOMMENDATIONS FOR USPS PROGRAM IMPROVEMENTS

This section contains the ACHP’s findings regarding USPS compliance with Section 106 of the NHPA for its relocation of services and disposal of historic postal facilities. These findings and their accompanying recommendations highlight the most significant issues related to the USPS disposal program and offer new strategies for going forward.

It is important to note that, while the Congress has asked the ACHP for steps it can take to ensure USPS compliance with Section 106, neither the NHPA nor the Section 106 regulations authorize the ACHP to directly control or dictate the actions of the USPS. Legal enforcement of Section 106 occurs through civil litigation filed by members of the public. Recognizing this, the recommendations do include steps the ACHP can and will take to address the issues. More importantly, the ACHP, under its statutory authority to advise the President and the Congress and to “review the policies and programs of federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act” (16 U.S.C. § 470j), is providing recommendations for action by the Congress and the USPS itself.

FINDING NO. I

The responsibility of the USPS to comply with the requirements of Section 106, as a matter of law rather than discretionary policy, is supported by persuasive case law but is not clearly established.

USPS acknowledges through resolution of its Board of Governors that, as a matter of policy, it will abide by the general policies and requirements for historic preservation applicable to the federal government, specifically Sections 106, 110, and 111 of the National Historic Preservation Act and their implementing regulations. This spirit of “voluntary” compliance put forth by the USPS results in a Section 106 compliance process that is perceived by stakeholders as reluctant, minimal, and only “going through the motions.” Further, this “voluntary” policy enables the USPS to select when and how they chose to comply with Section 106. While case law is clear that the USPS exemptions do not extend to NEPA (a statute very similar in nature to the NHPA), such case law has not directly addressed the issue with regard to the NHPA.

RECOMMENDATION

The Congress should clarify that the NHPA and its implementing regulations apply to all programs of the USPS, in order to remove any doubt that the USPS is legally obligated to comply with Sections 106, 110, and 111 of the NHPA and to conduct a strong and transparent consultation process with stakeholders as required by the implementing regulations.

FINDING NO. 2

The continuation of USPS relocation and disposal actions for historic postal facilities without significant corrective steps can harm these historic properties of importance to communities.

This report contains a series of recommendations for implementation by Congress and the USPS and for actions that will be undertaken by the ACHP. These recommendations and actions, implemented collectively, will result in a Section 106 compliance process for the disposal of historic postal facilities that fully considers the views of consulting parties and examines alternatives that can ensure the long term protection of historic properties. Until such time as these reforms are implemented however, continuing decision making and actions to relocate services from these historic facilities or disposing of the facilities perpetuates the inadequacies of the USPS Section 106 compliance process and puts the protection of historic properties at risk.

RECOMMENDATION

The USPS should suspend any further actions to relocate services out of historic postal facilities and dispose of those historic facilities until such time as it fully implements the recommendations of this report. If the USPS fails to suspend such actions, the ACHP recommends that Congress direct the USPS to suspend all relocation of service decisions and disposal actions for postal facilities that are listed or eligible for listing on the National Register of Historic Places until such time as the USPS fully implements the recommendations of this report directed to it.

FINDING NO. 3

The USPS defines the undertaking subject to Section 106 review too narrowly to enable consideration of alternatives and meaningful consultation with stakeholders.

The USPS has repeatedly expressed its interpretation of the Section 106 regulations that the initiation of compliance with Section 106 is necessary only when the USPS decides to initiate disposal of a historic post office. The ACHP disagrees with this interpretation. The decision to cease or relocate postal services and operations is inextricably linked to the decision to dispose of the building. They are not separate, unrelated actions: but for the relocation of postal operations, the disposal of the building would not occur.

RECOMMENDATION

The USPS should define the undertaking for Section 106 purposes as both the proposal to cease/relocate postal services and operations and the subsequent proposal to dispose of the historic property.

FINDING NO. 4

The failure of the USPS to identify and consider alternatives to relocation of services and disposal of historic postal facilities does not meet the requirements of Section 106.

The Section 106 regulations 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 CFR 800.1(c)). The ACHP has no evidence that the USPS has explored, under Section 106, any alternatives to disposal of any of the historic post offices to date. Rather, by the time it initiates its Section 106 process, it has already declared that sale is the only option, despite considerable objection in most cases from community leaders and preservation advocates.

RECOMMENDATION

The USPS should initiate Section 106 consultation at the time relocation or cessation of services at a historic postal facility is considered, rather than waiting until disposal is proposed, in order to fully identify, evaluate, and consult upon a range of alternatives that could avoid or minimize effects.

FINDING NO. 5

Covenants being used by the USPS in the disposal of historic postal facilities are often insufficient to ensure long-term protection of historic properties.

The ACHP and preservation stakeholders continue to have a number of concerns regarding the use of preservation covenants as a mechanism to make a finding of no adverse effect. Specifically, the language in a number of proposed covenants may not be sufficient to adequately ensure long-term preservation of the historic property, as required by the Section 106 regulations to justify a finding of no adverse effect. For example, some covenants allow for the covenant to be terminated due to “good cause” or may not be in effect in perpetuity. In addition, the lack of financial resources being provided to potential covenant holders for the enforcement of the covenant, the role of CLGs in the Section 106 process and as covenant holders, and the lack of willing and able preservation organizations that have the capacity to enforce a covenant have been of concern.

RECOMMENDATION

The ACHP will work with the USPS, NCSHPO, the NTHP, and other stakeholders to develop a model covenant to serve as the basis for all future covenants used for historic post office disposals. Further, the ACHP will assist the USPS to identify preservation partners (nationwide, state, and local) and facilitate collaboration to establish partnerships for holding and enforcing covenants.

FINDING NO. 6

Sale of historic postal facilities to non-federal owners may result in an adverse effect under Section 106.

Many post offices were constructed and have operated for decades as the civic core of the community, serving as community meeting places and providing the federal presence in the community. The effect of this loss of traditional use on the significance of the historic property should be determined through evaluation of the property’s significance in accordance with the National Register criteria. That is, if a post office is listed or eligible for the NRHP based solely on its architecture or design (National Register Criterion C), then a change of use would not constitute an adverse effect. However, if the significance is also tied to historical events (National Register Criterion A), such as the traditional function of providing retail mail service to the community, then changing the use of the property may constitute an adverse effect. (36 CFR § 800.5(a)(2)(iv))

In addition, while the use of covenants to reach a no adverse effect finding may be preferable to the USPS in the majority of cases, if efforts to identify a covenant holder and/or the attachment of a legally enforceable covenant are not feasible, then a finding of adverse effect is appropriate. The finding of no adverse effect is appropriate only when the covenant adequately provides for long-term preservation of the property's historic significance (which may include characteristics beyond its architectural features). Rather than insisting on the "one size fits all" approach of a no adverse effect finding and use of a preservation covenant, it is appropriate for the USPS to acknowledge that, at times, an adverse effect finding is the procedurally correct course of action, leading to consultation with stakeholders to find ways to minimize or mitigate the adverse effects.

RECOMMENDATION

The USPS must correctly apply all of the Criteria of Adverse Effect found in the Section 106 regulations (36 CFR 800.5) to determine when a finding of no adverse effect or adverse effect is warranted.

FINDING NO. 7

Local preservation ordinances administered by Certified Local Governments can be used in appropriate cases to resolve the adverse effects resulting from the disposal of a historic post office.

Where postal facilities are located within municipalities that have been designated as CLGs, the CLG review process embodied in a local historic preservation ordinance has potential to serve as an alternative to a covenant.

RECOMMENDATION

The USPS should explore partnerships with CLGs to facilitate the use of local ordinances as mitigation for adverse effects when the SHPO concurs.

FINDING NO. 8

Alternative property disposal systems that effectively deal with historic property transfers are available to the USPS.

The Federal Property and Administrative Services Act of 1949 was designed, in part, to increase the efficiency and economy of federal government operations with regard to the procurement, utilization, and disposal of property. To fulfill this mandate, GSA's Office of Real Property Disposal offers comprehensive services to federal agencies, including the USPS, in the marketing and sale of federal real estate at a cost lower than commercial vendors. GSA offers all services related to disposal of federal property, including compliance with Section 106, and has a proven track record of efficient, cost-effective, competent service to federal agencies.

RECOMMENDATION

The USPS should evaluate the benefits of utilizing GSA's Office of Real Property Disposal to conduct disposal activities, including Section 106 compliance.

FINDING NO. 9

Alternative disposal authorities exist to allow historic postal facilities to remain in public ownership.

The Historic Surplus Property Program provides a cost-effective mechanism for iconic community resources to transfer to non-federal governmental entities, keeping important historic properties in the public domain and ensuring their long-term preservation. Authorized under the Federal Property and Administrative Services Act of 1949, the Historic Surplus Property Program (administered cooperatively by GSA and the National Park Service) authorizes cost-free conveyances of suitable surplus historic properties to states, counties, municipalities, and other governmental entities for use as a “historic monument,” which includes properties listed or eligible for listing on the NRHP. Transferred properties may be used for a wide variety of public facilities or revenue-producing activities.

While private and not-for-profit organizations cannot acquire property under this program, they may enter into long-term leases with recipients of historic surplus properties, and private developers with a long-term lease may be eligible to take advantage of federal historic preservation tax incentives. While disposal of historic property through this program would not generate revenue equivalent to selling the property to a private purchaser, it would achieve cost avoidance for the USPS through elimination of the ongoing overhead and maintenance costs associated with retaining ownership of the property and, more importantly, ensure protection of significant historic assets.

RECOMMENDATION

The USPS should consider use of the Historic Surplus Property Program, including seeking the appropriate authority to do so if necessary, for select historic properties where protection of the property is tantamount and the state or local government is interested in acquiring the property.

FINDING NO. 10

Program Alternatives are available to help USPS improve compliance with Section 106.

To meet challenges like those faced by the USPS, the Section 106 regulations allow for development of “program alternatives” to stand in place of the default Section 106 process. The regulations list five types of program alternatives, including a) alternate procedures, which can be adopted by an agency in lieu of the Section 106 regulations; b) Programmatic Agreements; c) exempted categories of activities; d) standard treatments for certain types of resources and impacts; and e) program comments.

A program alternative could be negotiated to govern a number of disposals within a geographic area; such an area could be defined as a single state, a region, or nationwide. This approach may be especially helpful in states such as California due to the high number of disposals concentrated there. In addition, it would allow USPS to front load the consultation for disposals, resulting in efficiencies in the Section 106 process and the identification of mitigation measures that could be applied regionally or nationally. Consultation for development of a program alternative could include all the parties who would likely have an interest in each individual undertaking, thereby identifying issues and concerns of consulting parties early on and enlisting all the parties in problem-solving. This approach would allow the USPS to conclude Section 106 responsibilities for all undertakings covered in the program alternative, focusing agency resources elsewhere.

RECOMMENDATION

The ACHP should continue to work with the USPS, NCSHPO, and other stakeholders to identify a program alternative appropriate to the scope and duration of the disposal program and work with the parties to develop such an approach.

FINDING NO. 11

The existing USPS historic preservation program lacks resources and proper influence to adequately ensure compliance with Sections 106 and 110 of the NHPA.

A number of deficiencies in the USPS disposal program and compliance procedures noted in this report result from insufficient expertise, manpower, and training. This collective lack of resources has created a compliance program that is failing to implement proper consultation, conduct proactive project planning, and ensure meaningful, good faith stewardship of the historic properties entrusted to the USPS. In addition, it is important that the USPS work with SHPOs on development of statewide historic contexts and actively inventory and identify historic properties in accordance with Section 110 of the NHPA. A commitment is also needed from the USPS to maintain and improve the data contained within the USPS property database, eFMS, to ensure USPS personnel have access to accurate information on regional and statewide historic trends to effectively manage and maintain its historic buildings.

Further, the USPS FPO position is located within Facilities Implementation (Design and Construction) and accordingly has no input into disposal analyses and decisions. In order to ensure the expertise of the FPO is utilized to inform disposal program planning and decision making, the FPO position should be part of the USPS Planning Group. As an alternative, this position could report directly to the Vice President for Facilities to ensure historic property considerations are factored in early in the planning process and Section 106 compliance and consultation are fully and properly implemented.

RECOMMENDATION

The USPS should expand its historic preservation program to provide adequate resources for regular historic property inventory, database management and maintenance, and increased numbers of qualified staff to conduct individual Section 106 reviews and consultations. In addition, the FPO position should be relocated within the USPS organizational structure to enable full participation in disposal planning and decision making.

FINDING NO. 12

USPS personnel lack adequate guidance on the disposal of historic postal facilities and special consideration associated with the disposal of these properties.

Existing policy and guidance available to USPS personnel are dated, and in some cases, inaccurate in their description of the statutory and regulatory obligations of the USPS with regard to historic properties. USPS personnel need information on how the historic status of the property may influence disposal decision making, incorporating information on the significance of the facility in marketing materials (including the availability of historic preservation tax credits) and best practices for timing, communication, and decision making for historic property disposals.

RECOMMENDATION

The USPS, in cooperation with the ACHP, should work with NCSHPO and other stakeholders to develop guidance and training for USPS employees on the process, procedures, and special considerations of disposal of historic post offices, including the implementation of the Section 106 process and consultation with stakeholders.

FINDING NO. 13

Potential purchasers/developers of historic post offices often lack knowledge of both the responsibilities associated with owning a property with a historic preservation covenant as well as the potential incentives available to them due to the property's historic significance.

While many developers are knowledgeable about the considerations and opportunities offered when redeveloping historic properties, some certainly are not. Information should be made available to potential developers before they consider the purchase and redevelopment of an important part of a community's historic heritage. Because there are purchasers of historic buildings with covenants that would subject them to requirements of the Secretary of the Interior's Standards for Rehabilitation and therefore may make redevelopment projects eligible for historic preservation tax credits, the goal would be to place more specific information in the hands of developers prior to the execution of sale of historic properties, so that they recognize the benefit of the buildings' historic status as manifested in significant tax savings rather than see protective measures as a hindrance to their reuse. This effort would involve preparing materials on the federal investment tax credit and gathering information on other similar state or local-level incentive programs for historic building rehabilitation.

RECOMMENDATION

The USPS, in cooperation with the ACHP, should work with NCSHPO and other preservation partners (such as the National Park Service who administers the federal investment tax credit program) to develop guidance for developers on covenants and historic property stewardship, including information on federal and state tax incentive programs, and how assuming the cost of managing a covenant could be offset by the corresponding decrease in the local tax valuation of the property.

FINDING NO. 14

The USPS has not used Section 111 of the NHPA to lease historic properties no longer needed for its agency's purposes.

As noted, Section 111 requires federal agencies to give serious consideration to alternative uses for historic properties and authorizes leases of such properties to non-federal entities. Leasing can provide an income stream to maintain a historic post office while retaining the building in public ownership. This approach could offer an effective tool for dealing with excess capacity while allowing the continued use of the post office for retail operations in a small portion of the building.

RECOMMENDATION

The USPS should evaluate the viability of leasing historic post offices, or portions thereof, in accordance with Section 111 of NHPA as an alternative to disposal.

FINDING NO. 15

The USPS may be placing the murals and artwork in historic post offices at risk when disposing of the buildings that house them.

While the USPS indicates its intent to retain ownership of artwork following disposal of historic buildings, the long-term care and public access often remains in question. The murals and artwork within historic post offices are undoubtedly a component of the importance of the building and hold significant value for the community. The USPS has a responsibility as steward of historic properties to maintain those features that contribute to the building's significance. Through diminishing financial resources and planned disposals, USPS is putting publically funded murals and other works of art in historic post offices at risk for deterioration and loss. Further, despite promises made to communities for continued public access, these promises have, in some cases, not been realized.

RECOMMENDATION

The USPS should develop language for inclusion in covenants attached to historic properties or other legally binding mechanisms that makes an effective commitment for the USPS and a binding obligation for the new owner to ensure proper maintenance and public access to significant murals and other artwork located within historic post offices.

CONCLUSION

Historic post offices in cities and towns across the United States are more than providers of mailing services. They are important, often pivotal components of the civic landscape, imbued with a long tradition of use and community pride and identity. As the USPS addresses its challenges in managing these special resources and seeks realistic solutions to its financial needs, it should be mindful of their importance and attempt to see them as the local residents do.

By fully implementing the Section 106 process and its consultation requirements, the USPS can benefit from the assistance of local communities and other stakeholders to plan for the future operational needs of the agency and seek sound historic preservation outcomes. It should work collaboratively with the ACHP, the major national preservation organizations, and local stakeholders to fashion an approach to its historic preservation responsibilities that ensures the long-term vitality of its unique historic assets.

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CORRESPONDENCE

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Correspondence from Paul Edmondson, Chief Legal Officer, National Trust for Historic Preservation to Sharon Freiman, Attorney, Procurement and Property Law, USPS, February 5, 2013.

Correspondence from Joseph J. Mulvey, Real Estate Specialist, USPS, to Ruben Diaz, Jr., Bronx Borough President, March 14, 2013.

Correspondence from the National Trust for Historic Preservation, the National Post Office Collaborate, the City of Berkeley, the California Preservation Foundation, the La Jolla Historical Society, and the Los Angeles Conservancy to Angie Mitchell, USPS, February 11, 2014.

Correspondence from Reid Nelson, Director, Office of Federal Agency Programs, ACHP to Sharon Freiman, Chief Counsel, Procurement and Property Law, USPS, February 14, 2014.

Correspondence from Daniel Delahaye, USPS to Reid Nelson, Director, Office of Federal Agency Programs, ACHP, February 20, 2014.

TESTIMONY PROVIDED ON MARCH 11, 2014, OAKLAND, CA

Alameda County Parks, Recreation and Historical Commission, Al Minard

Berkeley Architectural Heritage Association, Daniella Thompson

Berkeley Design Associates, Jay Claiborne

California Office of Historic Preservation, Carol Roland-Nawi, State Historic Preservation Officer

California Preservation Foundation, Cindy Heitzman, Executive Director

Citizens to Save the Berkeley Post Office, Mike Lonergan

City of Berkeley, Tom Bates, Mayor

Living New Deal, Gray Brechin

Los Angeles Conservancy, Adrian Fine, Director of Advocacy

National New Deal Preservation Association, Harvey Smith, Board President

National Post Office Collaborate, Jacqueline McCormack

National Trust for Historic Preservation, Christine Morris, Senior Field Officer

Office of Congresswoman Barbara Lee, Jonathan Gast

Save the La Jolla Post Office Task Force, Diane Kane

WRITTEN COMMENTS SUBMITTED TO THE ACHP

Berkeley Architectural Heritage Association, Berkeley, CA, (Susan D. Cerny, Corporate Secretary)

Berkeley Design Associates, Berkeley, CA (Anthony Bruzzone, President)

Charleston, Illinois Historic Preservation Commission (Elisa S. Roberts)

Citizens to Save the Berkeley Post Office, Berkeley, CA (Moni T. Law)

Citizens to Save the Berkeley Post Office, Berkeley, CA (Mike Lonergan)

Citizens to Save the Berkeley Post Office, Berkeley, CA (Charlene M. Woodcock)

City of Berkeley, CA (Tom Bates, Mayor)

Historic Neighborhood Preservation Program, Stamford CT

Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (SHPO)(Cathy Draeger-Williams, Archaeologist)

Kansas Historical Society (SHPO) (Kim Gant, Review and Compliance Coordinator)

Living New Deal, University of California, Berkeley (Gray Brechin)

Los Angeles Conservancy, Los Angeles, CA (Adrian Scott Fine, Director of Advocacy)

National New Deal Preservation Association, Berkeley, CA (Harvey Smith, Board President)

National Post Office Collaborate, Berkeley, CA (Jacqueline McCormack)

NY State Parks, Recreation & Historic Preservation, Division of Historic Preservation (SHPO) (Beth Cumming, Supervisor, Technical Assistance and Compliance Unit)

Northfield Downtown Development Corporation, Northfield, MN (Ross A. Currier, Executive Director)

Northfield Historical Society, Northfield, MN (Hayes Scriven, Executive Director)

Restore Oregon (Peggy Moretti, Executive Director)

Save the La Jolla Post Office Task Force, La Jolla, CA (Diane Kane)

Washington State Department of Archaeology and Historic Preservation (SHPO) (Gregory Griffith, Deputy State Historic Preservation Officer)

Donald Adams, Kansas City, MO

Ms. Marcia Caine Edelen, Berkeley, CA

Ms. Simona Miller, Berkeley, CA

Dr. Steve Hutkins, Associate Professor, New York University (Save the Post Office Founder-Editor)

Michael B. Schwartz, Tucson, AZ

A Roy Smith, West Chester, PA

Ruth Claire Weintraub, Huntington Station, NY



Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 803, Washington, DC 20004
Phone: 202-606-8503 + Fax: 202-606-8647
www.achp.gov | www.preserveamerica.gov