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SENATOR, 29TH DISTRICT

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PLEASE RESPOND TO:
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FAX: (212) 633-8096

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EMAIL
DUANE@SENATE.STATE.NY.US

September 18, 2006

Arthur E. Strange
National Manager, Real Estate
United States Postal Service
4301 Wilson Boulevard, Suite 300
Arlington, VA 22203-1861

Dear Mr. Strange:

I am writing to urge the United States Postal Service (USPS) to immediately withhold its consent for an easement over its Cooper Station property at 93 Fourth Avenue in Manhattan. As the State Senator representing the district in which Cooper Station resides, I am dismayed to hear that the USPS has continued to ignore legal procedure, as well as the outcries from numerous community members and elected officials, by attempting to sell air rights without undergoing proper Section 106 review as mandated by the National Historic Preservation Act.

As you know, the USPS has a history of selling air rights without going through the required review. It is outrageous that the USPS continues to flout the law in this regard. The excuse you have given – that there is nothing that the USPS can do in this case since the transaction has already been completed – is unacceptable. In fact, the National Trust for Historic Preservation has recently pointed out that in the case of the sale of the Cooper Station Post Office air rights, the USPS retained the right to “withhold its consent” from any development utilizing those air rights which would “materially affect the appearance of any portion of the [post office] Building visible from the street...” I strongly encourage the USPS to exercise this right, withhold its consent to the easement to halt any construction from beginning, and initiate the required Section 106 review.

The Section 106 requirements were established to mitigate adverse impacts upon local historic resources. It is distressing to hear that, despite the callings of the law, the community and elected officials, the USPS has decided to ignore its own pledge to obey the National Historic Preservation Act. I urge the USPS to reconsider and stay true to its promises. It is incumbent upon the USPS to withhold its consent to the easement in order to halt any construction from beginning so that meaningful Section 106 review may take place.

Sincerely,

Tom Duane

Thomas K. Duane
New York State Senator
29th District

LIZ KRUEGER
SENATOR, 26TH DISTRICT

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SENATE

ALBANY, NEW YORK 12247



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MINORITY PROGRAM DEVELOPMENT

RANKING MINORITY MEMBER
HOUSING, CONSTRUCTION &
COMMUNITY DEVELOPMENT

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CONSUMER PROTECTION
FINANCE
HIGHER EDUCATION
RULES

September 18, 2006

John Fowler, Executive Director
Advisory Council on Historic Preservation (ACHP)
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington D.C., 20004

Bernadette Castro, Commissioner
New York State Office of Parks, Recreation, and Historic Preservation (OPRHP)
Agency Building No.1, Empire State Plaza
Albany, NY 12238

**Re: United States Postal Service's Repeated Violation of Section 106
of the National Historic Preservation Act Regarding Air Rights Sales**

Dear Executive Director Fowler and Commissioner Castro:

We write to express our extreme disappointment at the continuing failure of the United States Postal Service (USPS) to live up to its responsibilities under Section 106 of the National Historic Preservation Act, and to urge your two agencies to finally force the USPS to conform to the law.

For nearly two years, USPS has been selling air rights in Manhattan without subjecting such sales to required Section 106 review. It is our understanding that when this matter was brought to the attention of the USPS and your two agencies over a year ago, the USPS admitted they had not lived up to their obligations under the law and committed to obey it in the future. However, the guidelines suggested by preservation advocates to ensure that such review was followed in the future were never adopted (see attached letter). Instead, the USPS is yet again seeking to sell air rights from its Canal Street Station without subjecting them to Section 106 review.

Furthermore, as the National Trust for Historic Preservation has pointed out, a section 106 review can still take place after development rights are sold in cases including the Cooper Square Post Office, where the USPS has retained its right to withhold consent from any development that would "materially affect the appearance" of any part of the

Post Office visible from the street. It is therefore incumbent in such cases that the USPS exercise this right to withhold consent, in order to allow a Section 106 review to take place.

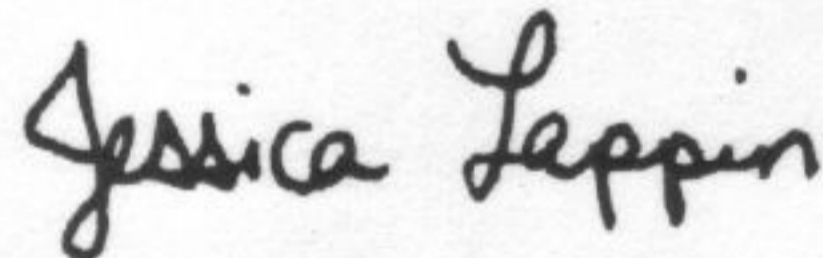
USPS is clearly not interested in voluntarily obeying the National Historic Preservation Act, in spite of its verbal and written assurances to the contrary. It is incumbent upon your agencies to ensure that the law is obeyed in this case, and that the landscape of Manhattan is not further transformed to the detriment of our historic resources because USPS refuses to obey the law. We urge you, in the strongest of terms, to put in place clear and strict guidelines which would ensure that meaningful Section 106 review does take place when USPS contemplates the sale of its air rights and to take concrete and decisive action against USPS for its failure to live up the requirements of the National Historic Preservation Act.

Thank your for your prompt attention to this important matter.

Sincerely,



Liz Krueger
State Senator



Jessica Lappin
City Councilmember

cc: Arthur Strange, National Manager, Real Estate, USPS
Congresswoman Carolyn Maloney
New York State Preservation League
Historic Districts Council
New York Landmarks Conservancy
Municipal Arts Society
Greenwich Village Society for Historic Preservation

TONY AVELLA
COUNCIL MEMBER, 19TH DISTRICT
QUEENS

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FAX: (718) 747-3105

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September 6, 2006

Hon. Bernadette Castro
Commissioner
New York State Office of Parks, Recreation and Historic Preservation
Agency Building No. 1, Empire State Plaza
Albany, NY 12238

Mr. John Fowler
Executive Director
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington, D.C., 20004

Dear Commissioner Castro and Executive Director Fowler:

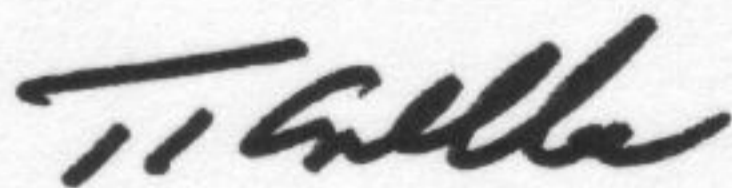
I am writing to express my outrage about the continuing failure of the United States Postal Service (USPS) to live up to its responsibilities under Section 106 of the National Historic Preservation Act, and to urge your agencies to finally force this renegade entity to conform to the law.

For nearly two years, USPS has been selling air rights without subjecting such sales to required Section 106 review. I understand that this matter was brought to the attention of your agencies over a year ago. As a result, USPS begrudgingly admitted they had not lived up to their obligations under the law and committed to obey the statute in the future. However, the guidelines suggested by the Greenwich Village Society for Historic Preservation (GVSHIP), to ensure that such review was followed in the future, were never adopted. GVSHIP has now discovered that USPS is yet again seeking to sell air rights from one of its facilities without subjecting them to Section 106 review.

USPS is clearly not interested in voluntarily obeying the National Historic Preservation Act, in spite of its verbal and written assurances to the contrary. It is incumbent upon

your agencies to ensure that the law is obeyed and that the landscape of our city is not further transformed to the detriment of our historic resources because USPS refuses to obey the law. I urge you, in the strongest of terms, to institute clear and strict guidelines which would ensure that meaningful Section 106 review does occur whenever USPS contemplates the sale of its air rights, and that concrete and decisive action against USPS is taken for failure to obey the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Avella". The signature is written in a cursive, slightly slanted style.

Tony Avella
Council Member
District 19 – Northeast Queens

cc: Mr. Andrew Berman, GVSHP

TA:lms



THE SENATE
STATE OF NEW YORK
ALBANY

THOMAS DUANE
SENATOR, 29TH DISTRICT

RANKING MINORITY MEMBER:
CODES
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DUANE@SENATE.STATE.NY.US

September 7, 2006

Bernadette Castro, Commissioner
New York State Office of Parks, Recreation, and Historic Preservation
Agency Building No.1, Empire State Plaza
Albany, NY 12238

Dear Commissioner Castro:

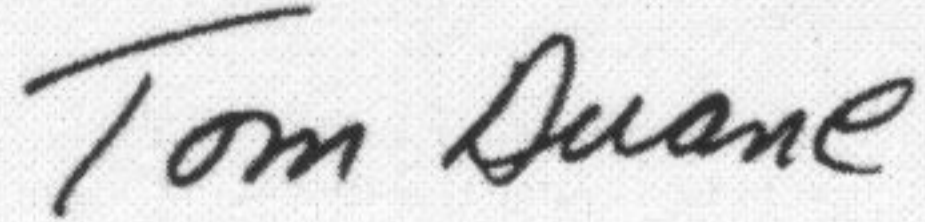
I was distressed to learn that the United States Postal Service (USPS) is seeking, once again, to sell air rights from one of its stations in Manhattan without putting the sale through a review mandated under Section 106 of the National Historic Preservation Act. I am aware of four other times in recent years that the USPS has sold air rights without going through the required review, which, as you know, is intended to mitigate adverse impacts upon local historic resources. I urge the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) to force the USPS to conform to the law.

The Greenwich Village Society for Historic Preservation (GVSHIP) indicates that it brought this matter to the attention of your agency over a year ago, and that the USPS subsequently admitted it had not lived up to its obligations under the law and committed to obey it in the future. Regrettably, the guidelines suggested by GVSHIP to ensure that such review was followed in the future were never adopted, and as a result, the USPS is now seeking to sell air rights from the Canal Street Station to a private developer without subjecting the transaction to a Section 106 review.

Because the USPS has not voluntarily obeyed the National Historic Preservation Act, despite its pledge to do so, I am calling on OPRHP to ensure that the law is obeyed. It is outrageous that our historic landscape in Manhattan may be diminished as a result of the USPS's refusal to obey the law. I urge you to ensure that meaningful Section 106 review

takes place when the USPS contemplates the sale of its air rights, to impose strict guidelines like those proposed by GVSHP, and to take concrete and decisive action against USPS for its failure to obey the law.

Sincerely,

A handwritten signature in black ink that reads "Tom Duane". The signature is written in a cursive style with a prominent initial "T".

Thomas K. Duane
New York State Senator
29th District



THE SENATE
STATE OF NEW YORK
ALBANY

THOMAS DUANE
SENATOR, 29TH DISTRICT

RANKING MINORITY MEMBER:
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September 7, 2006

John Fowler, Executive Director
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington, D.C. 20004

Dear Executive Director Fowler:

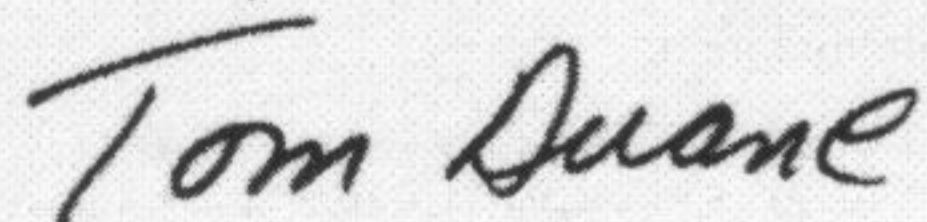
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The Greenwich Village Society for Historic Preservation (GVSHHP) indicates that it brought this matter to the attention of your agency over a year ago, and that the USPS subsequently admitted that it had not lived up to its obligations under the law and committed to obey it in the future. Regrettably, the guidelines suggested by GVSHHP to ensure that such review was followed in the future were never adopted, and as a result, the USPS is now seeking to sell air rights from the Canal Street Station to a private developer without subjecting the transaction to a Section 106 review.

Because the USPS has not voluntarily obeyed the National Historic Preservation Act, despite its pledge to do so, I am calling on ACHP to ensure that the law is obeyed. It is outrageous that our historic landscape in Manhattan may be diminished as a result of the USPS's refusal to obey the law. I urge you to ensure that meaningful Section 106 review

takes place when the USPS contemplates the sale of its air rights, to impose strict guidelines like those suggested by GVSHP, and to take concrete and decisive action against USPS for its failure to obey the law.

Sincerely,

A handwritten signature in black ink that reads "Tom Duane". The signature is written in a cursive style with a prominent horizontal line above the first few letters.

Thomas K. Duane
New York State Senator
29th District



ROSIE MENDEZ
COUNCIL MEMBER, 2ND DISTRICT

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rosie.mendez@council.nyc.ny.us

THE COUNCIL
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HOUSING & BUILDINGS
LAND USE
LOWER MANHATTAN REDEVELOPMENT

SUB COMMITTEE
LANDMARKS, PUBLIC SITING &
MARITIME ISSUES

September 7, 2006

John Fowler, Executive Director
Advisory Council on Historic Preservation (ACHP)
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington D.C., 20004

Bernadette Castro, Commissioner
New York State Office of Parks, Recreation, and Historic Preservation (OPRHP)
Agency Building No.1, Empire State Plaza
Albany, NY 12238

**Re: United States Postal Service's Repeated Violation of Section 106
of the National Historic Preservation Act Regarding Air Rights Sales**

Dear Executive Director Fowler and Commissioner Castro:

I write to you on behalf of my constituents who very disheartened over the failure of the United States Postal Service (USPS) to perform their due diligence under Section 106 of the National Historic Preservation Act. I strongly urge your two agencies to force the USPS to strictly follow the law.

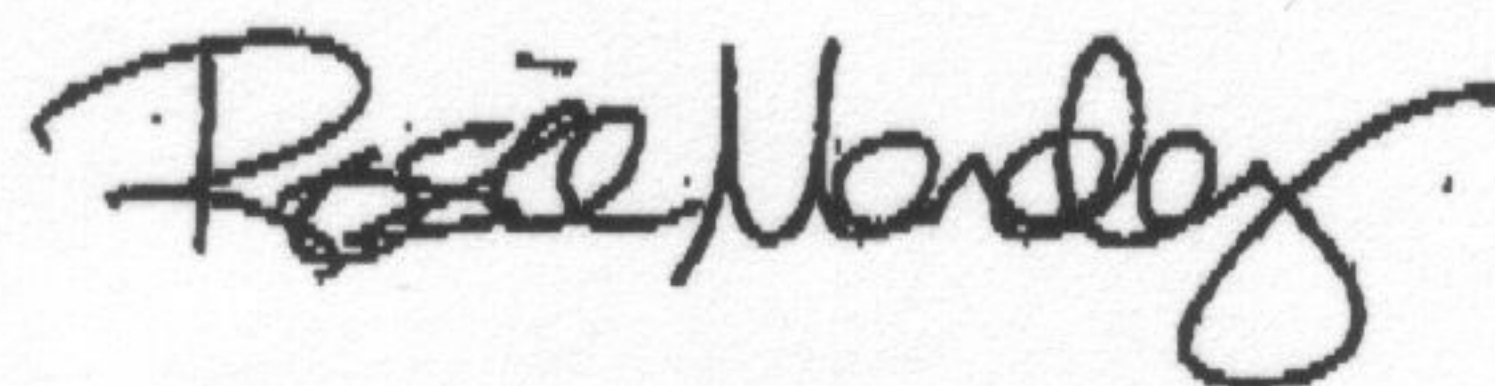
As you both are aware, USPS has over the last two years sold air rights in various locations in Manhattan without conducting the required Section 106 review. Local activists and elected officials including my predecessor expressed their dismay over the air rights transfer from the Stuyvesant Post Office, located on 4th Avenue and East 11th Street, more than a year ago. I, as the current councilperson representing this district, join those who believe that the process was not appropriately carried out and more fundamentally that a post office, which is not subject to local zoning, lacks the right to sell this intangible value. I am particularly distressed that this transaction is slated to produce a 26-story dormitory that would be grossly out of character with the surrounding buildings.

Obviously, the USPS lacks interest in voluntarily complying with the National Historic Preservation Act, in spite of its verbal and written assurances to the contrary. I urge you,



in the strongest of terms, to put in place clear and strict guidelines which would ensure that a thorough Section 106 review takes place when USPS contemplates the sale of its air rights, and to take concrete and decisive action against USPS for its failure to do so in the past.

Sincerely,



Rosie Mendez
Council Member
2nd Council District, Manhattan

RM/jflk



ROSIE MENDEZ
COUNCIL MEMBER, 2ND DISTRICT

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THE COUNCIL
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COMMITTEES
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HOUSING & BUILDINGS

LAND USE

LOWER MANHATTAN REDEVELOPMENT

SUB COMMITTEE

LANDMARKS, PUBLIC SITING &
MARITIME ISSUES

September 14, 2006

Mr. Arthur Strange
National Manager, Real Estate
United States Postal Service
4301 Wilson Boulevard, Suite 300
Arlington, VA 22203-1861

Re: Cooper Station Post Office

Dear Mr. Strange:

I write to you on behalf of my constituents who are very disheartened over the failure of the United States Postal Service (USPS) to perform the due diligence required under Section 106 of the National Historic Preservation Act when air rights of post offices in Manhattan have been sold.

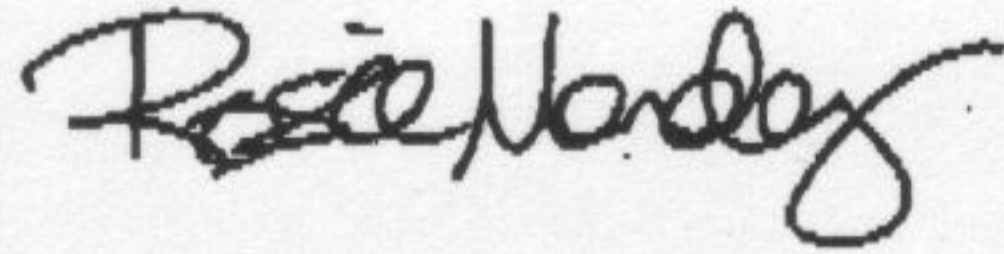
As you are aware, USPS has over the last two years sold air rights in various locations in Manhattan without conducting the required Section 106 review. Local activists and elected officials including my predecessor expressed their dismay over the air rights transfer from the Cooper Square Office, located on 4th Avenue and East 11th Street, more than a year ago. I, as the current councilmember representing this district, join those who believe that the process was not appropriately carried out and more fundamentally that a post office, which is not subject to local zoning, lacks the right to sell this intangible value. I am particularly distressed that this transaction is slated to produce a 26-story dormitory that would be grossly out of character with the surrounding buildings.

I urge the USPS to voluntarily comply with the National Historic Preservation Act and the Section 106 review, stopping all development plans in Lower Manhattan in order to complete its verbal and written assurances to follow the proper legal proceedings.

This is an urgent matter of great importance to my community, and I look forward to hearing back from you in the very near future.

Sincerely,





Rosie Mendez
Council Member

RM/jfk

cc: Advisory Council for Historic Preservation
NY State Office of Parks, Recreation, and Historic Preservation



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

DEBORAH J. GLICK
Assemblymember 66th District
New York County

CHAIR
Social Services Committee

COMMITTEES
Children and Families
Environmental Conservation
Higher Education
Ways & Means

September 7, 2006

John Fowler
Executive Director
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Dear Mr. Fowler:

I am writing to you regarding the sale of air rights from the Canal Street Post Office in Manhattan. This site is listed on the National Register of Historic Places requiring the sale of its air rights to be reviewed by the Advisory Council on Historic Preservation as per Section 106 of the National Historic Preservation Act.

However, the Post Office has not yet submitted its plans for review by ACHP. This situation is reminiscent of a troubling situation which occurred last year when USPS sold air rights from the Cooper Square Post Office also in Manhattan. In that situation, USPS also did not comply with the requirement to have their plans reviewed by ACHP and the matter was only brought to the attention of ACHP after the air rights sale had been completed.

The sale of air rights from the Canal Street Post Office is likely to affect the area immediately surrounding the building and obstruct the view of the post office. As such, it is important that ACHP ensure that the air right transfer is done in a manner that does not affect the goal of preserving the historic character of the Canal Street Post Office.

I appreciate that ACHP has acknowledged that USPS ought to have presented their plans for the sale of air rights from the Cooper Square Post Office to ACHP. I am hopeful that the plans to sell air rights from the Canal Street Post Office will now be given a thorough review.

I urge ACHP to compel the post office to put its plans for the sale of air rights at Canal Street Station under review. ACHP must ensure that this does not become another situation where the post office is allowed to ignore their federally required historic review process.

Sincerely,

A handwritten signature in cursive script that reads "Deborah J. Glick".

Deborah J. Glick
Assemblymember



NATIONAL TRUST
for HISTORIC PRESERVATION®

Protecting the Irreplaceable

September 7, 2006

Mr. Arthur Strange
National Manager, Real Estate
United States Postal Service
4301 Wilson Boulevard, Suite 300
Arlington, VA 22203-1861

Dear Mr. Strange:

The National Trust for Historic Preservation is extremely concerned about the long-standing failure of the United States Postal Service to comply with Section 106 of the National Historic Preservation Act prior to selling air rights above several Post Offices in Manhattan. Even though these violations were brought to the agency's attention well over a year ago, and the agency acknowledges its legal responsibility to comply with Section 106 prior to selling air rights, conveyances have continued since that time without correcting this flagrant legal deficiency. We are dismayed at the continued failure of the Postal Service to engage in the consultation and review process required under Section 106 prior to conveying these valuable property rights out of federal ownership.

Most recently, we have learned that just last month the Postal Service closed on the conveyance of air rights from the historic Canal Street Station to the developer of a neighboring lot. This transaction has been in the works for quite some time, and we believe the Postal Service's failure to comply with Section 106 prior to closing on the Canal Street air rights sale is inexcusable. The resulting new tower project would loom high above the National Register-listed Canal Street Station, greatly affecting the appearance of the historic post office, and obscuring the adjacent AT&T Building, a New York City Landmark. In order to properly protect and manage the significant collection of historic properties owned by the Postal Service, and to take into account adverse effects on the architecturally and historically rich urban fabric surrounding these post offices, it is essential that the Postal Service initiate Section 106 review for all transfers of development rights.

The Postal Service also failed to comply with Section 106 for three earlier sales of development rights in Manhattan, as required by law. The tower project enabled by the recent sale of Cooper Station development rights was predicated on almost complete demolition of a significant historic church, St. Ann's Roman Catholic Church, and the 25-story scale of the new development will loom over the low-scale, National Register-listed Cooper Station and other adjacent historic properties. We believe the demolition of St. Ann's Church may constitute anticipatory demolition, pursuant to 16 U.S.C. § 470h-2(k) and 36 C.F.R. § 800.9(c). Second, the sale of Times Square Station development rights made possible the construction of a 60-story tower that will obscure and overshadow the McGraw-Hill Building, a National Historic Landmark. Third, air rights were sold over the historic Madison Square post office without compliance with Section 106. The provisions of Section 106 subject these agency activities to public review precisely in order to help avoid or



*Recipient of the National
Humanities Medal*

1785 MASSACHUSETTS AVENUE, NW • WASHINGTON, DC 20036

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mitigate the kinds of damaging effects these new development projects will have on the surrounding historic buildings.

In the National Trust's view, the Postal Service has an ongoing obligation in at least one of these cases to engage in consultation under Section 106, even after the conveyance has been made. In the case of the Cooper Square Station, for example, the Postal Service retained specific rights in a recorded easement agreement to review plans and specifications for the new development. Among other things, the Postal Service retains the explicit right to "withhold its consent" with respect to any development plans that would "materially affect the appearance of any portion of the [post office] Building visible from the street . . ." Easement Agreement, § 5.1(b)(i)(5) (Jan. 17, 2005). By exercising this review of plans and specifications, the Postal Service retains the ability to influence the new development project for the Cooper Square Station in a manner that could modify the impact of the project on historic properties. As a result, the Postal Service remains legally obligated to initiate compliance with Section 106 in order to ensure that its review of the new development is exercised in a manner that "takes into account" the effects of the projects on historic properties. See *Tyler v. Cuomo*, 236 F.3d 1124 (9th Cir. 2000); *Vieux Carre Property Owners, Residents & Associates v. Brown*, 948 F.2d 1436 (5th Cir. 1991); *Morris County Trust for Historic Preservation v. Pierce*, 714 F.2d 271 (3d Cir. 1983).

We have not been able to obtain documentation in order to ascertain whether the Postal Service has retained the right to review any aspect of the subsequent developments for any of the other three conveyances of air rights in Manhattan. However, we ask that the Postal Service provide us with copies of the agreements and other documentation from those transactions in order to determine whether the Postal Service's subsequent review may create an ongoing obligation to comply with Section 106, similar to the obligation with respect to the Cooper Square Station.

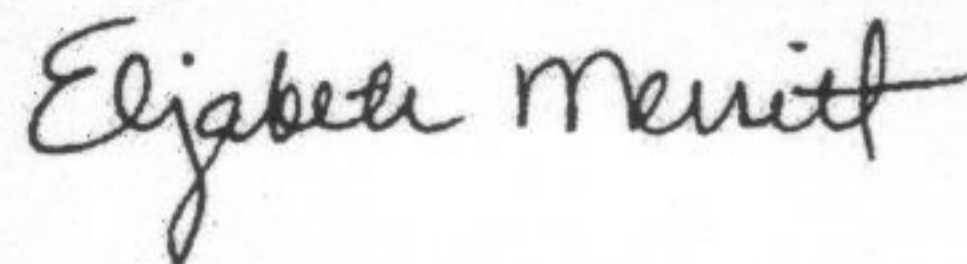
The National Trust hereby requests the opportunity to participate as a consulting party with respect to Section 106 review for the Cooper Square Station transaction, pursuant to 36 C.F.R. §§ 800.2(c)(5), 800.3(f)(3). In the event that the Canal Street Station or other air rights transactions involve any retained rights by the Postal Service, we request consulting party status for those Section 106 reviews as well. The National Trust is a private, non-profit organization, chartered by Congress in 1949 to facilitate public participation in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. 16 U.S.C. § 468. With over 250,000 members nationwide, the National Trust provides leadership, education, advocacy, and resources to save America's diverse historic places and revitalize our communities. The National Trust also advocates historic preservation as a fundamental value in programs and policies at all levels of government. We have a unique interest in enforcing federal agency compliance with Section 106 because the Chairman of the National Trust is designated by Congress as a member of the Advisory Council on Historic Preservation. 16 U.S.C. § 470i(a)(8). We believe the National Trust would bring a valuable national perspective to Section 106 consultation for these transactions.

In conclusion, we urge the Postal Service to initiate Section 106 review immediately for the Cooper Square Station and for other air rights transactions in New York under which the agency retains any review authority that could influence the resulting development projects.

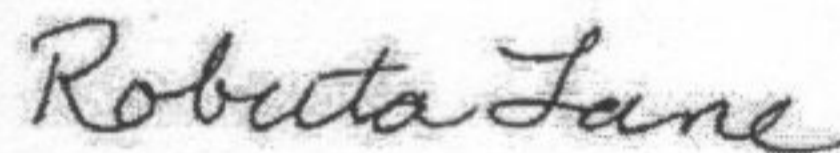
Arthur Strange
United States Postal Service
September 7, 2006
Page 3

Thank you for your attention to this letter. We look forward to your reply, and to working with you on this important matter.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel



Roberta Lane
Program Officer and Northeast Regional Attorney

cc: John E. Potter, Postmaster General, United States Postal Service
Dallan C. Wordekemper, Federal Preservation Officer, United States Postal Service
Reid Nelson, Advisory Council on Historic Preservation
Javier Marques, Associate General Counsel, Advisory Council on Historic Preservation
Ruth Pierpont, New York State Historic Preservation Office
Andrew Berman, Greenwich Village Society for Historic Preservation
Peg Breen, New York Landmarks Conservancy
Frank Sanchis, Municipal Art Society
Simeon Bankoff, Historic Districts Council

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September 7, 2006

John M. Fowler, Executive Director
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, N.W., Suite 809
Washington, D.C. 20004

Re: United States Postal Service – Section 106 Compliance Issues

Dear Executive Director Fowler:

This office represents the Preservation League of New York State, Inc. (“League”), New York’s statewide historic preservation advocate. I am writing on the League’s behalf to reiterate the concerns that the Greenwich Village Society for Historic Preservation (“GVSHP”; Andrew Berman, Executive Director) has repeatedly expressed to your office regarding the United States Postal Service’s (“USPS”) apparent lack of compliance with the consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470f), and the Advisory Council’s implementing regulations at 36 C.F.R. § 800.1, *et seq.* Specifically, this letter addresses the repeated sale by USPS of development rights attached to National Register-listed or eligible facilities under its jurisdiction, or used to develop other historic properties, without engaging the Section 106 consultation process.

As you may recall, GVSHP brought this issue into public focus in or about June 2005, after becoming aware of the USPS’s conveyance of development rights previously attached to the historic Cooper Station and Times Square Station postal facilities. The conveyance of these development rights facilitated the build-out by private developers of adjacent commercial properties, some of which are themselves State or National Register-eligible. In any event, the build-outs facilitated by USPS’s actions have clearly resulted in indirect -- but nevertheless significant and adverse -- impacts to the historic properties. At or about that time, the ACHP and USPS acknowledged that such conveyances constituted federal “undertakings” as defined in 36 C.F.R. § 800.16(y), and therefore should have been subjected to Section 106 review – a position with which the League thoroughly agrees.

Contrary to the agency’s previously stated commitments, it appears that the USPS has again sought to convey the development rights attached to an historic property – the State and National Register-listed Canal Street Station – without conducting Section 106 review. As in the past, such conveyance will facilitate the commercial development of adjacent property in a

manner that causes indirect adverse impacts to historic properties. As distinguished from prior instances of non-compliance, however, it appears from the public record that the conveyance of the Canal Street Station's development rights may be incomplete, thus providing the opportunity for meaningful consultation to occur, consistent with the letter and spirit of the National Historic Preservation Act in general, and Section 106 in particular.

To the extent that any question remains, the conveyance of development rights by a federal agency constitutes an "undertaking" within the meaning of Section 106 and its implementing regulations. 36 C.F.R. § 800.16(y) defines an "undertaking" as:

A project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance and those requiring a Federal permit, license or approval.

36 C.F.R. § 800.16(y). The conveyance of development rights attached to Federal properties to facilitate adjacent private development is clearly an "activity or program . . . carried out . . . on behalf of a Federal agency." Indeed, among the factors that ACHP advises should be considered in making the determination of whether a particular action constitutes an undertaking is "whether or not the action could move forward without Federal involvement." *See* 65 Fed. Reg. 77698 (December 12, 2000). Unquestionably, the commercial developments at issue could not move forward without Federal involvement, *i.e.*, the transfer of valuable development rights to authorize construction otherwise barred by local zoning requirements.¹ In that respect, the conveyances at issue are virtually indistinguishable from a Federal permit or other authorization or approval.

Additionally, to the extent that USPS deems Section 106 review of conveyances of development rights from individual facilities to be too burdensome, the negotiation and implementation of a Programmatic Agreement, which is intended to "govern . . . the resolution of adverse effects from . . . multiple undertakings" (36 C.F.R. § 800.14(b)) provides an appropriate remedy. The League would be pleased to participate in discussions among all of the stakeholders, including ACHP, NYS SHPO, USPS and GVSHP, to craft such a Programmatic Agreement covering the conveyances of development rights from Federal historic properties.

In sum, there are many nationally-significant historic properties under USPS's jurisdiction and control. It is simply unconscionable to allow the USPS to circumvent Section 106 review of actions adversely affecting those properties by characterizing the resultant development project as "private." As previously stated, but for the conveyances of development

¹ Furthermore, USPS's conveyances of development rights may constitute "major Federal action," triggering the review requirement of the National Environmental Policy Act of 1969, 42 U.S.C. § 4331, *et seq.* To be consistent with NEPA's bar against improper segmentation and the settled requirement to conduct cumulative impacts review, proper NEPA review of such actions would include consideration of the construction to follow since such construction is a direct result of the Federal action.

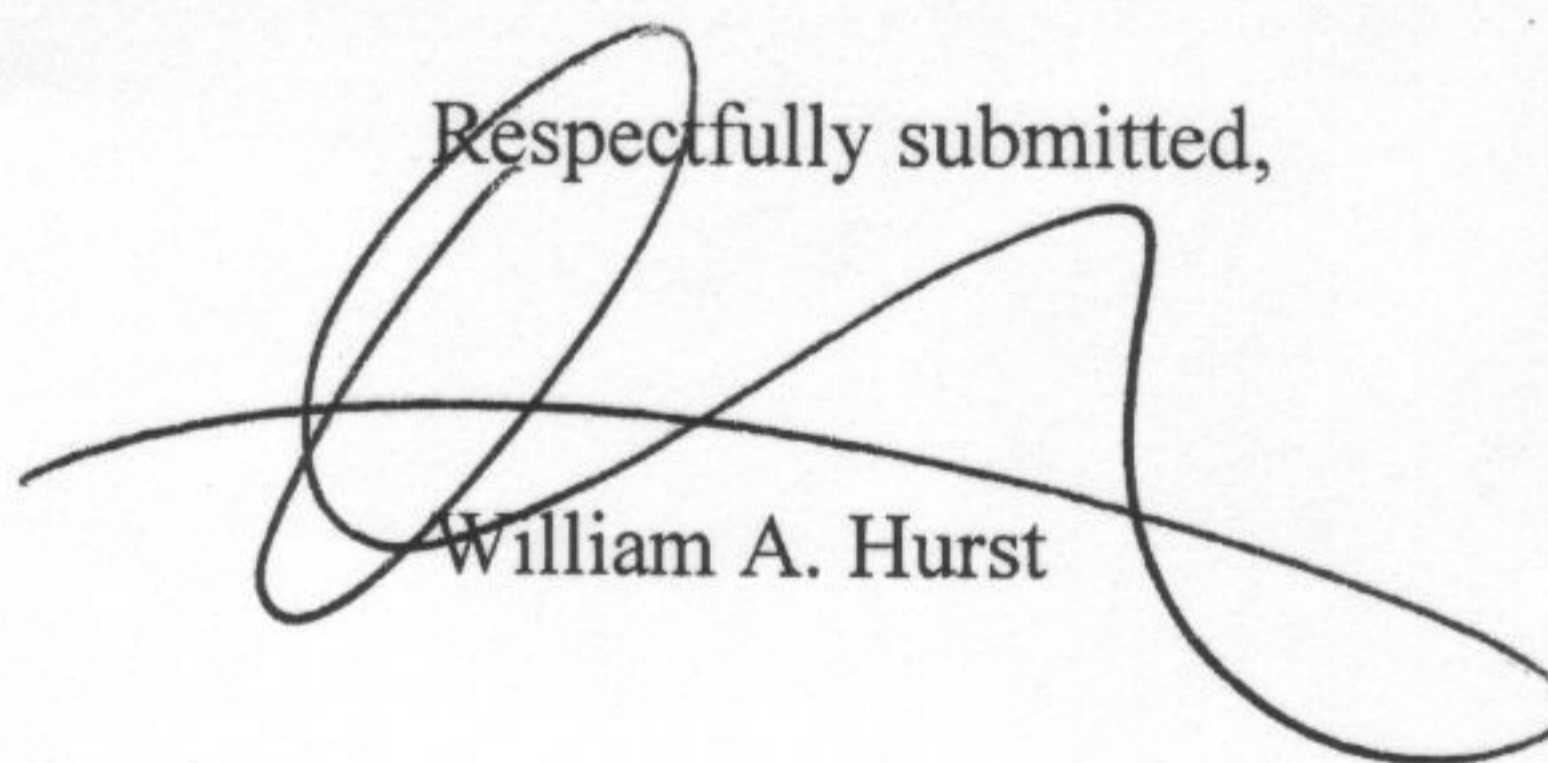
John M. Fowler, Executive Director
September 7, 2006
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rights from USPS, the vast majority of adverse impacts to historic properties that have been catalogued by GVSHP would never have occurred. Therefore, Section 106 review is both necessary and appropriate to protect the integrity of these historic properties.

Under the foregoing circumstances -- and consistent with ACHP's role as statutory steward and guardian of our Nation's historic resources -- the League respectfully requests that ACHP inquire further of USPS regarding its intent to comply with applicable law, even to the extent of calling upon USPS to participate in a meeting of all the stakeholders in order to discuss the possibility of drafting a Programmatic Agreement, setting forth processes and procedures for mitigating adverse impacts to historic properties under USPS's jurisdiction and control.

Thank you for your attention to these important matters.

Respectfully submitted,



William A. Hurst

cc: Jay DiLorenzo, President
Preservation League of NYS, Inc.
44 Central Avenue
Albany, New York 12206-3095

Hon. Bernadette Castro
NYS Office of Parks, Recreation and Historic Preservation
Agency Building No. 1, Empire State Plaza
Albany, New York 12238

Hon. Jerrold Nadler
U.S. Representative, 8th Congressional District, New York
201 Varick Street, Suite 669
New York, New York 10014

Hon. Carolyn Maloney
U.S. Representative, 14th Congressional District, New York
1651 3rd Avenue, Suite 311
New York, New York 10128-3679

Hon. Liz Kruger
NYS Senator, 26th District
Legislative Office Building, Rm. 302
The Capitol
Albany, New York 12247

John M. Fowler, Executive Director
September 7, 2006
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Hon. Christine Quinn
Speaker, The Council of the City of New York
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New York, New York 10007

Andrew Berman, Executive Director
Greenwich Village Society for Historic Preservation
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New York, New York 10003

Simeon Bankoff, Executive Director
Historic Districts Council
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September 9, 2006

John Fowler, Executive Director
Advisory Council on Historic Preservation ("ACHP")
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington, D.C. 20004

Bernadette Castro, Commissioner
New York State Office of Parks, Recreation, and Historic Preservation ("OPRHP")
Agency Building No. 1, Empire State Plaza
Albany, NY 12238

**RE: United States Postal Service's ("USPS") Continuing Violation of
Section 106 of the National Historical Preservation Act Regarding the
Sale of USPS's Air Rights**

Dear Executive Director Fowler and Commissioner Castro:

The Municipal Art Society is a private, non-profit membership organization whose mission is to promote a more livable city. Since 1893, the Society has worked to advocate excellence in urban design and planning, contemporary architecture, historic preservation and public art. I write today in support of the letter written by Andrew Berman, Executive Director of the Greenwich Village Society for Historic Preservation ("GVSHP"), and join in its plea for your two agencies to force the USPS to comply with its responsibilities under Section 106 of the National Historic Preservation Act.

GVSHP has discovered that USPS has, yet again, sought to sell the air rights from its Canal Street Station in Tribeca without subjecting the proposed sale to Section 106 review. The Canal Street Station, which itself is listed on the State and National Register of Historic Places, would become a part of this merged development lot if the sale of USPS's air rights went through. Furthermore, the New York City Landmarked AT&T Building is directly behind the site upon which the air rights would be used for development, thereby blocking public views of this structure. The potential negative impacts caused by USPS's sale of

its air rights (thus stemming development of a 20 story hotel) clearly triggers Section 106 review. As of the writing of this letter, the USPS has not initiated any such review.

As you both are aware, USPS has historically neglected to conduct Section 106 review for the sale of its air rights. The statute mandating review of the potential impacts to historical properties caused by a federal agency's undertaking is clear: if the USPS's sale of air rights may affect historical properties, then it must conduct Section 106 review before such a sale takes place. To that end, the USPS has previously conceded that the sale of air rights are subject to Section 106 review, as the sale of such rights potentially have negative and irreversible effects on historic properties.

In response to USPS's contention that the sale of its air rights could not be meaningfully reviewed under the Section 106 review process, GVSHP recommended guidelines for the Section 106 review of the sale of air rights by USPS. Adoption of these proposed guidelines were then supported, in writing, by State Senator Liz Kruger, NY City Councilmember Margarita Lopez, Community Boards 2, 3, and 4 Manhattan, and the Historic Districts Council, among others. The Municipal Art Society urges you to put into place these guidelines (see attached letter containing the guideline recommendations), which would ensure that meaningful Section 106 review actually takes place when USPS contemplates the sale of its air rights and take concrete and decisive action against USPS for its failure to obey the law.

The Society is deeply interested in, and concerned about, the potential impacts on historic resources posed by the USPS sale of its air rights. Unless and until the USPS complies with its required Section 106 review, your agencies must preclude further action by the USPS with regard to the sale of its air rights at the Canal Street Station. It is incumbent upon your agencies to ensure that the USPS complies with the NHPA so that the landscape of Manhattan is not further transformed to the detriment of our historic resources due to USPS's disregard of this important law.

Sincerely,

Katie Kendall, Esq.
Ralph C. Menapace Fellow

CC: Congressman Jerrold Nadler
Congressmember Carolyn Maloney
State Senator Liz Kruger
State Senator Martin Connor
State Senator Tom Duane

Manhattan Borough President Scott Stringer
City Council Speaker Christine Quinn
City Council Member Alan Gerson
City Council Member Rosie Mendez
City Council Member Dan Garodnick
City Council Landmarks Subcommittee Chair Jessica Lappin
Community Boards 1, 2, 3, 4, 5, and 6, Manhattan
National Trust for Historic Preservation
Preservation League of New York State
Greenwich Village Society for Historical Preservation
New York Landmarks Conservancy
Tribeca Community Association



HISTORIC DISTRICTS COUNCIL

THE ADVOCATE FOR NEW YORK CITY'S HISTORIC NEIGHBORHOODS

232 East 11th Street New York NY 10003
tel 212-614-9107 fax 212-614-9127 e-mail hdc@hdc.org

August 30, 2006

John Fowler, Executive Director
Advisory Council on Historic Preservation (ACHP)
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington D.C., 20004

Re: United States Postal Service's Repeated Violation of Section 106 of the National Historic Preservation Act Regarding Air Rights Sales

Dear Mr. Fowler,

The Historic Districts Council is disgusted and outraged by the United States Postal Service's continuing failure to obey *federal law* by ignoring its responsibilities under Section 106 of the National Historic Preservation Act. In America, we depend on our government setting an example for our citizens and it is extremely disheartening to witness this federal agency's flagrant disregard of environmental regulations that were put in place to benefit all Americans. HDC urges the Advisory Council to act in its role of steward of our country's historic resources bring the USPS to heel, and make them obey the law.

For nearly two years, USPS has been selling air rights in Manhattan without subjecting such sales to required Section 106 review. The Historic Districts Council brought this matter to the attention of your agency almost a year ago (in a letter directed to the USPS dated October 25, 2005 and copied to you, attached), and USPS admitted they had not lived up to their obligations under the law and committed to obey it in the future. However, guidelines suggested by our neighborhood partners, the Greenwich Village Society for Historic Preservation, to ensure that such review was followed in the future were never adopted. Following up on their concern, GVSHP has discovered that USPS is again seeking to sell air rights from one of its facilities without subjecting them to Section 106 review.

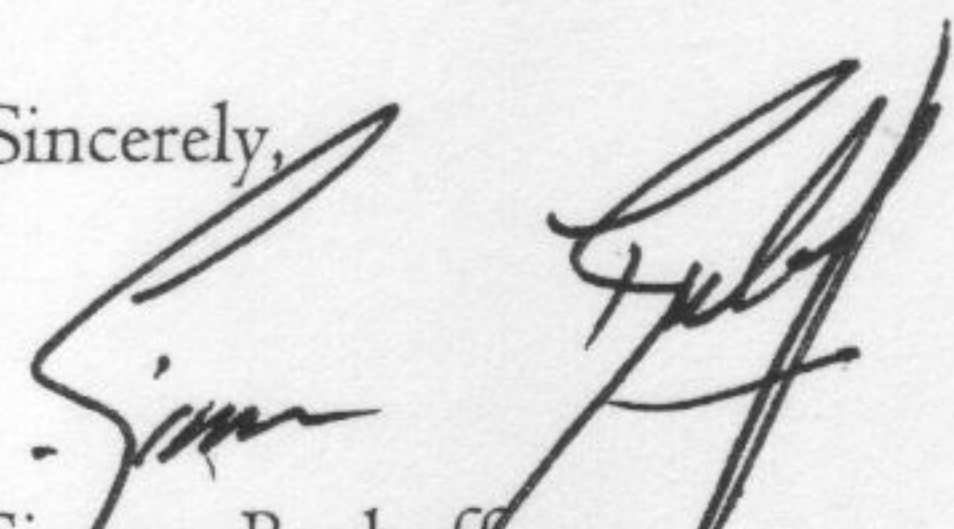
USPS is clearly not interested in voluntarily obeying the National Historic Preservation Act, in spite of its verbal and written assurances to the contrary. **This is an untenable situation which must not be let to stand.** Post offices are often the centerpiece of historic downtowns and encompass some of the finest civic architecture in America. The USPS, more than any other federal agency, serves as the representative of the federal government that most citizens have direct and regular contact with.

The USPS quite rightly cloaks itself in its proud historical traditions, and promotes its role in the building of our country. To have this agency brush off historical and environmental concerns that so directly affect the quality of life of thousands, if not millions of American citizens is appalling.

The Historic Districts Council urges the Advisory Council to put in place clear and strict guidelines (like those previously suggested by GVSHP and others) which would ensure that meaningful Section 106 review takes place when USPS contemplates the sale of air rights for its facilities. Furthermore, HDC insists that the Advisory Council use every power at its command to take action against USPS for its failure to obey the law, and to ensure that this sorry scenario does not continue to happen.

Thank you for your consideration of this important matter.

Sincerely,



Simeon Bankoff
Executive Director

CC: US Senator Charles Schumer
US Senator Hillary Rodham Clinton
US Rep Jerrold Nadler
US Rep Carolyn Maloney
US Rep Nydia Velaquez
Postmaster General John Potter, USPS
Richard Moe, National Trust for Historic Preservation
Other interested parties