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18 CITY OF BERKELEY, et al.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 OAKLAND DIVISION

22 CITY OF BERKELEY; MAYOR AND  
23 MEMBERS OF THE CITY COUNCIL  
24 OF THE CITY OF BERKELEY,

25 NO: \_\_\_\_\_

26 Plaintiffs

27 **COMPLAINT FOR DECLARATORY AND  
28 INJUNCTIVE RELIEF**

29 vs.

30 UNITED STATES POSTAL SERVICE;  
31 PATRICK R. DONAHOE AS POSTMASTER  
32 GENERAL OF THE UNITED STATES  
33 POSTAL SERVICE; TOM A. SAMRA,  
34 VICE PRESIDENT-FACILITIES  
35 OF THE UNITED STATES POSTAL  
36 SERVICE; DIANA ALVARADO, DIRECTOR,  
37 REAL ESTATE, USPS PACIFIC REGION;

38 Defendants.

1 **PARTIES, JURISDICTION, AND VENUE**

2

3 1. Summary: This action for declaratory and injunctive relief seeks to prevent and enjoin

4 the proposed sale by defendants of the Berkeley Main Post Office located at 2000 Allston Way,

5 Berkeley, California, until and unless the United States Postal Service (USPS) comply with their

6 obligations under the National Environmental Protection Act (NEPA) and National Historic

7 Preservation Act (NHPA), and the proposed sale is authorized under those statutes. The Berkeley

8 Main Post Office (Post Office) is a century-old city landmark listed in the National Register of

9 Historic Places in the United States, both individually and as a contributing building to Berkeley's

10 Civic Center Historic District. On or about 24 October 2014 defendants for the first time listed the

11 proposed sale is already "in contract" even though defendants have failed to issue any notices or

12 assessments whatsoever under NEPA. On 29 October 2014, defendants refused plaintiffs' request

13 for 30-days' advance notice of closing the sale, as "contrary to good business practice." On 31

14 October 2014 defendants effectively terminated their consultation with the federal Advisory

15 Council on Historic Preservation (ACHP) and other interested parties, thereby in their eyes

16 completing their compliance with NHPA. USPS ended this review despite ACHP's finding that

17 defendants had failed to support a finding of no adverse effects, and failed to sufficiently ensure the

18 property's long-term preservation. The action also challenges defendants' decision to move the

19 post office function out of its historic Post Office building based on the faulty assumption, rejected

20 by the ACHP and widely criticized by local, state, and national officials, that this federal action has

21 no potential to affect historic properties. Accordingly, defendants have taken final action prior to

22 sale without ensuring compliance with the NHPA and NEPA. Plaintiffs believe that closing of the

23 sale on the purchase agreement is now imminent and will proceed absent immediate orders from

24 this Court.

25

26 2. Plaintiff City of Berkeley (Berkeley, or City) is a municipal corporation established as a

27 public agency under California law, and within whose borders lies the Berkeley Main Post Office

28 and the Berkeley Civic Center Historic District. In its capacity as a municipal corporation, the City

1 regularly uses the Berkeley Post Office located one-half block from the Berkeley Municipal  
2 Building.

3  
4 3. Plaintiffs Mayor and Members of the City Council of the City of Berkeley are the elected  
5 governing body of plaintiff City of Berkeley, whose place of business in the Berkeley Civic Center  
6 Building is located one half block from the Berkeley Main Post Office. In their official capacities  
7 as members of the City's governing body plaintiffs Mayor and Members regularly use the Berkeley  
8 Main Post Office.

9  
10 4. Defendant United States Postal Service (USPS), owner of the Berkeley Main Post Office,  
11 is an independent establishment of the executive branch of the Government of the United States,  
12 with power to be sued in its official name. 39 U.S.C. §§ 201. 401(*l*). Paid for by and constructed  
13 for the benefit of the people of the United States, the Berkeley Main Post Office is a property that  
14 defendant USPS holds in trust for the American public. This trusteeship that is enhanced by the  
15 Constitutional status of the Post Office (Art. I, § 8, cl. 7), the extraordinary architectural quality of  
16 the structure, and the Post Office's vital role as the most significant federal presence in the City,  
17 uniting citizen-patrons at the juncture of Berkeley's commercial and civic cores.

18  
19 5. Defendant Patrick R. Donahoe is the Postmaster General and chief executive officer of  
20 the United States Postal Service, an instrumentality of the Government of the United States.  
21 Defendant Donahoe is named here in his official capacity at Postmaster General.

22  
23 6. Defendant Tom A. Samra is the Vice President-Facilities of the United States Postal  
24 Service, with decision-making authority to sell the Post Office. Defendant Samra is named here in  
25 his official capacity.

1 7. Defendant Diana Alvarado is the Director of Real Estate-Facilities Implementation of the  
2 Pacific Region of the United States Postal Service, with decision-making authority to implement the  
3 sale of the Post Office. Defendant Alvarado is named here in her official capacity.

4  
5 8. Jurisdiction in this Court is vested by 39 U.S.C. § 409, 28 U.S.C. § 1331 (federal  
6 question, including NEPA, 42 U.S.C. § 4321 et seq. and NHPA, 16 U.S.C. §470), and 28 U.S.C. §  
7 2201 (declaratory judgment).

8  
9 9. Venue in this Court and division lie under 28 U.S.C. § 1391 and this Court's local rule 3-  
10 2(C), in that a substantial part of the events or omissions which give rise to this complaint occurred,  
11 and the property that is the subject of this action is situated, as is the City of Berkeley, within the  
12 County of Alameda, California.

13  
14 **THE RESOURCE AT STAKE**

15  
16 10. The Berkeley Main Post Office was constructed 100 years ago, in 1914. This property  
17 was designated a Berkeley City Landmark in 1980, listed on the National Register of Historic  
18 Places in 1981, and identified in 1998 as a contributing building to the National Register-designated  
19 Berkeley Civic Center Historic District. The successful 1980 nomination of the Berkeley Post  
20 Office building to the National Register describes its individual historic use and significance:

21 The Berkeley Post Office ... embodies for the City of Berkeley the sense of mission  
22 which the government then put into its public buildings -- "buildings which will  
23 educate and develop the public taste & eventually elevate it to a higher plane" ....  
24 The lobby, particularly, is a civic treasure .... Berkeley has few if any comparable  
25 public spaces where citizens from all over the city come frequently and freely and  
26 can experience the quality workmanship and civic pride that used to be part of  
27 government building.... The authorization of a post office building for Berkeley in  
28 1910, and its completion in 1914, symbolized the city's coming of age ....  
Downtown Berkeley is still essentially the Main Street that developed in the 1910s &  
20s, and the well-patronized post office is important in keeping it alive.

Five photographs of the Post Office appear as the attachment to this complaint.

1 11. The successful 1998 nomination of the Berkeley Civic Center District to the National  
2 Register describes the Berkeley Post Office as a "'free adaptation of Brunelleschi's Foundling  
3 Hospital' in Florence" -- the building that won Brunelleschi's commission to design and construct  
4 the Duomo. As further summarized in the Civic Center National Register descriptive listing:

5 The United State Post Office, constructed in 1914, embodies the distinctive  
6 characteristics of the Beaux Arts Classic Renaissance Revival style. The building is  
7 an expression of the aesthetic ideals of the government to "educate and develop the  
8 public taste and eventually elevate it to a higher plane" and was designed by the  
9 Treasury Department Supervising Architect's Office headed by Oscar Wenderoth.  
10 The building conveys its significance through its colonnaded recessed entry,  
11 ornamentation and materials. The Post Office is related to the Civic Center by its  
12 location, function, date and style. The building retains a high degree of integrity of  
13 materials and workmanship ....

14 A photograph of Brunelleschi's Ospedale appears after the Post Office photographs in the appendix.

15 12. The importance of the Berkeley Post Office as a publicly-owned and publicly-used  
16 component of the Berkeley Civic Center Historic District is summarized in the opening two  
17 paragraphs of the district's National Register statement of significance:

18 For almost one hundred years, Berkeley's civic center district has served the  
19 needs of its government and small community. Beginning in 1899 when the first City  
20 Hall building was strategically relocated to its current site, the district took over a  
21 half century to plan and develop. It embodies the political trends of the nation as well  
22 as the region and the city during the district's period of significance, 1909-1950.  
23 Both World Wars, the Depression, and local politics influenced the district's  
24 development. The district also represents the town's importance as an agricultural  
25 center for the surrounding region due to the influence of the first state university, the  
26 University of California, Berkeley.

27 The civic center district includes federal, regional, and local government  
28 buildings, along with a community theater, a YMCA, and a Veteran's Memorial  
Building all surrounding a central park. These diverse community buildings, located  
in Berkeley's most important public space, reflect significant social aspects of  
Berkeley's history, important to the citizens' health, safety, and welfare. The park  
plan and its collection of civic buildings illuminate the variety of architectural and  
design influences (the City Beautiful Movement, Beaux Arts and Art Deco/Moderne)  
that prevailed during the first half of this century. The park layout and its buildings  
were executed by renowned designers and fortunately the district is largely unaltered  
and retains a high degree of integrity. As a result, Berkeley's Civic Center is locally  
significant as an ensemble of harmoniously planned buildings and as a collective  
body of civic architecture.

1  
2 **THE ADMINISTRATIVE PROCEEDINGS**  
3

4 13. In June 2012—the same month that the National Trust for Historic Preservation  
5 (National Trust) listed America’s Historic Post Office Buildings on its annual list of the United  
6 States’ 11 most endangered places--defendant USPS issued an advisory to its postal patrons that it  
7 intended to sell the Berkeley Post Office. On 31 July 2012 the Berkeley City Council unanimously  
8 passed resolution 65,858-N.S., opposing the proposed sale and requesting USPS to install a one-  
9 year moratorium to explore alternative dispositions other than sale and termination of postal use in  
10 the building.  
11

12 14. On 24 September 2012 ADR Environmental Group, Inc. released a "due diligence"  
13 report, commissioned by USPS, which concluded that USPS’s intended sale of the Berkeley Post  
14 Office would require review under both NHPA and NEPA. The report represented that it was  
15 performed in accordance with USPS policies for site disposal and developmental projects. The  
16 report did not claim that USPS’s intended sale would be exempt from compliance with either of  
17 these statutes. In its section addressing historic resources, the report noted that Post Office is listed  
18 on the National Register, is one of three historic properties within one-eighth of a mile, and is  
19 included in the Berkeley Civic Center Historic District. The “facilities environmental checklist” in  
20 the report noted that the action would affect “historic, cultural or archaeological resources,” and was  
21 not listed as a “categorical exclusion” in 39 CFR, Part 775.  
22

23 15. On 28 September 2012 the National Trust requested defendant USPS to grant it  
24 consulting status under section 106 of NHPA, and objecting to further process toward the intended  
25 sale without initiating review under section 106. The National Trust observed that among other  
26 adverse effects, sale of the Berkeley Post Office would terminate its historic use; and advised the  
27 USPS to investigate less damaging options to sale such as a lease. On 22 October 2012 USPS  
28 responded without further explanation to the National Trust that its request to consult under section

1 106 was premature.

2  
3 16. On 5 February 2013 defendant USPS issued its notice of intent to relocate the Berkeley  
4 Post Office so that it might offer it for sale. USPS did not identify a site for that relocation. On 26  
5 February defendant USPS conducted a public hearing on its notice, at which plaintiff Berkeley, the  
6 National Trust, and others appeared to oppose the intended sale.

7  
8 17. On 5 March 2013 the Berkeley City Council adopted resolution 66,025-N.S. to oppose  
9 the intended sale of the post office and to express support for USPS lease of the rear annex to  
10 generate additional USPS income. On 13 March 2013 the National Trust presented a demand, later  
11 endorsed by the City of Berkeley, that defendant USPS recognize the loss of historic use as a  
12 significant adverse effect under NHPA and NEPA, and prepare an environmental impact statement  
13 (EIS) under NEPA to explore alternatives to USPS disposition of the Berkeley Post Office.

14  
15 18. On 10 April 2013 defendant Postmaster General Donahoe in communication with the  
16 Mayor of Berkeley specifically announced his intent to sell the Berkeley Post Office. On 19 April  
17 2013 defendant USPS issued a general notice and press release confirming USPS intent to relocate  
18 the post office in order to sell the building.

19  
20 19. On 30 April 2013 plaintiffs Mayor and City Council of Berkeley appealed to defendant  
21 Samra the USPS announcement of relocation and sale of the Berkeley Post Office. Plaintiff  
22 Berkeley specifically incorporated the objections of the National Trust, as described in paragraph 17  
23 above. On 20 May 2014 the National Trust made a similar appeal to defendant Samra, as did other  
24 interested individuals and organizations.

25  
26 20. On 18 July 2013, defendant Samra executed a document identified as the “final review  
27 determination” with respect to USPS’s April 19, 2013 decision. In this document, without  
28 specifying the date of relocation or place to which the post office will relocate, Samra refused to set

1 aside the USPS announcement of intent to relocate for purposes of sale. In respect of NEPA,  
2 defendant Samra declared that because USPS has not yet identified a relocation site, "it is premature  
3 to evaluate potential impacts. The Postal Service will comply with ... NEPA at the appropriate  
4 time." However, defendant Samra did not identify that "appropriate time," and failed to ensure that  
5 this time would occur prior to sale of the Berkeley Post Office.

6  
7 21. On 26 July 2013 plaintiff Mayor of Berkeley petitioned the Postal Regulatory  
8 Commission to review and set aside the USPS determination to relocate for purposes of sale. On 27  
9 August 2013 the Postal Regulatory Commission dismissed the appeal as premature, observing that  
10 such an appeal would not be ripe until USPS has identified a date on which the Berkeley Post  
11 Office will be closed and the place to which its operations will be relocated.

12  
13 22. On 3 September 2013 defendant USPS initiated its NHPA section 106 review by  
14 advising the California State Historic Preservation Officer (SHPO) that it was "considering selling  
15 the property."

16  
17 23. On 5 October 2013 USPS listed on its website the Berkeley Post Office for sale.

18  
19 24. On 15 November 2013 the California SHPO communicated to USPS that it had not  
20 adequately delineated the historic "area of adverse potential effect," and that she could not agree to  
21 a finding of no adverse effect until agreement was reached between USPS and a qualified holder of  
22 a restrictive preservation easement on the property to be sold, which would eliminate those effects.

23  
24 25. On or about 2 February 2014 the U.S. House of Representatives Appropriations  
25 Committee in its report on the Financial Services and General Government Appropriation Bill,  
26 2014, at 75, stated that it is "concerned by reports that the Postal Service is attempting to sell off  
27 many of its historic properties without regard for the preservation of these buildings. The  
28 Committee is particularly concerned that the Postal Service may not be following Section 106 of the



1 National Historic Preservation Act in the relocation and sales process of these historic buildings.”

2  
3 26. In a separate report on the Department of Interior, Environment, and Related Agencies  
4 Appropriation Bill, 2014, at 89, the House committee observed:

5  
6 Last year the National Trust on [*sic.*] Historic Preservation placed historic post office  
7 buildings on its list of most endangered historic places. The Committee is concerned  
8 that although the Advisory Council on Historic Preservation has been working with  
9 the United States Postal Service for almost two years to develop a consistent,  
10 transparent, consultative process to preserve these historic properties, no such  
11 comprehensive process has been forthcoming. The Committee directs the Council to  
12 provide, within 90 days of enactment of this Act, a report on the action plan for  
13 ensuring USPS compliance with Section 106 responsibilities during the divestment  
14 of historically significant properties.

15  
16 27. On 17 April 2014 the ACHP issued its 50-page *Preserving Historic Post Offices: A*  
17 *Report to Congress*. The ACHP report noted that in contrast to the vast majority of federal-agency  
18 cases in which the line agency accepted an SHPO or ACHP finding of adverse effect, USPS has  
19 consistently resolved its conflicts by simply declaring no adverse effect. (*Op. cit.* at 31-32.) The  
20 ACHP continued, "The finding of no adverse effect is appropriate only when the [preservation]  
21 covenant adequately provides for long-term preservation of the property's significance (which may  
22 include characteristics beyond its architectural features." (*Op. cit.* at 42.) And under the heading  
23 "Sale of historic postal facilities to non-federal owners may result in an adverse effect under Section  
24 106," the council wrote, at page 41 with emphasis added:

25  
26 Many post offices were constructed and have operated for decades as the civic core  
27 of the community, serving as community meeting places and providing the federal  
28 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))*

1           28. On 28 April 2014 defendant Samra in behalf of USPS responded to the ACHP Report to  
2 Congress as follows, with emphasis added: "The Use of a Building as a Post Office Does Not Make  
3 it Historic.... Adopting the ACHP's concept would effectively foreclose sales of historic post  
4 offices, since there would be *little opportunity to mitigate or minimize the adverse effects* of a loss  
5 of postal use." Notwithstanding this representation, defendant USPS, as part of sales of historic  
6 post office buildings, has entered into long-term leases, up to fifty years in length, to maintain postal  
7 use in those buildings.

8  
9           29. On 9 May 2014 USPS proposed to ACHP a draft preservation covenant for the Berkeley  
10 Post Office, requesting that it be the basis for a finding of "no adverse effect" from sale of the post  
11 office. The draft anticipated that the City of Berkeley would serve as grantee of the covenant from  
12 the purchaser of the Berkeley Post Office. In response, the City and National Trust, acting as  
13 section 106 consulting parties, commented on that draft in a letter dated July 9, 2014, proposing the  
14 removal of qualifiers that would neutralize the asserted protective provisions and undermine the  
15 City's own authority as future land use regulator. The City and National Trust noted that the  
16 qualifiers undermined the City's role in implementation and exercise of its lawful land use  
17 authority, failed to ensure reasonable public access, and contained loopholes interfering with  
18 effective enforcement. Referencing ACHP's conclusion in its *Report to Congress* that changes in  
19 historic use of a post office can constitute an adverse effect when the National Register listing was  
20 tied to that use, the City and the National Trust noted that this was precisely the case with respect to  
21 the Berkeley Post Office, and that the draft covenant improperly devalued that use. In addition, the  
22 City and National Trust also maintained that the covenant should include a long-term leaseback to  
23 USPS for continued postal service operations in the historic post office lobby.

24  
25           30. On 11 July 2014 the California SHPO advised USPS that its proposed covenant  
26 "exhibits the same flaws and inadequacies outlined in" the ACHP *Report to Congress*. The SHPO  
27 also recommended that USPS incorporate the recommendations submitted by Berkeley and the  
28 National Trust.

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31. On 24 September 2014 USPS formally requested the ACHP to concur in a finding of no adverse effect, based on a new covenant drafted by USPS. This new covenant included the unprecedented provision that *USPS itself* would be grantee to enforce the covenant's asserted protective terms. USPS' one paragraph "explanation of why the criteria of adverse effect were found inapplicable" did not mention or address the loss of historic use. Nonetheless, USPS' submission also included its September 3, 2013 report concurring with the California Department of Parks and Recreation that the Berkeley Post Office "appears to continue to meet" National Register criterion A.

32. No earlier than 23 October but no later than 24 October, USPS posted on its website with respect to the Berkeley Post Office "✓ IN CONTRACT."

33. On 24 October 2014 the ACHP rejected the USPS finding of no adverse effect. Focusing on USPS' proposal that it act as covenant grantee, ACHP found that insufficient to ensure the long-term preservation of the property's historic significance, as required under NHPA section 106 and 36 C.F.R. §800.5(a)(2)(viii) to proceed with transfer, lease or sale of the property, since it would allow for demolition "so long as the covenant holder, USPS, approves them." Noting that USPS had abruptly ended discussions with consulting parties without providing reasonable notice, ACHP urged USPS not to terminate consultation, and offered to assist USPS in renewed discussions on covenant terms and avoidance of adverse effects.

34. On 27 October 2014 the Berkeley City Attorney requested the Chief Counsel of USPS to disclose immediately any contracts or escrow instructions between USPS and a prospective purchaser of the Berkeley Post Office, and a written commitment that it would not enter into a sale of the post office without 30 days' advance notice.

35. On 29 October 2014 the Chief Counsel responded, claiming "under good business

1 practices" that it must "continue to keep confidential that information." Similarly, the Chief  
2 Counsel asserted that providing the City with 30 days' advance notice "would be contrary to good  
3 business practice." The Chief Counsel reiterated USPS' objection to "the City's insistence that the  
4 Postal Service include in any preservation covenant a requirement that the Postal Service lease  
5 space in the Berkeley Main Post Office for the operation of a postal facility ...."  
6

7 36. On 31 October 2014 USPS responded to ACHP, declining to establish an independent  
8 covenant grantee, and expressly refusing "to include the use of the property as a retail post office as  
9 an historic feature of the Property." On that basis, and despite ACHP's urging to resume  
10 consultation, USPS refused to revise its finding of no adverse effect and declared that "the  
11 submission of this letter to you, the California SHPO and the consulting parties, concludes the  
12 section 106 process.". Accordingly, USPS has taken final agency action prior to sale without  
13 ensuring compliance with NHPA and NEPA, for which there is no adequate remedy in the absence  
14 of this Court's review. See 5 U.S.C. §704, 706 (Administrative Procedure Act).  
15

## 16 **CHARGING ALLEGATIONS**

### 17 **Claim One: Violation of NHPA**

18  
19 37. Plaintiffs incorporate by reference the preceding paragraphs of this complaint and allege  
20 their contents as though fully set forth here.  
21

22 38. USPS regulations specify that USPS must comply with section 106 of NHPA,  
23 Executive Order 12072, and Executive Order 13006. 39 C.F.R. § 241.1(d)(1). NHPA section 106,  
24 16 U.S.C. §470f, requires that federal agencies take into account the effect of any undertaking  
25 licensed or approved by the federal government on any site or object included in, or eligible for  
26 inclusion in, the National Register of Historic Places. The Berkeley Post Office, owned and  
27 proposed for sale by USPS, is a National Register-listed property and a contributing building to the  
28 National Register-listed Berkeley Civic Center Historic District. Sale of the Berkeley Post Office is

1 a project or activity under USPS's direct jurisdiction, requiring compliance with section 106. By  
2 effectively terminating consultation prior to sale without documenting the adverse effects of the  
3 decision to close and sell the Berkeley Post Office on the building and surrounding community, and  
4 by failing to place adequate long-term protections on the building prior to sale, USPS violated  
5 section 106.

6  
7 39. Section 106 requires that the agency initiate consultation under its section 106 at the  
8 earliest possible stage of the decision-making process – in this case, at the time when a *proposed*  
9 *sale of historic property* is announced, not when the property is formally listed for sale. 36 C.F.R. §  
10 800.3(e)-(f). NHPA's "early planning" requirement is intended to assure the public that agencies of  
11 the federal government will consider "a broad range of alternatives" in order avoid harm to historic  
12 properties. 36 C.F.R. § 800.1(c). USPS must complete its section 106 consultation before offering  
13 to sell the historic post office building. Taking such a consequential decision before consultation is  
14 completed precludes consideration of viable preservation alternatives and stifles public input. 16  
15 U.S.C. § 470f. By prematurely ending section 106 consultation, despite criticism from ACHP, the  
16 City, the SHPO, the National Trust and others that it had not complied with the NHPA, USPS  
17 violated section 106.

18  
19 40. Section 106 regulations provides that a "[c]hange of the character of the property's *use*  
20 ... that contribute[s] to its historic significance" is an adverse effect. 36 C.F.R. § 800.5(a)(2)(iv).  
21 USPS violated section 106 by deciding to move the post office function out of its historic post  
22 office building, based on the false assumption, discredited by ACHP, the City, and others, that this  
23 federal action has no potential to affect historic properties.

24  
25 41. USPS is required to ensure that "Federal space shall conserve existing urban resources,"  
26 respecting a federal asset's improvement of the "cultural conditions" of its community. Executive  
27 Order 12072. USPS's final determinations prior to sale violated these requirements of Executive  
28 Order 12072.



1 §1500.1(b).

2  
3 46. NEPA regulations adopted by the USPS, like those of the Council on Environmental  
4 Quality, recognize that an EIS must be prepared whenever its proposed action is “significant” in  
5 context or intensity. 39 C.F.R. §775.6 (a); 40 C.F.R. §1508.27

6  
7 47. The decision of USPS to move the post office function out of Berkeley’s historic post  
8 office building and proceed to sale represent a major federal action affecting the human  
9 environment, requiring full compliance with NEPA. 40 C.F.R. §1508.27(b) (“may cause destruction  
10 of significant...cultural, or historical resources.”) This action will produce major changes in context  
11 and intensity on several levels--in the building’s own use, in its contribution to the Berkeley Civic  
12 Center Historic District, and in its cumulatively significant impact in connection with numerous  
13 other historic post offices proposed for closure and sale throughout the United States. Accordingly,  
14 an EIS should have been prepared and circulated for public review.

15  
16 48. To comply with NEPA, assessment of the relocation and sale must take place at the  
17 earliest possible moment to ensure that impacts are acknowledged, alternatives identified, and both  
18 the proposal and impacts are assessed *before* a decision is made and in time to allow meaningful  
19 public participation. 40 C.F.R. § 1502.5 (EIS “shall be prepared early enough” to contribute to  
20 decision-making and “not be used to rationalize or justify decisions already made”). Assessment  
21 after relocation will prove meaningless, because at that time the remaining alternatives will only ask  
22 how to deal with an empty, publicly inaccessible building. USPS violated NEPA, and the NEPA  
23 regulations of USPS and CEQ, by failing to prepare *any* environmental document addressing NEPA  
24 compliance before completing its decision-making.

25  
26 49. An extensive body of substantial evidence supports the conclusion that moving the post  
27 office function out of the current location and selling the Berkeley Post Office will produce a major  
28 adverse impact on the environment, which includes the loss of public access and use of an historic

1 resource, and degradation of the integrity of an historic civic center district. This evidence of  
2 significant effects was presented at the USPS public hearing in Berkeley on 26 February 2013,  
3 referenced in the unanimously adopted resolution No. 66,025 N.S. of the Berkeley City Council,  
4 and discussed in other documents noted above. USPS curtailed consultation and proceeded to final  
5 action in contravention of the advice of ACHP that USPS had failed to support a determination of  
6 no adverse effects. Without a remedy from this Court, the negative effects of USPS's action will  
7 directly and irreparably harm the City and its constituents.

8  
9 50. USPS cannot rationalize its outright failure to prepare any NEPA document by insisting  
10 that its action merely addresses "relocation" of retail services. The "major federal action" -- the  
11 "whole of the action" -- defined by the USPS in its notice also applies to sale ("If this relocation is  
12 approved, USPS anticipates selling the current Berkeley Main Post Office building.") The action  
13 cannot be segmented into relocation only when the driving force for that action is the intended sale.  
14 40 C.F.R. § 1508.25 ("connected actions ... should be discussed in the same impact statement").

15  
16 51. USPS cannot rationalize its outright failure to prepare any NEPA document by claiming  
17 "categorical exclusion" to escape the duty to prepare an EIS. The regulations of both the Council on  
18 Environmental Quality and U.S. Postal Service itself do not allow categorical exclusions in cases  
19 such as this, representing "extraordinary circumstances in which a normally excluded action may  
20 have a significant adverse effect." 40 C.F.R. § 1508.4; 39 C.F.R. § 775.6; see also 39 U.S.C. § 404  
21 (no Congressional NEPA exemption for closure or consolidation of post offices).

22  
23 52. Unless this court enjoins defendants from carrying out their proposed sale of the  
24 Berkeley Main Post Office without their compliance with both NEPA and NHPA, plaintiffs City of  
25 Berkeley and its governing board will suffer immediate and irreparable injury. Such injury includes  
26 loss of service to them and all Berkeley citizens of use of the Post Office, loss of access to the  
27 architectural and artistic features of its interior lobby, diminution (if not outright removal) of its  
28 contribution to the Berkeley Civic Center Historic District, conflict with the City's authority over



1 land use regulation, and ultimately a weakening of the integrity of the City's century of planning for  
2 Downtown Berkeley.

3  
4 **PRAYER FOR RELIEF**

5  
6 WHEREFORE, plaintiffs pray for declaratory and injunctive relief against defendants as  
7 follows, requesting that this Court:

- 8 1. Adjudge and declare that defendants cannot proceed with the sale of the Berkeley  
9 Main Post Office unless and until the USPS proceeds as required by the NHPA.
- 10 2. Adjudge and declare that defendants cannot proceed with the sale of the Berkeley  
11 Main Post Office unless and until the USPS fully complies with NEPA, including the  
12 preparation of an environmental assessment and EIS.
- 13 3. Grant an injunction against defendants proceeding with the sale of the Berkeley  
14 Main Post Office unless and until the USPS proceeds as required by the NHPA.
- 15 4. Grant an injunction against defendants proceeding with the sale of the Berkeley  
16 Main Post Office unless and until the USPS fully complies with NEPA, including the  
17 preparation of an environmental assessment and EIS.
- 18 5. Award plaintiffs costs and attorney's fees pursuant to the Equal Access to Justice  
19 Act, 28 U.S.C. §2412, and any other applicable requirements of law or equity.
- 20 6. Issue any additional relief that the Court deems just and proper.

21  
22  
23 DATED: November 4, 2014

24  
25 Respectfully submitted,

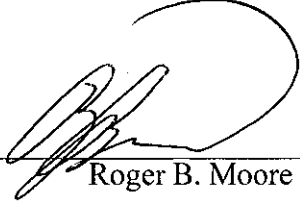
26 ZACH COWAN, City Attorney (SBN 96372)  
27 City of Berkeley

28 By: \_\_\_\_\_  
Zach Cowan

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ROSSMANN AND MOORE, LLP

By:   
Antonio Rossmann

By:   
Roger B. Moore

Attorneys for Plaintiffs  
CITY OF BERKELEY, et al.



FRONT  
LOGGIA FOLLOWS

APPENDIX





**LOBBY HOURS**  
Monday - Friday  
10:00am - 4:00pm  
Saturday  
10:00am - 4:00pm  
Closed Sundays

**BINGO HOURS**  
Monday - Friday  
10:00am - 4:00pm  
Saturday  
10:00am - 4:00pm  
Closed Sundays

**THE AIRS OF OPA2.COM**







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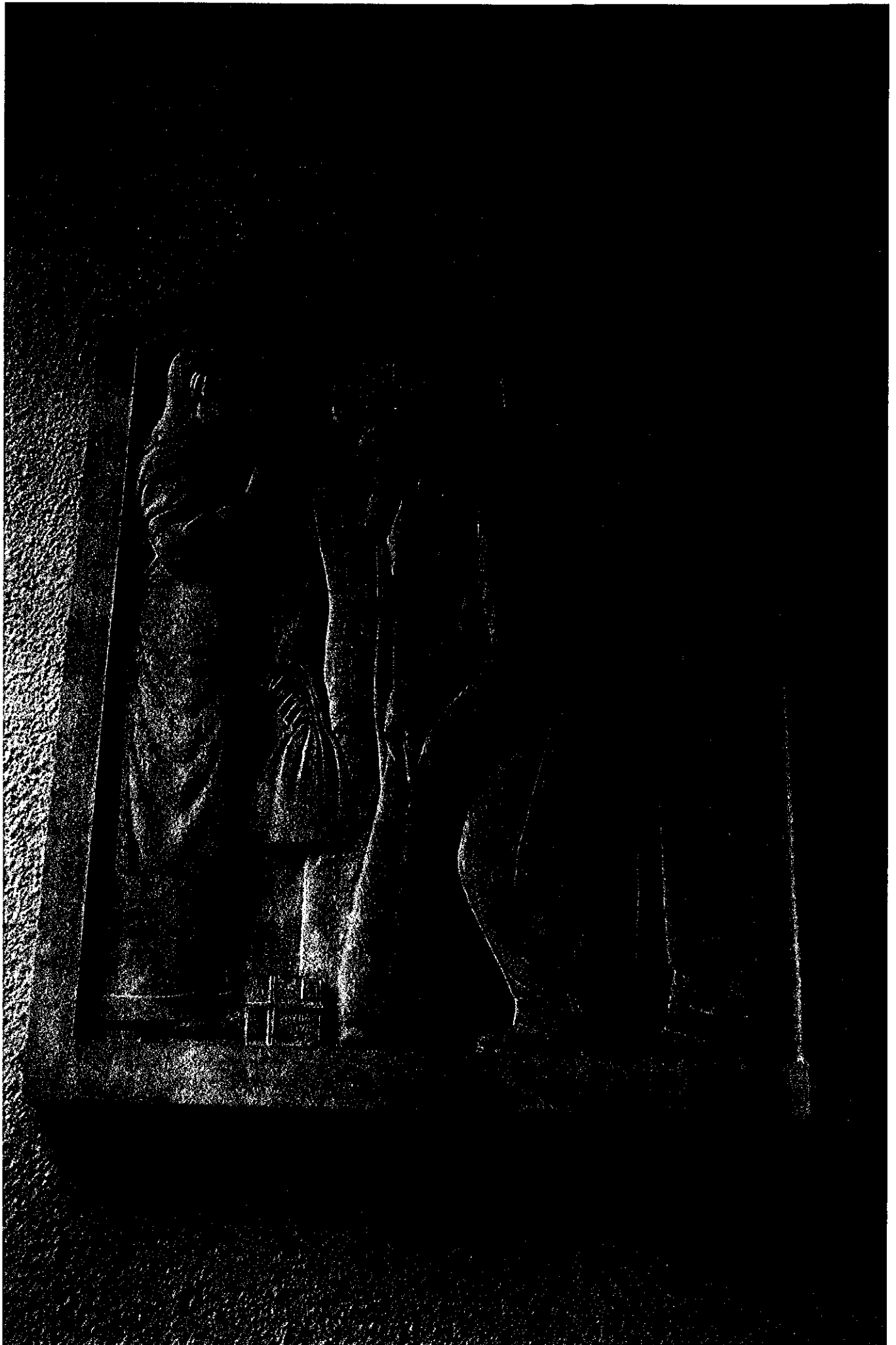
FULL INTERIOR FOLLOWS

SCULPTURE FOLLOWS











BRUNELLESCHI'S OSPEDALE DEGLI INNOCENTI  
(FLORENCE)

APPENDIX