

1 Brian R. Turner (CA Bar No. 251687)  
2 SENIOR FIELD OFFICER AND ATTORNEY  
3 NATIONAL TRUST FOR HISTORIC PRESERVATION  
4 [BTurner@savingplaces.org](mailto:BTurner@savingplaces.org)  
5 San Francisco Field Office  
6 5 Third St., Suite 707  
7 San Francisco, CA 94103  
8 TEL: (415) 947.0692  
9 FAX: (415) 947-0699

6 Elizabeth S. Merritt  
7 DEPUTY GENERAL COUNSEL (DC Bar No. 337261)  
8 NATIONAL TRUST FOR HISTORIC PRESERVATION  
9 [EMerritt@savingplaces.org](mailto:EMerritt@savingplaces.org)  
10 2600 Virginia Ave. NW, Suite 1100  
11 Washington, DC 20037  
12 TEL: (202) 588-6026  
13 FAX: (202) 588-6038

14 Attorneys for Plaintiff  
15 NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES

16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 NATIONAL TRUST FOR HISTORIC  
21 PRESERVATION IN THE UNITED STATES,

22 Plaintiff,

23 vs.

24 UNITED STATES POSTAL SERVICE;  
25 PATRICK R. DONAHOE AS POSTMATER  
26 GENERAL OF THE UNITED STATES  
27 POSTAL SERVICE; TOM A. SAMRA,  
28 VICE PRESIDENT-FACILITIES  
OF THE UNITED STATES POSTAL  
SERVICE; DIANA ALVARADO, DIRECTOR,  
REAL ESTATE, USPS PACIFIC REGION;

Defendants.

NO: C14-05179 WHA

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

1  
2           1. This is an action to compel Defendants (hereinafter collectively referred to as U.S.  
3 Postal Service or USPS) to comply with the National Historic Preservation Act and the National  
4 Environmental Policy Act prior to making a decision to relocate and sell the historic Berkeley  
5 Main Post Office located at 2000 Allston Way, Berkeley, California. The Berkeley Main Post  
6 Office is a valued community asset in the civic core of downtown and has been an integral part  
7 of the federal government’s presence in Berkeley for 100 years.

8           2. Construction of the Berkeley Main Post Office was completed in 1914 for \$130,000  
9 with funds provided by the Department of the Treasury. In 1932 the Postal Service added a rear  
10 annex at a cost of \$200,000. The building was improved by New Deal artwork in 1937, including  
11 two murals in the interior lobby and a bas-relief sculpture in the exterior loggia.

12           3. The Berkeley Main Post Office contains an Indiana limestone foundation, granite  
13 steps and Kasota marble columns supporting vaulted arches over a main entrance loggia, which  
14 extends across the front facade. Its exterior contains cement stucco with terra cotta trimmings of  
15 a sanded-cream finish, the first time this decorative technique was employed on the Pacific coast.  
16 The interior finish in the public lobby is oak and marble with ornamental bronze and plaster. It  
17 has a Spanish clay tile hipped roof which overhangs a frieze featuring decorative classical  
18 motifs.

19           4. The Berkeley Main Post Office is a recognized historic building at the local and  
20 national level. It was listed as a Berkeley City Landmark in 1980 and placed on the National  
21 Register of Historic Places individually in 1981 and as a contributing structure to the Berkeley  
22 Civic Center Historic District in 1998.

23           5. The National Trust for Historic Preservation is adversely affected by the increasing  
24 frequency at which federally-owned historic post office buildings are being sold to private  
25 owners without adequate consideration of alternatives to sale, and without adequate measures to  
26 ensure long-term preservation of these historic properties. In response to this trend the National  
27 Trust included the Nation’s historic post office buildings on the list of America’s 11 Most  
28 Endangered Historic Places in 2012, and designated historic post offices as a National Treasure.

1 Protection of the Berkeley Main Post Office has been a central focal point of the National Trust's  
2 ongoing National Treasures campaign.

3  
4 **JURISDICTION AND VENUE**

5 6. This action arises under the National Historic Preservation Act (NHPA), including  
6 Section 111, 16 U.S.C. § 470h-3, and Section 106, *id.* § 470f, and the Section 106 implementing  
7 regulations, 36 C.F.R. Part 800; and under the National Environmental Policy Act (NEPA), 42  
8 U.S.C. § 4332(2)(C), and its implementing regulations, issued by the Council on Environmental  
9 Quality, 40 C.F.R. Parts 1500-1508. Plaintiff seeks judicial review pursuant to Chapter 7 of the  
10 Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, and Section 305 of the NHPA, 16  
11 U.S.C. § 470w-4.

12 7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

13 8. This Court may grant declaratory judgment and further relief pursuant to 28 U.S.C.  
14 §§ 2201 and 2202.

15 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 703  
16 because a defendant in this action resides in this judicial district and a substantial part of the  
17 events or omissions giving rise to the claims occurred in this district.

18  
19 **PARTIES**

20 10. Plaintiff, the National Trust for Historic Preservation in the United States (National  
21 Trust) is a private, nonprofit organization chartered by Congress in 1949 to facilitate public  
22 participation in the preservation of our nation's heritage, and to further the historic preservation  
23 policy of the United States. 16 U.S.C. §§ 461, 468. With the strong support of its members  
24 across the nation, the National Trust works to protect significant historic sites and to advocate  
25 historic preservation as a fundamental value in programs and policies at all levels of government.  
26 The National Trust's members use and enjoy the Berkeley Main Post Office as a community  
27 resource and admire the building as a unique architectural and artistic icon of the Berkeley Civic  
28 Center Historic District. The National Trust commented in writing on the proposed relocation of

1 retail services from the Berkeley Main Post Office in September, 2012, and was a consulting  
2 party for the purposes of reviewing the action under Section 106 of the National Historic  
3 Preservation Act, 16 U.S.C. § 470f; 36 C.F.R. §§ 800.2(c)(5), 800.3(f)(3), which began after the  
4 USPS made its final decision to relocate operations in September 2013. The National Trust has  
5 also met on multiple occasions with members of the USPS staff to urge compliance with Section  
6 106 of the NHPA through the implementation of a strong and enforceable preservation covenant  
7 for the Berkeley Main Post Office, which would ensure the long-term protection of the  
8 building's significant architectural and cultural features. To date, we have seen no discernible  
9 change in the manner by which the USPS approaches its legal responsibilities under the NHPA  
10 in connection with its sale of historic properties.

11 11. Defendant U.S. Postal Service (USPS), owner of the Berkeley Main Post Office, is an  
12 independent establishment of the executive branch of the Government of the United States, with  
13 power to be sued in its official name. 39 U.S.C. §§ 201, 401(1).

14 12. Defendant Patrick R. Donahoe is the Postmaster General and chief executive officer  
15 of the U.S. Postal Service, an instrumentality of the Government of the United States. Defendant  
16 Donahoe is named here in his official capacity as Postmaster General.

17 13. Defendant Tom A. Samra is the Vice President of Facilities for the U.S. Postal  
18 Service, with decision-making authority to sell the Post Office. Defendant Samra is named here  
19 in his official capacity.

20 14. Defendant Diana Alvarado is the Director of Real Estate-Facilities Implementation  
21 for the Pacific Region of the U.S. Postal Service, with decision-making authority to implement  
22 the sale of the Post Office. Defendant Alvarado is named here in her official capacity.

#### 23 24 **SALE OF THE BERKELEY MAIN POST OFFICE**

25 15. The U.S. Postal Service has made a final decision to sell the Berkeley Main Post  
26 Office to a private party without adequate and legally enforceable restrictions or conditions to  
27 ensure long-term preservation of the property's historic significance. Defendants began the  
28 process in the Summer of 2012 when they announced that USPS was pursuing a process to

1 relocate operations, and released a due diligence report. On September 28, 2012 Plaintiff  
2 National Trust wrote to USPS expressing concern that the decision to relocate required  
3 compliance with Section 106 and 111 of the NHPA because the removal of postal services was  
4 an undertaking that had the potential to adversely affect the historic building. The National Trust  
5 requested consulting party status under Section 106, as a party with a demonstrated interest in  
6 assuring the building's protection. In addition, the National Trust urged the USPS to look at  
7 alternatives to sale such as historic leasing. On October 22, 2012 USPS responded that the  
8 National Trust's "request to be a consulting party is premature."

9         16. On February 26, 2013 USPS held a public hearing at Berkeley City Hall. National  
10 Trust staff testified at the hearing, expressing concern about the adverse impacts to the building  
11 that would result from the relocation of operations. The National Trust urged USPS to comply  
12 with the NHPA prior to making the consequential decision to vacate the facility. The National  
13 Trust followed up with a letter to USPS senior staff on March 12, 2013.

14         17. On April 19, 2013, the USPS announced its decision to relocate its operations in  
15 Berkeley, and indicated in a press release that it planned to sell the building after the operations  
16 are relocated, though it did not establish a date or schedule for the move. The National Trust,  
17 along with a broad coalition of partners, including the City of Berkeley, requested  
18 reconsideration of that decision. The USPS announced its relocation decision as final on July 18,  
19 2013.

20         18. The Mayor of Berkeley then requested a review of the relocation decision by the  
21 Postal Regulatory Commission. On August 27, 2013 the Commission found that the Mayor's  
22 appeal was premature because USPS had not yet identified a site to relocate to, and the appeal  
23 was dismissed without prejudice. In a concurring opinion Commission Chairman Ruth Y.  
24 Goldway wrote:

25                 Decisions to relocate a post office can be wrenching on a community. The Postal Service  
26 should undertake a thorough and balanced review, particularly when the building is  
27 historic and part of the civic fabric of the community. A decision to sell a building prior  
28 to identifying a relocation site bifurcates the community input and significantly reduces  
the ability of the Service and the community to evaluate the impact of relocation.

1           19. On April 30, 2014, USPS executed, but did not circulate for public review, a "record  
2 of environmental consideration" (REC) supporting its "proposed disposal" of the Berkeley Main  
3 Post Office. The REC recognized that the Berkeley Main Post Office is an historic building and  
4 noted that an April 18, 2014 Facilities Environmental Checklist prepared by URS Group, Inc.  
5 identified a "potential impact" from the project on historic resources. Nonetheless, the REC  
6 found the project categorically exempt from compliance with NEPA under USPS CATEX (e)(8),  
7 referenced in USPS' NEPA implementing procedures: 79 Fed. Reg. 2102 (Jan. 13, 2014); 39  
8 C.F.R. § 775.6(e)(8) (2014). The REC determined that further NEPA review of the project,  
9 including preparation of an environmental assessment, would not be required.

10           20. After it made the decision to cease operations at the Berkeley Main Post Office, the  
11 USPS formally initiated consultation with the California State Historic Preservation Officer  
12 (SHPO) under Section 106 of the NHPA. In its letter of September 3, 2013 the USPS stated that  
13 it "is considering selling" the property. The correspondence included a draft preservation  
14 covenant to be attached to the deed at the time of sale, naming the SHPO as the party that would  
15 enforce the terms of the covenant in perpetuity. The letter also indicated USPS's determination  
16 that the transfer would have "no adverse effect." The letter identified the City of Berkeley, the  
17 California Preservation Foundation, the National Trust, Berkeley Architectural Heritage, and the  
18 Alameda County Parks, Recreation, and Historical Commission as interested consulting parties.  
19 On October 5, 2013, the USPSPropertiesforsale.com website, hosted by USPS realtor CBRE  
20 Group, indicated that the Berkeley Main Post Office was "for sale."

21           21. The USPS rejected requests from Citizens to Save the Berkeley Post Office and the  
22 National Post Office Collaborate to participate as consulting parties. The groups raised  
23 objections about this decision to the Advisory Council on Historic Preservation (ACHP), an  
24 independent federal agency with oversight over the NHPA process. 16 U.S.C. §§ 470i, 470s. In a  
25 letter dated November 8, 2103 the ACHP expressed alarm that that USPS "provided no  
26 explanation" for its refusal to include these groups in the consultation and encouraged USPS to  
27 include all interested parties in the consultation.  
28

1           22. All consulting parties identified, including the SHPO, City of Berkeley, and the  
2 National Trust, disputed the USPS finding of “no adverse effect” in written comments in the fall  
3 of 2013. All consulting parties contended that the removal of the use for which the building was  
4 originally designed constituted an adverse effect. This acknowledgment would have required  
5 USPS to “take into account” that adverse effect through consultation, “prior to” making the final  
6 decision to relocate services. 16 U.S.C. § 470f.

7           23. Another central issue was the failure of the USPS to identify a qualified party to  
8 accept the duties of monitoring and enforcing a covenant to ensure that successive owners would  
9 preserve the building’s significant architectural features.

10           24. On September 22, 2014, without notice to the consulting parties, SHPO, or ACHP,  
11 USPS entered an Agreement to Sell and Purchase the Berkeley Main Post Office with Hudson  
12 McDonald LLC, a private developer.

13           25. On September 24, 2014, without notice to the consulting parties, the USPS wrote to  
14 the ACHP seeking a review of its “no adverse effect” determination, pursuant to 36 C.F.R. §  
15 800.5(c)(2)-(3), indicating disagreement with the consulting parties over whether the criteria of  
16 adverse effect had been correctly applied. The USPS forwarded a draft covenant that had never  
17 previously been shared with the consulting parties and proposed that USPS itself have the  
18 responsibility to enforce the covenant against successive owners.

19           26. On October 23 or 24, 2014, USPS posted on its website that the Berkeley Main Post  
20 Office was “in contract.” USPS staff would neither confirm nor deny any of the details of the  
21 proposed sale.

22           27. The ACHP responded to USPS on October 24, 2014, pursuant to 36 C.F.R. §  
23 800.5(c)(3)(i), disagreeing with the USPS determination of “no adverse effect,” and stating that:

24           the proposed covenant does not sufficiently ensure the long-term preservation of the  
25 property since the USPS, as covenant holder, has the unfettered authority to approve  
26 adverse effects to the property (including demolition) while having neither the  
27 demonstrated experience in holding preservation covenants nor an apparent interest in the  
28 long term preservation of the property.







1 and legally enforceable restrictions or conditions to ensure long-term preservation of the  
2 Property’s historic significance.

3 f. The Defendants improperly segmented the decision to relocate postal services  
4 from the decision to sell the Property in order to avoid a thorough review under NEPA.

5 g. The Defendants improperly categorically excluded the sale of the Property from  
6 review under NEPA by failing to consider the extraordinary circumstances that would result  
7 from the sale.

8  
9 **COUNT I**

10 Violation of National Historic Preservation Act, Section 111(a)

11 Failure to Consider Alternatives to Sale Including Leasing

12 31. Plaintiff repeats and incorporates all the allegations contained in paragraphs 1- 30  
13 above.

14 32. Congress enacted the National Historic Preservation Act (NHPA), 16 U.S.C. § 470 et  
15 seq., in 1966 to preserve America’s historic and cultural heritage. Congress specifically declared  
16 that “the historical and cultural foundations of the Nation should be preserved as a living part of  
17 our community life and development in order to give a sense of orientation to the American  
18 people;” and that “the preservation of [our] irreplaceable heritage is in the public interest so that  
19 its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will  
20 be maintained and enriched for future generations of Americans.” *Id.* § 470(b)(2), (4).

21 33. Section 111 of the NHPA requires that all federal agencies shall “establish and  
22 implement alternatives for historic properties, including adaptive reuse, that are not needed for  
23 current or projected agency purposes, and may lease an historic property owned by the  
24 agency...” 16 U.S.C. § 470h-3(a).

25 34. Under NHPA Section 111 the USPS must investigate alternatives to sale including  
26 adaptive reuse or leasing. Defendants failed to do either, initiating relocation procedures and  
27 subsequently listing the Berkeley Main Post Office for sale without first evaluating and  
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1 implementing other alternatives that would preserve federal ownership and keep the Property  
2 under the protection of federal historic preservation law.

3 35. The USPS's failure to comply with the requirements of the NHPA was arbitrary and  
4 capricious, an abuse of discretion, and otherwise not in accordance with law.

5 .  
6 **COUNT II**

7 Violation of National Historic Preservation Act, Section 106

8 Failure to Complete Section 106 Consultation  
9 "Prior to" Relocating Services from the Berkeley Main Post Office

10 36. Plaintiff repeats and incorporates all the allegations contained in paragraphs 1-35  
11 above.

12 37. Section 106 of the NHPA requires all federal agencies to "take into account" the  
13 impact of their actions on historic properties, including sites listed on and eligible for the  
14 National Register of Historic Places, and to do so "prior to" approving the action. 16 U.S.C. §  
15 470f. Section 106 also requires that the agency afford the Advisory Council on Historic  
16 Preservation "a reasonable opportunity to comment" on the project. *Id.*

17 38. The ACHP has promulgated regulations implementing Section 106, which are  
18 binding on all federal agencies. 16 U.S.C. § 470s; 36 C.F.R. Part 800. The Section 106  
19 regulations require the agency to engage in a consultation process that involves the State Historic  
20 Preservation Office, ACHP, Native American tribes, consulting parties, and interested members  
21 of the public. 36 C.F.R. §§ 800.1(a), 800.2.

22 39. According to the Section 106 regulations, an adverse effect occurs when an  
23 undertaking:

24 "may alter, directly or indirectly, any of the characteristics of a historic property that  
25 qualify the property for inclusion in the National Register in a manner that would  
26 diminish the integrity of the property's location, design, setting, materials, workmanship,  
27 feeling, or association. . . . Adverse effects may include reasonably foreseeable effects  
caused by the undertaking that may occur later in time, be farther removed in distance or  
be cumulative."

28 36 C.F.R. § 800.5(a)(1). Examples of adverse effects in the Section 106 regulations include:

1 “[c]hange of the character of the property’s use . . . that contribute[s] to its historic significance,” *id.* §  
2 800.5(a)(2)(iv).

3 40. When an undertaking will adversely affect one or more historic properties, the federal  
4 agency must engage in consultation to “develop and evaluate alternatives or modifications to the  
5 undertaking that could avoid, minimize or mitigate [those] adverse effects,” 36 C.F.R. § 800.6(a).  
6 If the agency, the ACHP, and the SHPO are able to reach consensus on ways to resolve the  
7 adverse effects, that consensus is reflected in a written Memorandum of Agreement (MOA),  
8 which documents how the agency will avoid, minimize or mitigate adverse effects, through  
9 consultation with all consulting parties. *Id.* § 800.6. The agency must fulfill its Section 106  
10 responsibilities “prior to” approving the project.

11 41. The Section 106 regulations stress the importance of considering the effects of a  
12 federal project at the earliest possible time during project planning, “so that a broad range of  
13 alternatives may be considered during the planning process for the undertaking.” 36 C.F.R. §  
14 800.1(c). The regulations reiterate the statutory requirement that Section 106 review must be  
15 completed “prior to” the approval of any expenditure of federal funds on the project, and prohibit  
16 actions that may “restrict the subsequent consideration of alternatives to avoid, minimize or  
17 mitigate” the project’s adverse effects on historic properties. *Id.*

18 42. The USPS ignored its mandate to comply with Section 106 of the NHPA when it  
19 made a final decision to relocate operations from the Property without having completed the  
20 Section 106 process.

21 43. When USPS Vice President Tom A. Samra issued a “final determination” on its  
22 relocation decision on July 18, 2013, the USPS had not initiated consultation under Section 106.  
23 However, as Plaintiff expressed to the USPS as early as September 28, 2012, the decision to  
24 move a post office function out of a historic post office is an undertaking with the potential to  
25 affect historic properties, which thus requires compliance with the NHPA. The Section 106  
26 regulations state that a “[c]hange of the character of the property’s use. . . that contribute[s] to its  
27 historic significance” is an adverse effect. 36 C.F.R. § 800.5(a)(2)(iv). The decision to relocate  
28

1 services, without prior Section 106 compliance, thus foreclosed alternatives that could otherwise  
2 protect the property, such as leasing or adaptive reuse.

3 44. The USPS's failure to comply with the requirements of the NHPA prior to making a  
4 final decision was arbitrary and capricious, an abuse of discretion, and otherwise not in  
5 accordance with law.

6 **COUNT III**

7 Violation of National Historic Preservation Act, Section 106

8 Failure to Complete Section 106 Consultation  
9 "Prior to" Making a Final Decision to Sell the Berkeley Main Post Office

10 45. Plaintiff repeats and incorporates all the allegations contained in paragraphs 1-44  
11 above.

12 46. When USPS announced via its USPSPropertiesforsale.com website that the Berkeley  
13 Main Post Office was "in contract," it had not completed the process outlined in the Section 106  
14 regulations to "take into account" the effect of the undertaking on the historic property.

15 47. When a federal agency is unable to persuade other agencies and consulting parties to  
16 concur in its determination that an undertaking will have "no adverse effect" on historic  
17 properties, the Section 106 regulations establish a process for the agency to resolve the  
18 disagreement through the ACHP, pursuant to 36 C.F.R. § 800.5(c)(2)-(3). Once the ACHP has  
19 provided its opinion as to whether the adverse effect criteria have been correctly applied, the  
20 regulations make it clear that the agency's responsibilities under Section 106 are not fulfilled  
21 until after the agency official has "prepare[d] a summary of the decision that contains the  
22 rationale for the decision and evidence of consideration of the Council's opinion, and provide[d]  
23 it to the Council, the SHPO/THPO, and the consulting parties." *Id.* § 800.5(c)(3)(ii)(B).

24 48. The Defendants failed to prepare a summary of the decision that contains the  
25 rationale for the decision and evidence of consideration of the ACHP's opinion, and provide it to  
26 the ACHP, SHPO, and consulting parties, "prior to" committing to sell the Berkeley Main Post  
27 Office, as required by 36 C.F.R. § 800.5(c)(3)(ii)(B). In fact, the Defendants entered into a  
28

1 contract for sale without even waiting for the ACHP's response to the USPS letter dated  
2 September 24, 2014 requesting the ACHP's views.

3 49. The USPS's failure to comply with the requirements of the NHPA prior to making a  
4 final decision was arbitrary and capricious, an abuse of discretion, and otherwise not in  
5 accordance with law.

6 **COUNT IV**

7 Violation of National Historic Preservation Act, Section 106

8 Defendants Arbitrarily and Capriciously Determined That "No Adverse Effect"  
9 Would Occur to the Property as a Result of its Change in Use.

10 50. Plaintiff repeats and incorporates all the allegations contained in paragraphs 1-49  
11 above.

12 51. The USPS ignored the plain language of the regulations implementing Section 106 of  
13 the NHPA when it determined that moving retail services out of the Berkeley Main Post Office  
14 would cause no adverse effect, notwithstanding the objections of all other consulting parties.  
15 When a historic building was designed specifically for use as a post office, and the words "POST  
16 OFFICE" are prominently labeled on the front of the building, and it has been used as a post  
17 office since its construction, as is the case in Berkeley, the "[c]hange of the character of the  
18 property's use" that is the direct result of the relocation decision by the USPS clearly has the  
19 potential to adversely affect the historic property, and requires compliance with Section 106 prior  
20 to the agency's action. 36 C.F.R. § 800.5(a)(2)(iv). However, the USPS has ignored the plain  
21 language of the regulations by segmenting its decision to relocate postal services out of the  
22 Property from its decision to sell the Property.

23 52. The USPS's failure to comply with the requirements of the NHPA was arbitrary and  
24 capricious, an abuse of discretion, and otherwise not in accordance with law.

COUNT V

Violation of National Historic Preservation Act, Section 106

Defendants' Determination That Their Proposed Preservation Covenant  
Would Have No Adverse Effect on the Historic Post Office,  
Notwithstanding the Objections of the ACHP, was Arbitrary and Capricious

53. Plaintiff repeats and incorporates all the allegations contained in paragraphs 1-52 above.

54. In a last-minute effort to establish long-term protections on the Berkeley Main Post Office, the USPS sent to the ACHP a draft covenant, which proposed that the USPS itself would act as the holder and enforcer of the covenant. The terms of the covenant proposed by the USPS do not ensure the long-term preservation of the Property's historic significance. The Covenant is flawed for three key reasons: (1) USPS has no experience administering, monitoring or enforcing covenants; (2) The Covenant allows demolition of the property, and provides for automatic approval of changes to the Property if the USPS fails or declines to respond to requests from the property owner; and (3) The Covenant invokes both the Section 106 process and the use of the *Secretary of the Interior's Standards for the Treatment of Historic Properties* in a way that will create confusion and ambiguity in the Covenant's interpretation or administration.

55. These concerns were substantiated by the ACHP, the federal agency with the greatest degree of expertise in the subject of historic preservation. The ACHP expressed concern that the Covenant grants USPS the "unfettered authority to approve adverse effects to the property (including demolition) while having neither the demonstrated experience in holding preservation covenants nor an apparent interest in the long term preservation of the property."

56. The determination by the USPS that the sale of the Berkeley Main Post Office would have "no adverse effect" on the historic property, over the objections of the ACHP, the SHPO, and all other consulting parties, was arbitrary, capricious, an abuse of discretion, and otherwise contrary to law.

**COUNT VI**Violation of National Environmental Policy ActDefendants Improperly Segmented the Decision to Relocate Postal Services  
From the Decision to Sell the Building

57. Plaintiff repeats and incorporates all the allegations contained in paragraphs 1-56 above.

58. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C), requires federal officials to prepare environmental impact statements (EISs) on proposals for “major Federal actions significantly affecting the quality of the human environment.” Essentially NEPA and its “action-forcing” provisions require Federal agencies to look before they leap so that harmful environmental impacts can be avoided and minimized.

59. NEPA establishes a national policy to “prevent or eliminate damage to the environment and biosphere.” 42 U.S.C. § 4321. The Act recognizes “the critical importance of restoring and maintaining environmental quality,” declares that the Federal government has a continuing responsibility to use “all practicable means” to minimize environmental degradations, and directs that “to the fullest extent possible . . . the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act.” *Id.* §§ 4331(a), 4332(1). The Act further recognizes the right of each person to enjoy a healthful environment. *Id.* § 4331(c).

60. NEPA specifically recognizes that it is “the continuing responsibility of the Federal Government to use all practicable means . . . to the end that the Nation may . . . preserve important historic, cultural, and natural aspects of our national heritage . . . .” 42 U.S.C. § 4331(b)(4). NEPA requires agencies to examine the impacts of Federal actions on the “human environment.” *Id.* § 4332(2)(C). All agencies of the Federal Government are to “utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may



1 have an impact on man’s environment; . . .” *Id.* § 4332(2)(A). The environmental impacts which  
2 must be studied include historic, cultural, and social impacts. 40 C.F.R. § 1508.8(b).

3 61. The USPS improperly segmented its decision to relocate services out of the Property  
4 from its decision to sell the Property, both interrelated actions that should be evaluated together  
5 under NEPA. The relocation of services is an essential step that foretells an ultimate sale.  
6 Similarly, both have impacts on the social and cultural environment in Berkeley, as well as  
7 potentially harmful environmental consequences, which NEPA requires the USPS to consider.

8 62. The USPS’s failure to comply with the requirements of NEPA was arbitrary and  
9 capricious, an abuse of discretion, and otherwise not in accordance with law.

10  
11 **COUNT VII**

12 Violation of National Environmental Policy Act

13 Defendants Improperly Determined that the Sale of the Berkeley Post Office was  
14 Categorically Excluded from Review Under NEPA  
15 by Failing to Consider Extraordinary Circumstances  
16 Due to Changed Ownership and Use

17 63. Plaintiff repeats and incorporates all the allegations contained in paragraphs 1-62  
18 above.

19 64. The USPS improperly relied on a categorical exclusion to avoid preparation of an  
20 EIS. The sale of the Berkeley Main Post Office represents an “extraordinary circumstance” that  
21 the USPS did not properly acknowledge in making this determination. The Berkeley Main Post  
22 Office is indisputably historic, but was treated like any other property for the purposes of NEPA.  
23 However, its historic significance should cause the agency to give added consideration to the  
24 issue of whether sale will result in harm. Because a major change in use can be expected from  
25 sale, the USPS should anticipate pressure by the new owner to alter sensitive historic fabric to  
26 meet new uses. The categorical exclusion was improper and had the effect of completely  
27 precluding public review of this important decision in violation of NEPA.  
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1 DATED: December 31, 2014

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Respectfully submitted,

BRIAN R. TURNER, Attorney (SBN 251687)  
National Trust for Historic Preservation

By: /S/ Brian R. Turner  
Brian R. Turner

ELIZABETH S. MERRITT, Deputy General Counsel  
National Trust for Historic Preservation

By: /S/ Elizabeth S. Merritt  
Elizabeth S. Merritt