



Preserving America's Heritage

July 13, 2012

Mr. Dallan Wordekemper, CCIM
Federal Preservation Officer
United States Postal Service
475 L'Enfant Plaza, SW, Suite 6670
Washington, DC 20260-1862

Ref: *Proposed Sale of Venice Main Post Office
City of Los Angeles, California*

Dear Mr. Wordekemper:

On July 2, 2012 the Advisory Council on Historic Preservation (ACHP) received your request to review the US Postal Service (USPS) finding for the referenced undertaking submitted in accordance with Section 800.5(c)(2)(i) of our regulations, "Protection of Historic Properties" (36 CFR Part 800). The USPS has proposed a finding of no adverse effect (NAE) for the undertaking because the USPS intends to attach a preservation covenant to the deed of the property as part of the disposition.

The Section 106 regulations provide for an agency official to make a NAE determination where conditions are imposed on the transfer of federal property out of federal control that avoid adverse effects. One such mechanism for achieving this result is the use of a covenant that is attached to the deed of the property and ensures the long term preservation of the historic property.

Section 800.5(a)(2)(vii) of the regulations specifies the following as an adverse effect:

"Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance."

Conversely, a transfer with such restrictions can be treated as having no adverse effect and qualify the undertaking for a NAE determination. We have reviewed the covenant provided by the USPS for the Venice Post Office and believe that it does not include provisions that "ensure the long-term preservation of the property's historic significance" as required by the regulations.

The fatal flaw in the covenant is the specification that the California State Historic Preservation Officer (SHPO) must approve any alterations to the building. We have been advised that the SHPO is not authorized by California state law to accept covenants or easements. Therefore, the SHPO cannot fulfill the role assigned by the USPS in the covenant. Since the SHPO is unable to accept these responsibilities under the covenant and the USPS has not identified any alternative individual or organization as a

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substitute, it is our determination that the covenant presented is legally insufficient to support a finding of no adverse effect and that the criteria of adverse effect would be met for this undertaking in accordance with Section 800.5(a)(2)(vii).

We are eager to assist the USPS and the transferee in moving forward with this transfer, which will be beneficial to the preservation of the Venice Post Office. We recommend that USPS consider two possible paths forward to complete the Section 106 process. In order to meet the threshold of a NAE finding, USPS could revise the proposed covenant based on these comments, which would require finding a qualified and capable entity willing to assume the duty in the covenant of reviewing and approving proposed alterations to the Venice Post Office. Doing so would allow the USPS to maintain its NAE finding. While the USPS did explore such an arrangement with other entities, it did not do so with the local government. We understand that the City of Los Angeles is willing to discuss the possibility that they could act in lieu of the SHPO for purposes of the covenant on the Venice Main Post Office. Given the City of Los Angeles' standing in this matter, we encourage you to explore whether they may fulfill such a role in the covenant.

A second alternative would be for USPS to make a finding of adverse effect and execute a Memorandum of Agreement (MOA). In the MOA, the USPS could ensure that the owner of the Venice Post Office, SHPO, the City of Los Angeles and other consulting parties establish a process that would subject any proposed alterations to the Post Office to the review and approval of a qualified entity and provide that such alterations meet the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68).

Thank you for the opportunity to provide our opinion on your proposed NAE finding. Upon considering the ACHP's opinion, should the USPS decide to revise its determination, we will look forward to working with the USPS to conclude the Section 106 process expeditiously. If, on the other hand, the USPS maintains its NAE finding, it must prepare a summary of its finding that contains the rationale for the decision and evidence of consideration of the ACHP's opinion and provide it to the ACHP, the SHPO, and consulting parties prior to proceeding with the undertaking (Section 800.5(c)(3)(ii)(B)).

If you have any questions regarding our comments, please contact Caroline Hall, Assistant Director, at (202) 606-8524 or via email at chall@achp.gov.

Sincerely,



Reid J. Nelson
Director
Office of Federal Agency Programs