



# SAN FRANCISCO PLANNING DEPARTMENT

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## Revised Certificate of Appropriateness Case Report

HEARING DATE: JUNE 6, 2012  
CONTINUED FROM: APRIL 4, 2012

*Filing Date:* March 13, 2012  
*Case No.:* **2011.0420A**  
*Project Address:* **VETERANS BUILDING, 401 VAN NESS AVENUE**  
*Historic Landmark:* Landmark No. 84; Civic Center Historic District  
*Zoning:* P (Public) Zoning District  
OS/96-X Height and Bulk District  
*Block/Lot:* 0786A/001  
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### PROPERTY DESCRIPTION

The **VETERANS BUILDING** at **401 VAN NESS AVENUE** is located on a large rectangular parcel at the southwest corner of McAllister Street and Van Ness Avenue (Assessor's Block 0786A Lot 001). Constructed in 1932, the Veterans Building is a four-story, steel-frame and reinforced concrete civic theater and office building designed in a Beaux-Arts architectural style by architects Brown and Bakewell. The Veterans Building, along with the nearly identical San Francisco Opera House and the adjacent Memorial Court, constitute the War Memorial Complex. The Veterans Building features a granite base and steps, terra cotta cladding, terra cotta ornamentation, steel-sash windows, and a leaded copper mansard roof. The Veterans Building contains 230,000 sq ft, and possesses a variety of uses, including a theater (Herbst Theater), reception space (Green Room), meeting space and offices for various veterans organizations (American Legion Post, War Memorial Trust beneficiaries, and other veterans groups), meeting space and offices for various city agencies, art galleries, and a law library (fourth floor). The Veterans Building is Landmark No. 84, and is designated as "contributory" to the Civic Center Historic District, which is listed in Article 10 of the San Francisco Planning Code.

### PROJECT DESCRIPTION

The War Memorial Board of Trustees (Project Sponsor) proposes to rehabilitate, refurbish, and seismically upgrade the Veterans Building. As noted in designating ordinance for the landmark and the surrounding historic district, this Certificate of Appropriateness authorizes the Historic Preservation

Commission to review and approve alterations on the exterior. In detail, the exterior would be rehabilitated as follows:

- Cleaning: Cleaning of exterior façade; removal of staining on granite architectural features caused by ferrous and cuprous metals.
- Window Rehabilitation: Rehabilitation of the existing steel-sash windows, including replacement of broken or missing glazing.
- Terra Cotta Repair/Replacement: Repair of the existing terra cotta cladding and features (balustrades, friezes, and balconies), where spalling, cracking and de-bonding is evident. If necessary, replacement terra cotta units shall be manufactured to match the historic terra cotta finish.
- Roof Replacement: Replacement of the existing membrane roof with a new roof membrane, and replacement of the existing lead-coated copper roof panels with new zinc panels.
- Infill Roof Lightwell: Infill of a roof lightwell adjacent to the main skylight through construction of a new steel-frame, new concrete roof slab and new built-up roof.
- Skylight Replacement: Replacement of the existing steel-sash skylights, which are heavily deteriorated, with new aluminum-sash skylights to match. New skylight profiles will match the size and width of historic profiles.
- New Rooftop Equipment: Installation of new energy-efficient rooftop mechanical equipment, in support of the facility modernization/upgrade.

The seismic upgrade and interior alterations do not require Certificate of Appropriateness approval; however, the Historic Preservation Commission will review and forward comments to the War Memorial Board of Trustees for consideration (See Case No. 2011.0420U). In detail, the interior would be rehabilitated as follows:

- Interior Remodeling/Reorganization:
  - *First Floor*: Construction of a museum/gallery for the San Francisco Arts Commission, as well as a new ticket sales center for the theater and a public café; Refurbishment of the Green Room, including restoration of historic finishes, parquet floor, and chandeliers; Upgrade of Herbst Theater, including refurbishment of the stage-level accessible dressing rooms, stage rigging, and controls; Construction of support space for the Herbst Theater, which will include removal of the non-historic seating in the theater, construction of new stage-level accessible dressing rooms, rehearsal and warm up areas, and equipment storage. The public corridor on the west side will be enclosed to accommodate support space for the theater.
  - *Second Floor*: Reconfigure the office and meeting space allocated to the San Francisco Posts of the American Legion, including removal of some interior historic finishes and installation of modern finishes. The majority of the interior historic finishes within the original meeting rooms will be retained, though the elevated platforms will be removed in some of the rooms.

- *Third Floor:* Relocation of the War Memorial Department to this floor level, and new offices for the Art Commission.
- *Fourth Floor:* Reconfigure the fourth floor to accommodate the San Francisco Opera (rehearsal, production and office space), and construction of a new 300-seat rehearsal/event space and gallery.
- *New Restrooms:* Construction of new restrooms on all four floors and basement level.
- Seismic Upgrade:
  - Addition of concrete shear walls at various locations throughout the building, including the public corridor walls surrounding the Herbst Theatre and at the four main stair wells;
  - Strengthening of the existing concrete stage walls by epoxy injecting cracks and increasing wall thickness by reinforced concrete;
  - Strengthening of existing perimeter walls in northeast and southeast corners of the building by increasing wall thickness with reinforced concrete;
  - Strengthening of diaphragm collectors at all floor levels by adding new steel members;
  - Strengthening of third and fourth floor diaphragm by addition of bracing members;
  - Strengthening of roof diaphragm by addition of bracing members on all four sides of the building and reinforced concrete at local areas;
  - Addition of lateral bracing to the existing plaster ceilings at the Herbst Theatre, the Main Lobby, the main corridors and the Fourth floor;
  - Addition of bracing to hollow clay tile walls;
  - Provision of adequate support of the stone veneer at Herbst Theatre; and
  - Crack repair of walls, floors and the roof through epoxy injection.
- Mechanical, Electrical and Plumbing Upgrades:
  - Upgrades to mechanical (heating, ventilation, air conditioning, fire protection, domestic and drinking water, and computerized building management), electrical (including emergency power supply), and telecommunication cabling systems; and
  - Replacement of two main passenger elevations and renovation of a freight elevator
- Infrastructure: Replacement of attic catwalks and service platform.
- ADA Upgrades: Various improvements to meet Americans with Disabilities Act (ADA) compliance, including clarification of path of travel, new drinking fountains and accessible restrooms.
- Hazardous Materials Abatement: Asbestos and lead abatement, where necessary.

## OTHER ACTIONS REQUIRED

Proposed work requires a Building Permit.

## COMPLIANCE WITH THE PLANNING CODE PROVISIONS

The proposed project is in compliance with all other provisions of the Planning Code.

## APPLICABLE PRESERVATION STANDARDS

### ARTICLE 10

A Certificate of Appropriateness is required for any construction, alteration, removal, or demolition of a designated Landmark for which a City permit is required. In appraising a proposal for a Certificate of Appropriateness, the Historic Preservation Commission should consider the factors of architectural style, design, arrangement, texture, materials, color, and other pertinent factors. Section 1006.7 of the Planning Code provides in relevant part as follows:

- a) The proposed work shall be appropriate for and consistent with the effectuation of the purposes of Article 10.
- b) For applications pertaining to landmark sites, the proposed work shall preserve, enhance or restore, and shall not damage or destroy, the exterior architectural features of the landmark and, where specified in the designating ordinance pursuant to Section 1004(c), its major interior architectural features. The proposed work shall not adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting, nor of the historic district in applicable cases.
- c) For applications pertaining to property in historic districts, other than on a designated landmark site, any new construction, addition or exterior change shall be compatible with the character of the historic district as described in the designating ordinance; and, in any exterior change, reasonable efforts shall be made to preserve, enhance or restore, and not to damage or destroy, the exterior architectural features of the subject property which are compatible with the character of the historic district. Notwithstanding the foregoing, for any exterior change where the subject property is not already compatible with the character of the historic district, reasonable efforts shall be made to produce compatibility, and in no event shall there be a greater deviation from compatibility. Where the required compatibility exists, the application for a Certificate of Appropriateness shall be approved.
- d) For applications pertaining to all property in historic districts, the proposed work shall also conform to such further standards as may be embodied in the ordinance designating the historic district.

### THE SECRETARY OF THE INTERIOR'S STANDARDS

Rehabilitation is the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features that convey its historical, cultural, or architectural values. The Rehabilitation Standards provide, in relevant part(s):

**Standard 1:** A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

*The proposed project would retain the subject property's use as a theater and office, and would maintain the area's civic character. The new uses, including the café and event space, will require minimal changes to the character-defining features of the interior, and will not impact any historic fabric.*

*Therefore, the proposed project complies with Rehabilitation Standard 1.*

**Standard 2:** The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

*In general, the proposed project maintains the historic character of the Veterans Building and the surrounding Civic Center Historic District, since many of the alterations are planned for the interior of the Veterans Building and since exterior work is limited to preservation, rehabilitation, and restoration of existing features, such as the steel-sash windows, skylights, and terra cotta. The exterior work will not remove historic materials that characterize the property and district. The exterior work will replace some historic features, including the historic skylights and lead-coated copper roof panels, but the replacement features will be a compatible substitute material and will match in design, color, shape, and profile. Within the interior, the proposed project would largely avoid removal of historic materials, as evidenced by the extensive plan to repair, rehabilitate, and reinstall many of the existing interior features, such as the electrical switches and faceplates, doors and hardware, and light fixtures. The project would impact the configuration of the west end of the first floor corridor, which would be altered to accommodate a larger dressing room and other support spaces for the Herbst Theater. The corridor would be altered in such a manner to be easily reversible, and to maintain a semblance of the building's original layout and finishes.*

*Therefore, the proposed project complies with Rehabilitation Standard 2.*

**Standard 3:** Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

*The proposed project does not involve conjectural alterations to the subject property. In general, all restoration is based upon historic documentation or retained historic features, such as the restoration of the historic light fixtures in the Main Lobby of the Veterans Building.*

*Therefore, the proposed project complies with Rehabilitation Standard 3.*

**Standard 4:** Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

*The Veterans Building has undergone some alterations, primarily within the interior, since it was constructed in 1932; however, none of the alterations have acquired significance in their own right. In the Herbst Theater, the removal of the non-historic side mezzanine seating does not constitute an alteration that has acquired significance in its own right. These seats were a later alteration to the property constructed in 1978, which is outside the period of significance. Consequently, the proposed project does not involve alterations to the Veterans Building or Civic Center Historic District, which have acquired significance in their own right.*

*Therefore, the proposed project complies with Rehabilitation Standard 4.*

**Standard 5:** Distinctive features, finishes, and construction techniques or examples of fine craftsmanship that characterize a property will be preserved.

*The proposed project would preserve all distinctive materials, features, finishes or construction techniques that characterize the subject property, including the historic interior finishes found within the Herbst Theater, Main Lobby, and first floor corridors. As part of the seismic upgrade, the proposed project would strengthen the existing corridor walls on each of the floors either with concrete shear walls or with hollow clay tile bracing. To accommodate this seismic scheme, the proposed project would remove, catalog, clean and reinstall all significant interior features finishes found on each of the floors, including historic wainscots, base molding, wood office partitions, drinking fountains, telephone closets, doors, etc. For any historic plaster impacted by the seismic scheme, new plaster would be designed to match. In general, removal or impact to significant ornamental features would be avoided by the proposed project. Similarly, gilded features would be re-gilded in-kind to match the original color and luster. To ensure compliance with Standard 5, the project sponsor is working with a qualified professional with experience in historic architecture, who will monitor the preservation and treatment of distinctive features, finishes, construction techniques and fine craftsmanship.*

*Therefore, the proposed project complies with Rehabilitation Standard 5.*

**Standard 6:** Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacements of a distinctive feature, the new feature will match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

*The proposed project adopts an ethic of repair over replace, and includes repairing exterior features and many of the historic interior features and finishes, including historic trim, doors and hardware, and light fixtures. Since the original architectural drawings and specifications drafted by architect Arthur Brown Jr. in 1932 are available, any restoration work would be guided by appropriate historic documentation. On the exterior, the majority of the deteriorated features, including the steel-sash windows and terra cotta cladding, will be repaired. The proposed project will replace the deteriorated historic steel-frame skylights with new aluminum-sash skylights. These new skylights will match the sash profile, design and configuration of the historic skylights. Similarly, the proposed project will replace the existing historic leaded copper roof panels with new zinc roof panels, which will closely match the design, color and finish of the historic roof panels.*

*Therefore, the proposed project complies with Rehabilitation Standard 6.*

**Standard 7:** Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

*The proposed project includes an extensive cleaning program, which would clean the granite, terra cotta, and bronze elements. For the terra cotta and granite elements, the project specifications identify a chemical treatment (primarily ProSoCo products or mild detergent), mock-up program and call for pressure washing. This cleaning program is sensitive to the historic materials and would not cause damage. For the bronze elements, the project specifications call for use of water, non-ionic detergent, mineral spirits or a mild cleaning solution—all of which would not cause damage to historic materials.*

*Therefore, the proposed project complies with Rehabilitation Standard 7.*

**Standard 8:** Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures will be undertaken.

*Based upon provided information, the proposed project would involve minimal ground disturbance limited to the superficial re-grading for the sidewalk and the re-paving of the driveway; therefore, no archaeological resources would be impacted.*

*Therefore, the proposed project complies with Rehabilitation Standard 8.*

**Standard 9:** New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

*The proposed project does not involve any new additions. Rather, the proposed project is focused upon the preservation, rehabilitation, and restoration of the Veterans Building through exterior and interior alterations, and a seismic upgrade. The exterior alterations will not destroy any historic materials, features or spatial relationships, and all work on the exterior is in keeping with the Secretary's Standards. The exterior alterations on the roof, including the infill of the roof lightwell adjacent to the main skylight, would not impact any historic materials, nor is this space considered character-defining to the property. Within the interior, the proposed project would impact the west end of the first floor corridor due to the expansion of the Herbst Theater dressing rooms, and the fourth floor law library, which would be converted into an event/auditorium space. In general, these two alterations would be in keeping with the building's historic character, and would maintain the historic finishes and features.*

*Therefore, the proposed project complies with Rehabilitation Standard 9.*

**Standard 10:** New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

*The proposed project includes a seismic upgrade, which is not typically considered a reversible feature. However, this seismic upgrade would be undertaken in a manner that respects the building's historic character and maintains significant interior features. The seismic upgrade would ensure the longevity of the existing building and would address life safety requirements. Other aspects of the project, including enclosing a portion of the first floor public corridor for the new Herbst Theater support spaces, would maintain and preserve the building's historic fabric, and would maintain the essential form and integrity of the subject property and the surrounding historic district. Typically, these new interior alterations are reversible and respect the building's character-defining features. No new additions are planned for the subject property.*

*Therefore, the proposed project complies with Rehabilitation Standard 10.*

**Summary:** The Department finds that the overall project is consistent with the *Secretary of the Interior Standards for Rehabilitation*.

## **PUBLIC/NEIGHBORHOOD INPUT**

**[To address Commission comments from the April 4, 2012 Historic Preservation Commission Hearing, the Department has included updated information and additional narrative in *italicized text*]**

*On April 11, 2012, the Planning Department met with community members, Jerome (Jerry) Sapiro and Paul Cox, to discuss the proposed project. During this meeting, Mr. Sapiro and Mr. Cox expressed three issues: 1) Ownership of the Veterans Building; 2) Public Notice for the Certificate of Appropriateness; and, 3) Requiring a Certificate of Appropriateness for interior alterations and seismic work. The Planning Department addressed these issues in the following manner: 1) the Historic Preservation Commission does not have jurisdiction over the ownership of the Veterans Building; 2) the Department conducted a second public notification of the Certificate of Appropriateness to*



*ensure that all owners and occupants within 300 ft of the subject property were notified of the public hearing on June 6<sup>th</sup>, 2012; and, 3) In consultation with the City Attorney, the Department has been advised that a Certificate of Appropriateness is not required for interior alterations to the subject property, as outlined within the San Francisco Planning Code and the designating ordinance for the San Francisco War Memorial (Ordinance No. 480-76).*

*On May 29, 2012, the Planning Department received letters from the 8<sup>th</sup> District of the American Legion and the American Legion War Memorial Commission. These letters have been included in the Commissioner packets.*

## ISSUES & OTHER CONSIDERATIONS

Constructed in 1932 by architects Brown & Bakewell, the Veterans Building and the surrounding San Francisco Civic Center Historic District are significant under National Register Criterion A (Events) and Criterion C (Design/Construction) within the areas of architecture, community planning, politic/government and recreation for its association with Panama-Pacific International Exposition of 1915. Specifically, the San Francisco Civic Center is notable for: the founding of the United Nations; the drafting and signing of the post-WWII peace treaties with Japan; municipal reform movements; post-earthquake reconstruction; early public and city planning; high artistic values as associated with architecture; and one of the finest and most complete manifestations of the "City Beautiful" architectural movement. The period of significance for the district and the subject property ranges from 1913 to 1951.

The character-defining features of the Veterans Building include the features documented as "Very Significant," "Significant" and "Contributing" within the diagrams and matrices produced by Carey & Company within the Appendix of the Historic Structure Report for the Veterans Building (dated January 25, 2012). A copy of the Historic Structure Report is included on the CD provided with the Commissioner packets.

The Department has no issues with the proposed project. As detailed below, the Department does recommend additional conditions on certain elements of the design to ensure compatibility with the building's historic character (see below).

**[To address Commission comments from the April 4, 2012 Historic Preservation Commission Hearing, the Department has included updated information and additional narrative in *italicized text*]**

*To address concerns with the original public notice, the Department conducted a second notice for the June 6<sup>th</sup> public hearing for the Veterans Building on April 27, 2012. This revised notice included all owners and occupants within 300 ft of the subject property, and was issued 40 days prior to the public hearing, more than the 20 day requirement. As part of this notification, new posters were also affixed to the subject property.*

*At the request of the HPC, the Department has provided a summary of the ownership of the War Memorial Veterans Building at 401 Van Ness Avenue, as provided by the Managing Director of the San Francisco War Memorial and Performing Arts Center:*

*"On August 19, 1921, the University of California Board of Regents (the "Regents") and certain individuals named as private trustees entered into a trust agreement (the "Trust") for the construction and maintenance of a San Francisco War Memorial honoring the memory of the*

*soldiers, sailors, marines, and war workers who had contributed to winning World War I. The War Memorial was to consist of a memorial court enclosed by a building or group of buildings. The buildings were to house three named beneficiaries of the Trust, the San Francisco Musical Association and Symphony Orchestra (the "Symphony"), the San Francisco Posts of the American Legion collectively (the "Posts") and the San Francisco Art Association, now the San Francisco Museum of Modern Art, (the "Museum").*

*The private trustees purchased the site bounded by Hayes, Franklin, and Grove Streets and Van Ness Avenue for the proposed San Francisco War Memorial. In 1922, it was decided that the lot purchased by the private trustees was too small for the proposed project. In early 1923, the private trustees proposed to the City and County of San Francisco that the San Francisco War Memorial be erected on the Civic Center site bounded by Grove, Franklin and McAllister Streets and Van Ness Avenue, and asked the City to join forces with them to purchase the necessary land. The City agreed, and the new site was acquired, certain lots purchased by the City and certain lots purchased by the private trustees.*

*By 1926, it was concluded that privately subscribed funds for the new San Francisco War Memorial were inadequate, and the City's Board of Supervisors agreed to submit a \$4 million bond issue to the voters for construction of the War Memorial.*

*On June 14, 1927, San Francisco voters approved a bond issue to complete the War Memorial project, and on November 6, 1928, the voters approved a Charter Amendment creating a City War Memorial Board of Trustees.*

*On November 10, 1930, the San Francisco Board of Supervisors adopted Resolution No. 33407 (New Series), accepting the offer of the Regents and private trustees to convey to the City all of the privately subscribed funds and other assets and property held under the 1921 Trust Agreement subject to the terms and conditions of the Trust.*

*Construction of the War Memorial, consisting of the War Memorial Opera House, the War Memorial Veterans Building and the connecting Memorial Court, was completed in 1932.*

*The City's War Memorial Board of Trustees is entrusted with managing the San Francisco War Memorial. The Board of Trustees is empowered to allocate space among the beneficiaries of the Trust, consistent with the terms of the Trust. In making decisions regarding the Trust property, the Board of Trustees considers the needs of the beneficiaries and beneficial uses of the Trust property. The Trust further provides that parts or portions of the building(s) not necessary to be used for the beneficiaries may be used by the Board of Trustees for any charitable or patriotic purposes the Board may determine.*

*Each of the three named beneficiaries of the Trust has certain rights to occupy portions of the War Memorial buildings. These rights are subject to certain conditions set forth in the Trust Agreement.*

*In anticipation of a major seismic retrofit and renovation of the Veterans Building, in 2000, the War Memorial Board of Trustees requested advice and guidance from the City Attorney in its determinations regarding the allocation of space to the beneficiary occupants of the Veterans Building, the Posts and the Museum. In making its post-renovation space allocation determinations for the Veterans Building, the War Memorial has followed the advice and guidance of the City Attorney.*

*Attachments:*

- 1. Board of Supervisors Resolution No. 33407 (New Series), accepting the offer of the Regents and private trustees to convey to the City all of the privately subscribed funds and other assets and property held under the 1921 Trust Agreement subject to the terms and conditions of the Trust.*
- 2. Preliminary Title Report prepared by Chicago Title Company, May 24, 2011, for property address: 301 & 401 Van Ness Avenue, San Francisco, California."*

*The Department has included the aforementioned attachments in the Commissioner packets.*

## STAFF ANALYSIS

Included as an exhibit are architectural drawings (plans, elevations and sections) of the existing building and the proposed project, as well as structural drawings of the proposed seismic upgrade. Based on the requirements of Article 10 and the *Secretary of Interior's Standards*, staff has determined the following:

**Exterior Alterations:** The proposed project includes a number of exterior alterations including: a cleaning program; steel-sash window rehabilitation; a terra cotta repair/replacement program; skylight replacement; roof replacement; infill of a roof lightwell; and installation of new rooftop. As noted above, these alterations are consistent with the *Secretary of the Interior's Standards for Rehabilitation*, and do not damage or destroy the exterior architectural features of the landmark property, nor do these alterations affect the overall character of the surrounding historic district.

In general, this work will clean, repair or restore the character-defining elements of the exterior, and will preserve and rehabilitate deteriorated features of the landmark. As noted in Carey & Company's Historic Structure Report (HSR; dated January 25, 2012), the Project Specifications (Spec; dated February 3, 2012) and the 50% Schematic Design Architectural Drawings, the Project Sponsor has outlined a program for cleaning, repairing, and restoring exterior architectural features and materials, which is organized and detailed as follows:

- Roof .....HSR, Page 49-55;  
Spec, Section 07 61 00-Zinc Roofing and Coping
- Skylights .....HSR, Page 55-58;  
Spec, Section 08 63 00-Metal-Framed Skylights
- Terra Cotta.....HSR, Page 60-64;  
50% Schematic Arch. Drawings, Sheet B805

- Windows.....HSR, Page 64-67;  
Spec, Section 04 21 17-Terra Cotta Restoration;  
Spec, Section 04 21 50-Terra Cotta Replacement
- Below Grade Spaces and Foundations ....HSR, Page 72-75  
Spec, Section 08 51 00-Metal Window Rehabilitation

Additional information on the Project Sponsor’s exterior proposal is detailed in the architectural drawings as follows:

- General Info..... Sheet G004; H000
- Damage & Repair Documentation (Plans)..... Sheets H201 thru H244
- Damage & Repair Documentation (Int. Elevations) ..... Sheets H300 thru H356
- Site Plan ..... Sheet A101
- Basement Plan thru Roof Plan ..... Sheets A200 thru A206
- Roof Plan (Repair) ..... Sheet B106
- Exterior Elevations (East and South) ..... Sheet B201
- Exterior Elevations (North and West) ..... Sheet B202
- Skylight Details..... Sheet B803

As noted in Article 10, Appendix J, Section 9:

(b) For applications pertaining to sites, buildings, structures and objects in the Civic Center Historic District, any alteration, construction, relocation or demolition, shall comply with the standards contained in Section 1017(c), and shall (1) be compatible with respect to height, massing, fenestration, materials, color, texture, detail, style, scale and proportion, signage, landscaping and street furniture which may define the character of the historic district as described in Section 5 of this designating ordinance and in the Civic Center Urban Design Guidelines adopted by the City Planning Commission; and (2) preserve, enhance or restore, and not damage or destroy, the exterior architectural appearance of the subject site, building, structure and object which is compatible with the character of the Historic District.

(d) Treatment of Stone Surfaces. Numerous structures in the Historic District exhibit stone, terra cotta, or brick exterior surfacing. Proposed treatment of said masonry surfaces with any acid wash, sandblasting, high pressure wash or other abrasive methods is discouraged as such abrasive treatments can severely damage historic masonry surfaces.

As noted above, the exterior alterations would preserve, repair and restore character-defining exterior materials, including the terra cotta cladding and the steel-sash windows, and would correct material

deficiencies with existing historic fabric by replacing the lead-coated copper roof panels and the steel-frame skylights with compatible substitute materials. These alterations would be consistent with Article 10, Appendix J, Section 9(b) and (d) in the following manner:

- Cleaning: The project specifications for the cleaning of the terra cotta and granite call for a cleaning mock-up to determine the appropriate product, dwell times and pressures. In addition, bronze elements would be cleaned in place and polished. (See Spec 04 01 25-Masonry Cleaning; Spec 05 01 71-Bronze Maintenance)

*Staff Analysis:* Staff has determined that this scope for work is appropriate. This treatment would not damage historic materials on the exterior. No abrasive treatments, such as acid washing, sandblasting or high pressure washing, would occur as part of the project.

- Window Rehabilitation: The project drawings and specifications call for the rehabilitation of the existing steel-sash windows, which will be repaired and repainted. Work will include: removal of cracked, broken or non-matching glazing, removal of loose paint and corrosion from windows and frames, application of new protective paint coating and sealant, insertion of new glazing (to match original glazing) and glazing compound, and restoration of window operability. (See Spec 08 51 00-Metal Window Rehabilitation; Architectural Drawings, Sheet B804)

*Staff Analysis:* Staff has determined that this scope for work is appropriate and will assist in repairing the existing deteriorated window frames and sashes. Further, this treatment would not damage the historic materials on the exterior and would assist in preserving a character-defining feature of the building and surrounding historic district. To ensure that work is performed according to the project specifications, staff has provided a condition of approval for additional information on the windows and a window mock-up (see below).

- Terra Cotta Repair/Replacement: The project drawings and specifications call for the repair of the existing terra cotta cladding and features (balustrades, friezes, and balconies), where spalling, cracking and de-bonding is evident. If necessary, replacement terra cotta units shall be manufactured to match the historic terra cotta finish. For the terra cotta repair/restoration, work will include: removal of biological growth, securing loose, displaced or cracked terra cotta units, routing and pointing cracks, removal of non-used metal inserts, removal of all loose bisque spalls, removal of non-matching patches and coat repairs, and re-coating non-color-matched patches. For the terra cotta replacement, new terra cotta units would be fabricated based upon the existing terra cotta units. The new terra cotta would be designed to match in exposed color, pattern, texture, shape, size and profile. (See Spec 03 93 00-Concrete Rehabilitation; Spec 04 06 00-Masonry Mortar; Spec 04 10 27-Repointing; Spec 04 21 17-Terra Cotta Restoration; Section 04 21 50-Terra Cotta Replacement; See Architectural Drawings, Sheet B201, B202, B805 and B806)

*Staff Analysis:* Staff has determined that this scope for work is appropriate and will assist in repairing the existing terra cotta units. This treatment would also appropriately replace severely deteriorated terra units with new, compatible terra cotta units that would match in design, profile, colors, and shape. This treatment would assist in preserving a character-defining feature of the building and surrounding historic district.

To ensure that work is performed according to the project specifications, staff has provided a condition of approval for a terra cotta mock-up (see below).

- **Roof Replacement:** The proposed project would the replace the existing membrane roof with a new roof membrane, and would replace the existing lead-coated copper roof panels with new zinc panels. Included within this work is replacement of the steep slope metal roof, the gutter linings, and the copings and flashings at the parapet, water table and cornices. The project specifications identify terne-coated copper as an alternate to zinc. (See Spec 07 52 16-Styrene-Butadiene-Styrene (SBS) Modified Bituminous Membrane Roofing; Spec 07 61 00 Zinc Roofing and Copings; Architectural Drawings, Sheet B106)

*Staff Analysis:* Staff has determined that this scope for work is appropriate and will assist in repairing the deteriorated elements of the metal roof. The replacement of the copper roof for a zinc roof is considered an acceptable substitute material, as supported by the National Park Service in Preservation Brief No. 4 – Roofing for Historic Buildings and Preservation Brief No. 16 – The Use of Substitute Materials on Historic Building Exteriors. Further, the replacement zinc roof would match the existing historic copper roof in design, form, surface, texture, and color. This aspect of the project would preserve an important visual characteristic of the building and surrounding historic district.

- **Infill Roof Lightwell:** The proposed project would infill a roof lightwell, adjacent to the main skylight, with a new steel-frame, new concrete roof slab and new built-up roof. This roof infill would be in support of the reconfiguration/reorganization of the Herbst Theater ancillary spaces. (See Architectural Drawings, Sheet A400)

*Staff Analysis:* Staff has determined that this scope for work appears appropriate, is not visible from any public right of way, and will not impact any character-defining features on the building's exterior.

- **Skylight Replacement:** The proposed project would replace the existing steel-sash skylights, which are heavily deteriorated, with new aluminum-sash skylights. These new skylights would match the historic skylights in design, profile, size and scale. Specifically, terne-coated copper custom caps and zinc paneling would be applied over the aluminum skylight frames, in order to maintain the visual appearance of the historic skylights. (See Spec 08 63 00-Metal-Framed Skylights; Architectural Drawings, Sheet B106, B803)

*Staff Analysis:* Staff has determined that this scope for work is appropriate and will replace a deteriorated feature of the landmark property. The existing skylights are currently deteriorated, and the new skylights will assist in correcting material deficiencies caused by age and weather. The replacement of skylights is acceptable, since the new skylights will match the design, form, surface, texture, and color of the historic skylights. This aspect of the project would preserve an important visual characteristic of the building and surrounding historic district.

- New Rooftop Equipment: The proposed project calls for the installation of new energy-efficient rooftop mechanical equipment, in support of the facility modernization/upgrade. (See Architectural Drawings, Sheet A206, B106)

*Staff Analysis*: Staff has determined that this scope for work appears appropriate, is not visible from any public right of way, and will not impact any character-defining features on the building's exterior.

**Seismic Upgrade/Interior Alterations**: The proposed project includes a seismic upgrade and various interior alterations to reconfigure existing offices and accommodate new tenants/uses. This interior work does not require a Certificate of Appropriateness; however, staff has reviewed the interior alterations and seismic upgrade, and finds them compatible with the Secretary of the Interior's Standards for Rehabilitation.

The seismic upgrade includes a number of structural upgrades, including construction of new concrete shear walls, strengthening existing concrete walls with epoxy injections, and strengthening diaphragm connectors, among other methods. The seismic upgrade will ensure that the existing building meets current building and safety codes, which will likely lead to the building's longevity during natural disaster. The seismic upgrade will not adversely impact any character-defining features of the subject property or the surrounding historic district, since all removed architectural features will be salvaged and reinstalled back in place, as specified in the Salvage/Protection Plans (See Sheet H000 to H150; Spec 02 42 91-Protection and Salvage of Historic Elements).

Similarly, the interior alterations would maintain nearly all of the building's interior character-defining features, and would better accommodate the new uses and new tenants. The basement level will be primarily used as storage. The first floor will accommodate more public functions, such as a café and a gallery for the Arts Commission. Historic finishes within the remaining offices on the first floor will be salvaged and reinstalled on the second floor. The Herbst Theater renovations will preserve the character-defining features of the theater and the adjacent public corridor, which will be partially closed off to support a new storage room for the adjacent stage. This public corridor will retain its general form and finishes, and will feature a new wall and doorways. Also occurring on the west end of the building are renovations to the existing offices and meeting rooms, which will be converted into a new green room, six new dressing rooms, and a multipurpose/chorus dressing room for the Herbst Theater. The second floor will be reconfigured to better accommodate the functions of the various veterans organizations. In particular, the historic meeting rooms will retain the majority of their historic wood finishes; though the raised platforms in some of the rooms will be removed. On the third floor, which has been severely altered and does not retain much historic fabric, the interior alterations will reconfigure the existing spaces for new offices and conference rooms. Finally, on the fourth floor, the San Francisco Opera will reconfigure the existing space into a new performance/event space, a new education/media room, a costume shop, new offices, and new storage spaces. Any historic features on this level will be retained, including the columns, plaster walls, and historic laylights, which will be re-glazed. At this level, new internal lighting and a new steel frame would be installed at the laylight level. Overall, the interior alterations retain and preserve those important character-defining features of the landmark property in a manner that is consistent with accepted preservation standards.

## CONDITIONS OF APPROVAL

To ensure that the proposed work is undertaken in conformance with this Certificate of Appropriateness, staff recommends the following conditions:

1. As part of the Building Permit, the Project Sponsor shall provide a mock-up of the window rehabilitation for review and approval by Planning Department Preservation Staff. The Project Sponsor shall provide additional information on the window rehabilitation, including a detailed conditions assessment of each window, a window schedule, and appropriate plan details, as determined by staff.
2. As part of the Building Permit, the Project Sponsor shall provide a mock-up of the terra cotta repair and restoration for review and approval by Planning Department Preservation Staff. During or prior to the mock-up, the Project Sponsor shall provide glaze samples, which shall match the existing glaze of the historic terra cotta in shade and tone. This sample shall include an accurate range of colors to match the landmark building.

Based on the requirements of Article 10 and the *Secretary of Interior's Standards*, staff has determined that the proposed work will not negatively affect the subject building or surrounding eligible historic district.

## ENVIRONMENTAL REVIEW STATUS

The Project received an exemption from the California Environmental Quality Act ("CEQA") as a Class 1 and 31 Categorical Exemption (CEQA Guideline Section 15301(a) and (d), and Section 15331) because the project involves exterior and interior alteration to the existing building and meets the *Secretary of the Interior's Standards for Rehabilitation*.

## PLANNING DEPARTMENT RECOMMENDATION

Planning Department staff recommends APPROVAL WITH CONDITIONS of the proposed project as it appears to meet the *Secretary of the Interior Standards for Rehabilitation* and requirements of Article 10.

## ATTACHMENTS

- Draft Motion
- Exhibits, including Parcel Map, Sanborn Map, Zoning Map, Aerial Photos, and Site Photos
- Landmark Designation Ordinance
- Half-Size 50% Schematic Design Architectural Drawings by Department of Public Works-Bureau of Architecture (dated February 3, 2012; Includes General Info & Code; Demolition and Protection; Historic Preservation; Structural; and Building Envelope) [Included in the April 4, 2012 Commission Packets]
- San Francisco Opera Tenant Improvement, 4<sup>th</sup> Floor by Mark Cavagnero Associates (dated February 29, 2012) [Included in the April 4, 2012 Commission Packets]



- CD (with electronic files of: Certificate of Appropriateness Schematic Design Planning Review Presentation (dated April 4, 2012); 50% Schematic Design Architectural Drawings by Department of Public Works-Bureau of Architecture (dated February 3, 2012; Includes Plumbing, Fire Protection, Electrical, Acoustic, Security, Telecom, AV, Theatrical and Vertical Transportation); Historic Structure Report by Carey & Co (dated January 25, 2012); Luminaire Documentation by Auerbach Glasgow and French (dated February 3, 2012); and Project Specifications by Department of Public Works, Building Design and Construction (Dated February 3, 2012) *[Included in the April 4, 2012 Commission Packets]*
- *Letter from Mario Benfield, Commander, 8<sup>th</sup> District of the American Legion, Department of California (May 28, 2012)*
- *Letter from Nelson C. Lum, Chairman, American Legion War Memorial Commission (May 28, 2012)*
- *Letter from Nelson C. Lum, Chairman, American Legion War Memorial Commission (May 28, 2012)*
- *Board of Supervisor's Resolution No. 33407 (New Series)*
- *Preliminary Title Report, 301 and 401 Van Ness Avenue (May 24, 2011)*

RS: G:\Documents\Certificate of Appropriateness\2011.0420A Veterans Building\CofA Case Report\_401 Van Ness Ave.doc



# SAN FRANCISCO PLANNING DEPARTMENT

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## Historic Preservation Commission Draft Motion

HEARING DATE: JUNE 6, 2012  
CONTINUED FROM: APRIL 4, 2012

*Filing Date:* March 13, 2012  
*Case No.:* **2011.0420A**  
*Project Address:* **VETERANS BUILDING, 401 VAN NESS AVENUE**  
*Historic Landmark:* Landmark No. 84; Civic Center Historic District  
*Zoning:* P Zoning District  
OS/96-X Height and Bulk District  
*Block/Lot:* 0786A/001  
*Applicant:* Tara Lamont, DPW-Bureau of Architecture  
30 Van Ness Avenue  
San Francisco, CA 94102  
*Staff Contact* Richard Sucre - (415) 575-9108  
richard.sucre@sfgov.org  
*Reviewed By* Timothy Frye - (415) 575-6822  
tim.frye@sfgov.org

1650 Mission St.  
Suite 400  
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**415.558.6378**

Fax:  
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Planning  
Information:  
**415.558.6377**

**ADOPTING FINDINGS FOR A CERTIFICATE OF APPROPRIATENESS FOR PROPOSED WORK DETERMINED TO BE APPROPRIATE FOR AND CONSISTENT WITH THE PURPOSES OF ARTICLE 10, TO MEET THE STANDARDS OF ARTICLE 10 AND TO MEET THE SECRETARY OF INTERIOR'S STANDARDS FOR REHABILITATION, FOR THE PROPERTY LOCATED ON LOT 001 IN ASSESSOR'S BLOCK 0786A, WITHIN THE P ZONING DISTRICT, CIVIC CENTER HISTORIC DISTRICT, AND OS/96-X HEIGHT AND BULK DISTRICT.**

### PREAMBLE

WHEREAS, on March 13, 2012, Tara Lamont of the City and County of San Francisco Department of Public Works-Bureau of Architecture on behalf of San Francisco War Memorial Board of Trustees (Property Owner) filed an application with the San Francisco Planning Department (Department) for a Certificate of Appropriateness for exterior alterations to the subject property located on Lot 001 in Assessor's Block 0786A.

WHEREAS, the Project was determined by the Department to be categorically exempt from environmental review. The Historic Preservation Commission (hereinafter "Commission") has reviewed and concurs with said determination.

WHEREAS, the Project was continued from the April 4, 2011 Historic Preservation Commission Hearing.

WHEREAS, on June 6, 2012, the Commission conducted a duly noticed public hearing on the current project, Case No. 2011.0420A (Project) for its appropriateness.

WHEREAS, in reviewing the Application, the Commission has had available for its review and consideration case reports, plans, and other materials pertaining to the Project contained in the Department's case files, has reviewed and heard testimony and received materials from interested parties during the public hearing on the Project.

**MOVED**, that the Commission hereby grants with conditions a Certificate of Appropriateness, in conformance with the project information dated February 3, 2012 and labeled Exhibit A on file in the docket for Case No. 2011.0420A based on the following findings:

### **CONDITIONS OF APPROVAL**

To ensure that the proposed work is undertaken in conformance with this Certificate of Appropriateness, staff recommends the following conditions:

1. As part of the Building Permit, the Project Sponsor shall provide a mock-up of the window rehabilitation for review and approval by Planning Department Preservation Staff. The Project Sponsor shall provide additional information on the window rehabilitation, including a detailed conditions assessment of each window, a window schedule, and appropriate plan details, as determined by staff.
2. As part of the Building Permit, the Project Sponsor shall provide a mock-up of the terracotta repair and restoration for review and approval by Planning Department Preservation Staff. During or prior to the mock-up, the Project Sponsor shall provide glaze samples, which shall match the existing glaze of the historic terracotta in shade and tone. This sample shall include an accurate range of colors to match the landmark building.

### **FINDINGS**

Having reviewed all the materials identified in the recitals above and having heard oral testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of the Commission.
2. Findings pursuant to Article 10:

The Historic Preservation Commission has determined that the proposed work is compatible with the character of Landmark No. 84 and the Civic Center Historic District as described in Article 10 of the Planning Code.

- That the exterior alterations would clean, repair and restore the exterior character-defining elements, and would rehabilitate deteriorated features of the landmark property.
- That the exterior alterations would replace historic materials, including the leaded-copper roof and steel-frame skylights, with compatible substitute materials.

- That the exterior alterations are compatible with the height, massing, fenestration, materials, color, texture, detail, style, scale and proportion of the surrounding Civic Center Historic District.
  - That the exterior alterations would preserve, enhance and restore the exterior architectural appearance of the landmark property in a manner that is compatible with the surrounding Civic Center Historic District.
  - That the treatment of the stone surfaces of the landmark property is appropriate and does not damage any historic masonry surfaces, which contribute to the surrounding Civic Center Historic District.
  - That the essential form and integrity of the landmark and its environment would be unimpaired if the alterations were removed at a future date.
  - That the proposal respects the character-defining features of Landmark No. 84.
  - That the proposal respects the character-defining features of the Civic Center Historic District
  - The proposed project meets the requirements of Article 10.
  - The proposed project meets all ten of the *Secretary of the Interior's Standards for Rehabilitation*.
3. **General Plan Compliance.** The proposed Certificate of Appropriateness is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. URBAN DESIGN ELEMENT

THE URBAN DESIGN ELEMENT CONCERNS THE PHYSICAL CHARACTER AND ORDER OF THE CITY, AND THE RELATIONSHIP BETWEEN PEOPLE AND THEIR ENVIRONMENT.

GOALS

*The Urban Design Element is concerned both with development and with preservation. It is a concerted effort to recognize the positive attributes of the city, to enhance and conserve those attributes, and to improve the living environment where it is less than satisfactory. The Plan is a definition of quality, a definition based upon human needs.*

OBJECTIVE 1

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

POLICY 1.3

*Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.*

OBJECTIVE 2

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

POLICY 2.4

*Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.*

POLICY 2.5

*Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.*

POLICY 2.7

*Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character.*

*The goal of a Certificate of Appropriateness is to provide additional oversight for buildings and districts that are architecturally or culturally significant to the City in order to protect the qualities that are associated with that significance.*

*The proposed project qualifies for a Certificate of Appropriateness and therefore furthers these policies and objectives by maintaining and preserving the character-defining features of the Landmark No. 84 and the Civic Center Historic District for the future enjoyment and education of San Francisco residents and visitors.*

4. The proposed project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
  - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The project will not have any impact on any existing neighborhood serving retail uses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed project will strengthen neighborhood character by respecting the character-defining features of Landmark No. 84 and the Civic Center Historic District in conformance with the Secretary of the Interior's Standards for Rehabilitation.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The project will have no impact to housing supply.*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed project will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed will not have any impact on industrial and service sector jobs.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed work. Any construction or alteration associated with the project will be executed in compliance with all applicable construction and safety measures.*

- G) That landmark and historic buildings will be preserved:

*The project as proposed is in conformance with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed project will not impact the access to sunlight or vistas for parks and open space.*

- 5. For these reasons, the proposal overall, is appropriate for and consistent with the purposes of Article 10, meets the standards of Article 10, and the *Secretary of Interior's Standards for Rehabilitation*, General Plan and Prop M findings of the Planning Code.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **GRANTS WITH CONDITIONS a Certificate of Appropriateness** for the property located at Lot 001 in Assessor's Block 0786A for proposed work in conformance with the project information dated February 3, 2012, labeled Exhibit A on file in the docket for Case No. 2011.0420A.

**APPEAL AND EFFECTIVE DATE OF MOTION:** The Commission's decision on a Certificate of Appropriateness shall be final unless appealed within thirty (30) days. Any appeal shall be made to the Board of Appeals, unless the proposed project requires Board of Supervisors approval or is appealed to the Board of Supervisors as a conditional use, in which case any appeal shall be made to the Board of Supervisors (see Charter Section 4.135).

**Duration of this Certificate of Appropriateness:** This Certificate of Appropriateness is issued pursuant to Article 10 of the Planning Code and is valid for a period of three (3) years from the effective date of approval by the Historic Preservation Commission. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within 3 years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor.

**THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OF OCCUPANCY UNLESS NO BUILDING PERMIT IS REQUIRED. PERMITS FROM THE DEPARTMENT OF BUILDING INSPECTION (and any other appropriate agencies) MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.**

I hereby certify that the Historical Preservation Commission ADOPTED the foregoing Motion on June 6, 2012.

Linda D. Avery  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: June 6, 2012

# Parcel Map

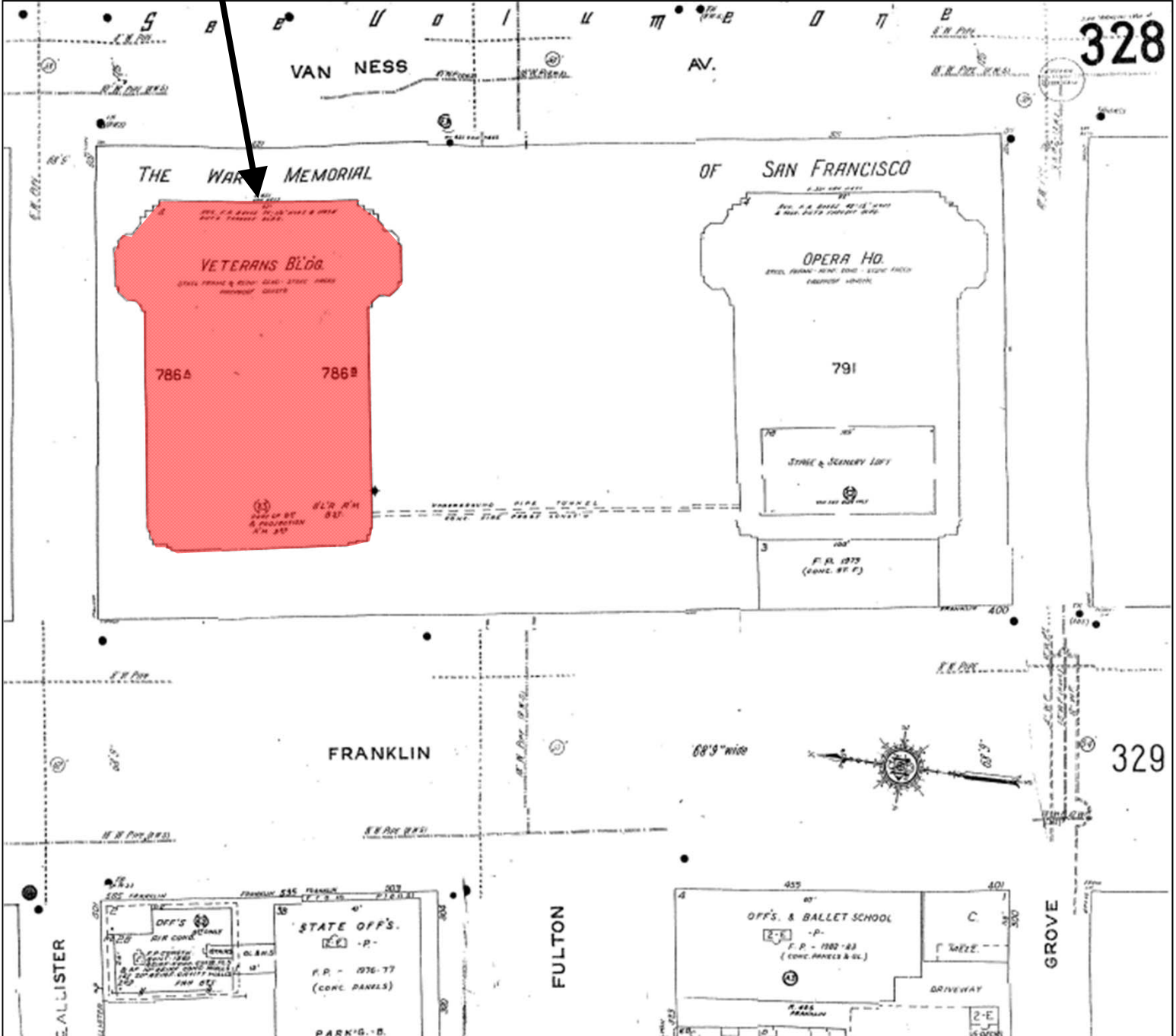
SUBJECT PROPERTY





# Sanborn Map\*

SUBJECT PROPERTY

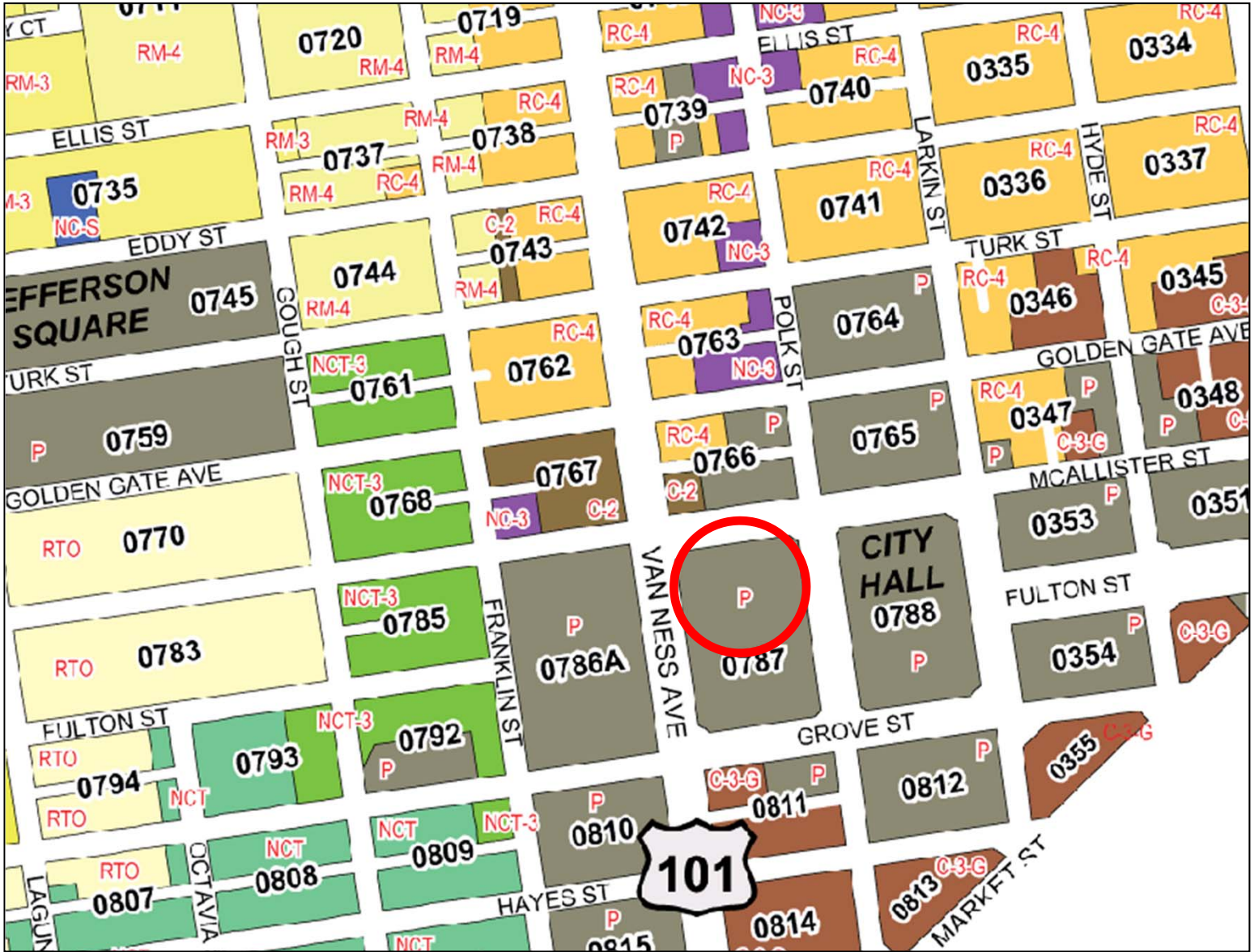


\*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



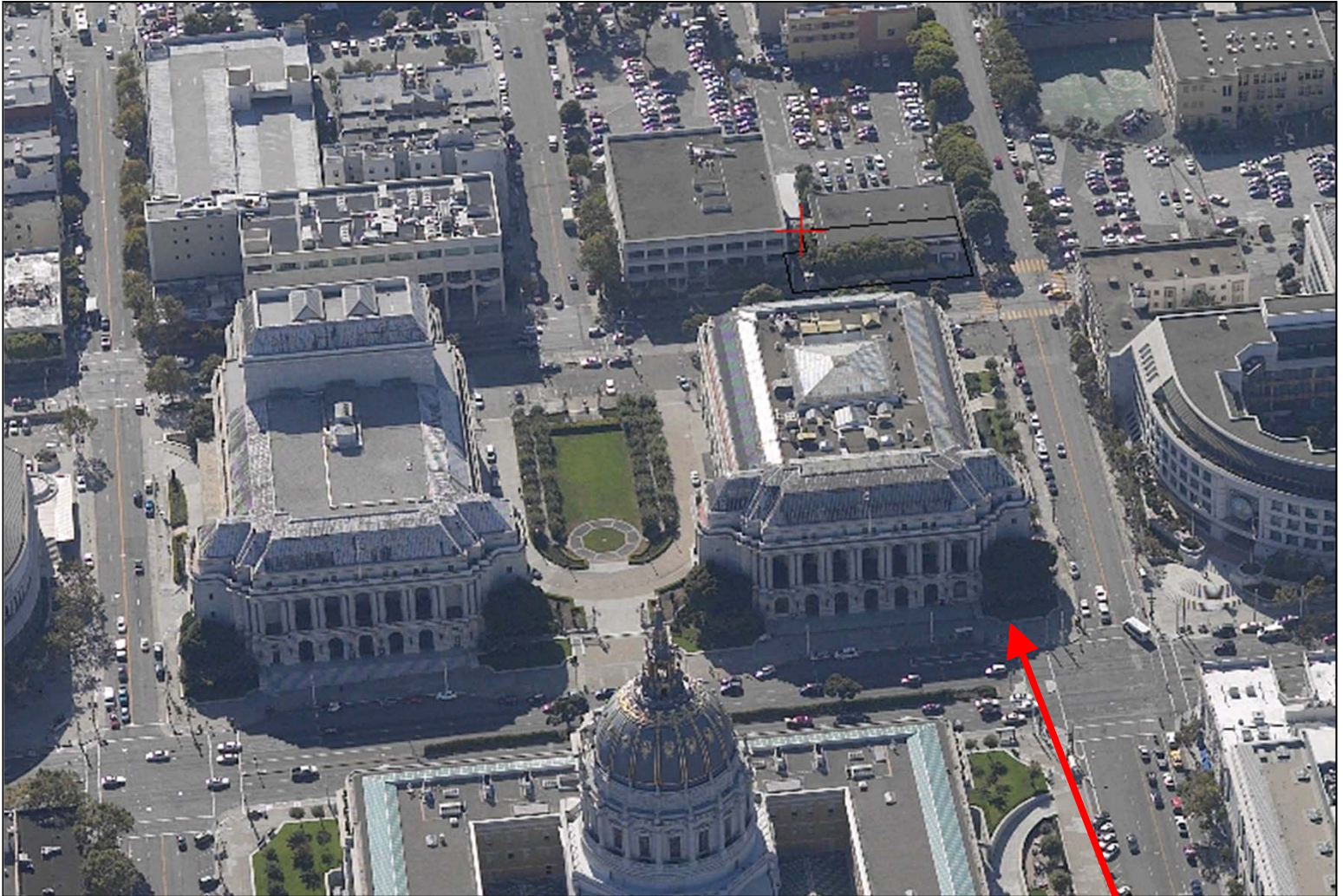
Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Zoning Map



Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Aerial Photo

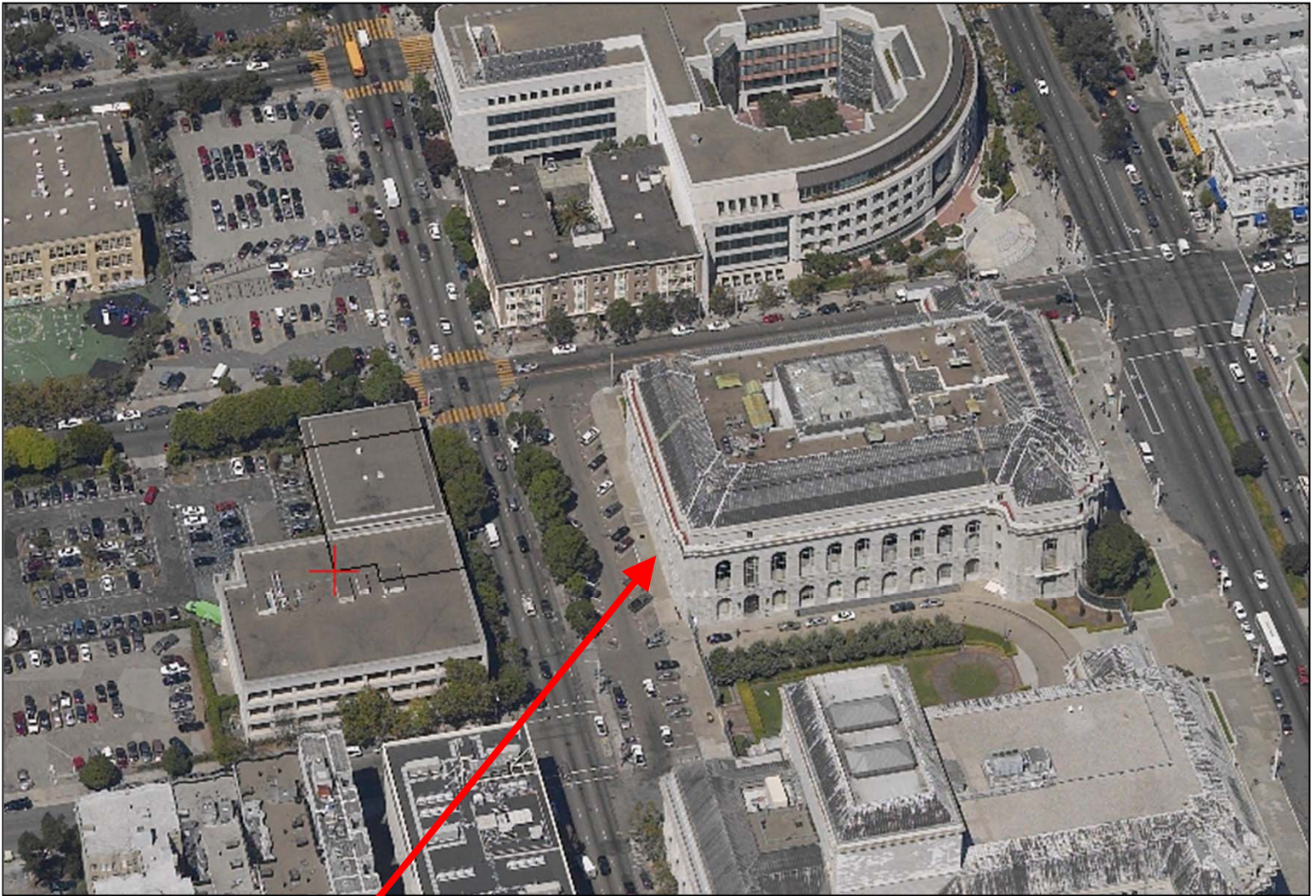


**SUBJECT PROPERTY**



Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Aerial Photo



**SUBJECT PROPERTY**



Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



View of Veterans Building along Van Ness Avenue

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



View of Veterans Building , North and West Facades

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



View of Veterans Building Roof

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



View of Veterans Building, Northwest Corner, Rust Staining

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue



# Site Photo



Veterans Building, View of Cracked Balustrade

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



Veterans Building, View of Glaze Spalling in Frieze

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



Veterans Building, View of Deteriorated Window Frame

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



Veterans Building, View of Deteriorated Leaded-Cooper Roof Panels

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



Veterans Building, View of Main Entry Lobby

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



Veterans Building, View of Historic Office Woodwork, 1<sup>st</sup> Floor

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



Veterans Building, View of Green Room, 2<sup>nd</sup> Floor

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

# Site Photo



Veterans Building , View of Veterans Meeting Room, 2<sup>nd</sup> Floor

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue



# Site Photo



Veterans Building, 4<sup>th</sup> Floor, View of Laylights

Certificate of Appropriateness Hearing  
Case Number 2011.0420AU  
Veterans Building, 401 Van Ness Avenue

1 DESIGNATING THE SAN FRANCISCO WAR MEMORIAL AS A LANDMARK PURSUANT TO  
2 ARTICLE 10 OF THE CITY PLANNING CODE.

3  
4 Be it ordained by the People of the City and County of San Francisco:

5 Section 1. The Board of Supervisors hereby finds that the San  
6 Francisco War Memorial located on the block surrounded by Van Ness  
7 Avenue, Grove, Franklin and McAllister Streets, being lot 1 in Asses-  
8 sor's Block 786A, has a special character and special historical,  
9 architectural and aesthetic interest and value, and that its designa-  
10 tion as a landmark will be in furtherance of and in conformance with  
11 the purposes of Article 10 of the City Planning Code.

12 (a) Designation. Pursuant to Section 1004 of the City Planning  
13 Code, Chapter 11, Part II of the San Francisco Municipal Code, the San  
14 Francisco War Memorial is hereby designated as a landmark, this desig-  
15 nation having been duly approved by Resolution No. 7273 of the City  
16 Planning Commission, which Resolution is on file with the Clerk of the  
17 Board of Supervisors in File No. 90-74-17; provided that this desig-  
18 nation shall in no way diminish the powers, rights and duties vested  
19 in the Trustees of the San Francisco War Memorial pursuant to Section  
20 1.610 of the Charter and Chapter 27 of the Administrative Code of the  
21 City and County of San Francisco.

22 (b) Required Data. The location and boundaries of the landmark  
23 site and the characteristics of the landmark which justify its designa-  
24 tion, described and included in the said Resolution, are hereby  
25 incorporated herein and made a part hereof as though fully set forth.

26 APPROVED AS TO FORM:

27 THOMAS H. O'CONNOR, City Attorney

28 By James V. [Signature]  
29 Deputy City Attorney  
30

RECOMMENDED:

CITY PLANNING COMMISSION

By [Signature]

BOARD OF SUPERVISORS

Passed for Second Reading  
Board of Supervisors, San Francisco  
NOV 22 1976

Ayes: Supervisors Barbagelata, Feinstein, Fran-  
cois, Gonzalez, Kopp, Mendicino, Molinari, Nel-  
der, Pelosi, Tamara, von Beroldingen.

Noes: Supervisors .....

Absent: Supervisors KINDELSON, PELOSI

Read Second Time and Finally Passed  
Board of Supervisors, San Francisco

NOV 20 1976

Ayes: Supervisors Barbagelata, Feinstein, Fran-  
cois, Gonzalez, Kopp, Mendicino, Molinari, Nel-  
der, Pelosi, Tamara, von Beroldingen.

Noes: Supervisors .....

Absent: Supervisors KINDELSON, PELOSI, MOLINARI

I hereby certify that the foregoing ordinance was  
finally passed by the Board of Supervisors of the  
City and County of San Francisco.

[Signature] Clerk

90-74-17 DEC 10 1976  
File No. Approved

[Signature] Mayor

SAN FRANCISCO

CITY PLANNING COMMISSION

RESOLUTION NO. 7273

WHEREAS, A proposal to designate the San Francisco War Memorial located on the block surrounded by Van Ness Avenue, Grove, Franklin, and McAllister Streets as a Landmark pursuant to the provisions of Article 10 of the City Planning Code was initiated by the Landmarks Preservation Advisory Board on October 23, 1974, and said Advisory Board, after due consideration, has recommended approval of this proposal; and

WHEREAS, The City Planning Commission, after due notice given, held a public hearing on December 5, 1974, to consider the proposed designation and the report of said Advisory Board; and

WHEREAS, The Commission believes that the proposed Landmark has a special character and special historical, architectural and aesthetic interest and value; and that the proposed designation would be in furtherance of and in conformance with the purposes and standards of the said Article 10;

NOW THEREFORE BE IT RESOLVED, First, that the proposal to designate the San Francisco War Memorial located on the block surrounded by Van Ness Avenue, Grove, Franklin, and McAllister Streets as a Landmark pursuant to Article 10 of the City Planning Code is hereby APPROVED, the location and boundaries of the landmark site being as follows:

Beginning at a point on the westerly line of Van Ness Avenue at the intersection of the southerly line of McAllister Street, thence southerly along the westerly line of Van Ness Avenue for a distance of 618.75 feet, thence at a right angle westerly along the northerly line of Grove Street for a distance of 384.75 feet, thence at a right angle northerly along the easterly line of Franklin Street for a distance of 618.75 feet, thence at a right angle easterly along the southerly line of McAllister Street for a distance of 384.75 feet to the point of beginning; being Lot 1 in Assessor's Block 706A.

Second, That the special character and special historical, architectural, and aesthetic interest and value of the said Landmark justifying its designation are set forth in the Landmarks Preservation Advisory Board Resolution No. 117 as adopted on October 23, 1974, which resolution is incorporated herein and made a part hereof as though fully set forth;

Third, That the said Landmark should be preserved generally in all of its particular exterior features as existing on the date hereof and as described and depicted in the photographs, case report and other material on file in the Department of City Planning Docket LM74.12;

AND BE IT FURTHER RESOLVED, That the City Planning Commission recommends that the Board of Supervisors not authorize review of alterations to major interior public spaces;

AND BE IT FURTHER RESOLVED, That the City Planning Commission acknowledges the jurisdiction of the War Memorial Trustees as set forth in the City Charter and the Administrative Code.

I hereby certify that the foregoing Resolution was ADOPTED by the City Planning Commission at its regular meeting of December 5, 1974.

Lynn E. Pio  
Secretary

Ayes: Commissioners Elliott, Finn, Fleishhacker, Newman, Porter,  
Ritchie, Rueda

Noes: None

Absent: None

Passed: December 5, 1974

OWNER: City and County of San Francisco

LOCATION: West side of Van Ness Avenue, between Grove and McAllister Streets; All of Assessor's Block 786A.

INTRODUCTION: "Certainly this is one of the great opera houses of the world."

So concluded the music critic of a national weekly magazine who visited the City some few years ago to attend several performances of the San Francisco Opera Company. Elsewhere in his review, the thrust of which was given over to acclaim the Company's legendary record of productions and employment of first-rate artists and other personnel, he noted that, "Their Opera House is a handsome one . . . forming part of a spacious civic center that was built at a time when monumental architecture was not demode, and there is an atmosphere of great elegance about the auditorium, as there is about its surroundings, which remind one of the central plaza of some Latin-American or European city and, as far as I am aware, are not matched in the United States."

San Franciscans would be inclined to agree, accepting the foregoing, however, as only one of many reasons for pointing with a touch of justifiable pride to the Opera House and its twin, the Veterans Building. Ranking among the most readily identifiable buildings in the City, they have served it well, not only for intended uses but also as appropriate settings for international proceedings such as the birthplace of the United Nations and the signing of the Japanese Peace Treaty following World War II. And in a certain measure, the War Memorial takes on a special character which is found in the struggle, now faded into history, to see the two buildings erected. Moreover, the Memorial was the product of deeply-rooted "citizen participation" long before that phrase became the watch-word in a civic undertaking. For thirteen unrelenting years, San Franciscans of all socio-economic levels and with persuasions focused on cultural aspirations and/or patriotic pride, were involved. Though initially united, the proponents were later divided; nevertheless, even in disunity they were determined to see the War Memorial through to completion.

HISTORY: In April 1918, twelve years after the City had experienced the loss of its major theaters, halls and opera houses, a group of prominent San Franciscans, members of the Musical Association, met to consider construction of a hall for performing arts. A previous attempt in 1911 and 1912 by the group had been thwarted by a state Supreme Court decision that the City could not contribute the land for what was to be essentially a privately owned building. Although new theaters and the Civic Auditorium had been constructed after 1906, none provided the facilities or setting deemed appropriate by the local citizenry which had given opera and other cultural events widespread and enthusiastic support since the City's first operatic performance in 1851.

The 1918 meeting was the genesis of what was to become the War Memorial.

Leadership from the Musical Association was provided by W.H. Crocker, Templeton Crocker, Milton Esberg, Herbert Fleishhacker, W.S. Heller, Walter Martin, John D. McKee, with John Drum serving as Chairman. Five of these each pledged \$25,000 outright towards a goal of \$2,000,000.

November of 1918 saw the cessation of World War I, and in the succeeding months, the return of servicemen to their homes. Among those returning to San Francisco was Major Charles H. Kendrick, who, on becoming aware of the Association's proposal and its financial concerns, conceived the idea of combining the performing hall with the growing demand throughout the nation for memorials commemorating the war heroes. His idea was enthusiastically accepted by the Association and shortly thereafter, the block bounded by Van Ness, Grove, Franklin and Hayes (which prior to 1906 had been occupied by St. Ignatius Church and College) was purchased as a site for the complex.

A city-wide drive for funds was proposed and from the veterans groups a War Memorial Committee was formed of 46 members, based pro-rata on the membership of the various Legion posts within the City. Major Kendrick was appointed Chairman and Frank F. Kilsby, Secretary of the Conference Committee.

By May 1920, \$1,000,000 was on hand, and a mass meeting that month in the Civic Auditorium with 10,000 in attendance brought in another \$600,000. Ground breaking ceremonies were held shortly thereafter and the campaign for funds continued so intensively that within another 30 days cash and pledges totaled \$2,150,000.

Trustees for the public subscription were the University of California Regents, who, upon completion of the pledge drive, determined that the pledges were not legally binding and refused further involvement until the issue could be corrected. New pledge forms were drawn up to the Regents' approval and those who had pledged previously were again contacted. This action required nearly two years and, as might well have been expected, some of the pledges were not renewed.

In October 1922, a distinguished Architectural Advisory Committee was appointed; chaired by Bernard Maybeck, it also included Willis Polk, John Galen Howard, Ernest Coxhead, G. Albert Lansburgh, John Reid, Jr., Fred Meyer and Arthur Brown, Jr. -- a veritable Pantheon of Bay Area architects. In January 1923, the War Memorial Trustees, who by this time had replaced the Regents, announced that they would erect the following buildings: Opera House, American Legion Building and Art Museum. The architects eventually selected were Arthur Brown, Jr. and G. Albert Lansburgh who had achieved recognition for his theater design.

With the enlarged scope of the proposal, it was evident that it could not be accommodated on the site already purchased. Moreover, about this time a storage company announced that it would build a large warehouse directly across Van Ness Avenue from City Hall. While City authorities were greatly concerned over the probable resultant clash of a warehouse with the classic architecture of the emerging Civic Center, the War Memorial Trustees saw the opportunity of obtaining an appropriate site for the War Memorial. So with financial aid from the Trustees, and the cooperation of the U.C. Regents ~~with financial aid from the Trustees, and the cooperation of the U.C. Regents~~ (who owned part of the site), the City began acquiring the present two-block site.

The construction of a major opera house, then as now, transcends local interest and Gaetano Merola, who lived in the East but had been involved in the production of opera in the City with touring companies as early as 1906, developed an interest in the San Francisco undertaking. From his visits he had observed that the City appreciated and would financially support opera, and thus it was that in the fall of 1921 he transferred his residence here. While the drive for construction funds was being pursued, Merola's efforts were channeled into organizing an opera company. In April 1923, the San Francisco Opera Association was formally organized and the first season of the company opened on September 26, 1923 in the Civic Auditorium which had been temporarily revamped to suggest the "feel" of an opera house. By 1924, the Association had over 2,000 founders pledged to underwrite any future production deficits.

Early in 1926, it was apparent that the funds subscribed for the structures (about \$2,000,000 remained) would be totally inadequate for the vastly enlarged proposal. In February 1927, the Trustees met with the publishers of the five San Francisco newspapers who unanimously agreed that the proposal should not be curtailed and also agreed to support a bond issue for the \$4,000,000 necessary to see the proposal completed as planned.

Fearful that legal complications experienced in the 1912 attempt by the Musical Association might again arise, the resolution of the Board of Supervisors placing the issue on the ballot called for construction of "... permanent buildings in or adjacent to the Civic Center to be used as a Memorial Hall for War Veterans and for education, recreational, entertainment and other municipal purposes." Outright mention of an opera house was avoided although the Supervisors were fully aware of the proposals and the newspaper were clear to point out the breadth of facilities to be included.

A special election was held on June 14, 1927 although the bond issue passed by a substantial majority, there were to be further delays. The Veterans' building was to include office space and other facilities, not only for the Legion posts, but for all veterans groups then existing in the City. Disputes arose over the space allocations for the veterans and also for their representation on the Board of Trustees. Once again the voters were to be called upon: this time to determine the com-

position of the Board of Trustees. The issue appeared as a charter amendment on the November 1928 ballot and, despite vigorous organized opposition, passed. Nevertheless, even with Mayor Rolph's best efforts, continuing related difficulties prevented the sale of the bonds until 1930.

Construction of the foundation work commenced on January 28, 1931; the cornerstones were laid on Armistice Day, 1931 and the dedication of the structures, on Admission Day, September 9, 1932.

HISTORY:  
(cont'd)

The Opera House opened on Saturday evening, October 15, 1932, with a performance of Puccini's La Tosca, with Mr. Merola conducting and the great Claudia Muzio in the title role. Notwithstanding the fact that the nation was in the depths of a severe depression (which was to curtail the performance of opera elsewhere), anticipation of the opening season in the new house was so intense that the original schedule of nine performances quickly sold out and three additional ones were added. For weeks ahead of the opening, local papers featured stories and photographs of the arrival of stars and preparations underway.

The anticipation was not only local. On opening day, the New York Times, in its radio guide, noted that among the outstanding programs for that day was the broadcast, (nation-wide) of the first act of La Tosca from the San Francisco War Memorial Opera House. The following day, the paper carried an account of the opening.

Time magazine, in its issue of October 17, 1932, featured a cover story on the "San Francisco Memorial" and noted that "The new Opera House, to be dedicated this week, is easily the most attractive and practical building of its kind in the U.S." and "... this year, when Chicago's and Philadelphia's opera houses are dark, the lights will go on in a house made possible by all the people of San Francisco."

Indeed, it was the first municipally owned opera house in the world.

The Veterans' Building was officially opened on Armistice Day that same year. There was so special fanfare such as that which accompanied the Opera House inaugural and, except for brief ceremonies that evening at the War Memorial, the day's events are best described only as typical of an Armistice Day observance of the times.

Unquestionably, since its construction, the history of the War Memorial complex transcends purely local significance and makes it a truly international landmark as well -- most fitting in this cosmopolitan city. For in April, May and June of 1945, with the world well into its sixth year of global war, the two buildings of the War Memorial served as the birthplace of the United Nations. Most of the meetings and ceremonies of the Conference took place in the Veterans Building, but it was on the great stage of the Opera House that President Truman and other heads of state and dignitaries signed the United Nations Charter at a plenary session on June 26, 1945. Commemorative



meetings of the signing, with official United Nations sessions, took place in the Opera House in 1955 with President Dwight D. Eisenhower and former President Harry S. Truman in attendance, and in 1965 with President Lyndon B. Johnson present. A Twenty-fifth Anniversary celebration with United Nations dignitaries in attendance occurred on the 25th and 26th of June 1970.

The War Memorial is further distinguished in that the Japanese Peace Treaty was drawn up in 1951 in the Veterans Building and signed in the Opera House.

The twin buildings of the War Memorial have been used principally as their names would imply. The Opera House has been the permanent home of the Opera and Symphony since its opening and it also serves the Ballet and other theatrical arts. The Veterans Building was designed for and has been devoted to veterans' organizations, except for the fourth floor (and of recent years, the third floor) which was given over to what is now the San Francisco Museum of Art.

The Opera House and Veterans Building, together with the Court between them, form an integral project, brilliantly conceived to complement and enhance the City Hall opposite which was, in fact, designed by Brown (with Bakewell). Moreover, they further and enlarge the concept of the Civic Center for which plans were initially formulated in 1911. The War Memorial represents a major contribution to the development of this grandes of all American civic complexes which started with the Civic Auditorium and City Hall and also includes the Public Library, State and Federal Buildings and the central Plaza.

#### ARCHITECTURE:

The War Memorial complex is composed of two substantially identical structures -- Opera House and Veterans Building -- separated, yet linked, by a formal court. The architectural description which follows will serve for both and reflects only the major characteristics of the structures. In this connection, three major exterior differences are noted between the two structures and these are stated in terms of the Opera House: a stage loft at the rear; a large arched opening in the rear facade provided for transporting scenery directly to and from the stage; and, because of a slight difference in ground elevation between the two structures, a short flight of steps leading to the main entrance was required to maintain horizontal continuity of identical architectural elements in the two buildings. A close inspection of the buildings will frequently reveal minor, intentional discrepancies between similar elements. This applies to the structures when viewed individually as well as when the two structures are compared. Nevertheless, the principal elements and their detailing are so boldly stated, and the subordinate, varying, details within these elements so skillfully handled, that, from the exterior, the structures are generally thought of as twins, save for the three major differences noted above.

The buildings are basically rectangular, steel-frame structures with granite foundations and faces of terra cotta simulating rusticated granite blocks. Exterior dimensions of each are 282 feet in length and 180 feet in width (for the main body) which, through lateral projections, increases to 231 feet near the front.

The height is 92 feet with the stage loft rising to 146 feet. Each building has four principal stories with basement, and a mansard-type roof. The architectural style of the War Memorial, like that of the more ornate City Hall opposite on Van Ness Avenue, is French Renaissance.

The principal facade, at main floor level, has seven arches flanked by decorative bronze lamps. The five central arches are glazed and contain double doors opening into the lobby. The end arches serve as windows or as secondary entrances to non-public areas. The major feature of the facade is the high colonnade at second and third stories composed of eight pairs of Doric columns which are positioned in front of a wall with seven arched openings between the paired columns. A low balustrade occurs between the pairs at second story level with the center and end balustrades brought slightly forward to suggest balconies. A two-story loggia is revealed behind all seven arched openings of the Veterans Building; however, in the Opera House the loggia is found only behind the five center openings -- the space behind those at either end being more appropriately described as shallow recesses or niches. The rear walls of the loggias feature two-story arched, windows, each centered on its arched opening opposite in the front wall. The colonnade supports a heavy architrave, itself surmounted by a cornice. The lateral projections referred to previously begin at the ends of the colonnade and achieve architectural significance through a series of staggered setbacks both on their front and rear.

The side facades continue the general appearance of the front: ten arched openings, equal in scale and elevation to those on the front, are present in each of two tiers. In the Veterans Building, these arches serve as windows with only two exceptions on the ground floor. In the Opera House, half of the lower tier on each side serve as carriage entrances to the main floor level. The rear of the Veterans Building is treated similarly to the sides with seven openings in each tier. The same treatment is partially present on the rear of the Opera House, however, the large, centered, arched opening for transporting scenery in and out is the most prominent feature.

OPERA HOUSE  
INTERIOR:

Five entrances in the main facade give direct access to the Lobby which is separated from a Foyer by five arched openings with glazed partitions and doorways in their lower portions. The Lobby, with walls of cast stone has a vaulted and coffered ceiling and marble floors. The Foyer is lined with fluted Doric columns supporting an architrave and a dentillated cornice above which is a magnificent coffered ceiling. Lighting is provided by bronze lamps rising from the floor as well as complementary lamps suspended from the ceiling. Access to the orchestra level is provided via five slightly elevated doorways, each of which is reached via steps flanked by ornate metal railings. Above the doorways, dentillated triangular pediments continue the classical motif. At each end of the Foyer are areas, subordinated in their architectural detailing, which provide access to stairways and elevators. At orchestra level, they also serve as connectors between the Foyer and the wide promenades or carriage entrances which flank the orchestra level. At Box level, these areas are treated as balustrated mezzanines overlooking the Foyer. Secondary stairways are located at the westerly ends of the promenades.

OPERA HOUSE  
INTERIOR:  
(cont'd)

The architectural treatment and arrangement of the auditorium is simple and direct. Except for Box level, the multi-tiered horse-shoe seating traditionally found in opera houses was abandoned and the arrangement employed more typically reflects that of a theater.

The auditorium has a breadth of 113 feet, height of 74 feet, and a depth varying from 116 feet at Orchestra level to 161 feet at the Balcony level. The seating capacity is 3,285 persons with 300 standee positions.

Twenty-five boxes, immediately above the Orchestra level, are each provided with a private vestibule approached from a broad promenade. The Grand Tier, Dress Circle, Balcony Circle and Balcony are also reached from various promenade levels and have their own conveniences. At basement level another promenade is now largely given over to seating for the adjacent bar and buffet. A hospital room is also found at this level.

The stage measurements, still generous, were unusual for their time: 134 feet in width, 84 feet in depth and 140 feet in total height. The orchestra pit, while accommodating 65 musicians comfortable, can seat 75, but only with crowding. The proscenium arch has a coffered frame whose opening measures 52 feet wide and 51 feet high at its center. Figures in relief, above and extending somewhat beyond the arch, further embellish this wall.

In the auditorium, the side walls reveal classical treatment reflective of the exterior in that the lower walls are rusticated and serve as a base for gridded arched openings with balustrades and pilasters. Space behind these openings is intended to house the pipes for an organ but no organ has ever been installed. The principal feature of the ceiling is a large elliptical surface from which is closely suspended a metal lighting fixture composed of shaped, metal troughs of varying lengths, radiating, sunburst fashion, from a central point.

VETERANS  
BUILDING  
INTERIOR:

On the main floor, the Lobby and Foyer areas lead to an auditorium surrounded by a corridor off of which are located offices of various organizations, principally those of veterans. The auditorium will seat about 1100 persons; it has a small stage and its floor can be either leveled for dancing or raised into tiers for stage performances. The hall is adorned by the Brangwyn murals, brought from the Panama-Pacific International Exposition of 1915, which portray the four elements, Air, Earth, Fire and Water, in their service to the welfare of mankind. The first floor also contains a Memorial Hall with military mementoes of the two World Wars. On the second floor, the front of the building is devoted to a Library and Reading Room, known as the Green Room, opening out onto the loggia. The remainder of the second floor is used for meeting rooms, lounges and other conveniences. As mentioned above, the San Francisco Museum of Art is installed on the third and fourth floors, the latter given over to galleries.

ZONING AND  
SURROUND-  
ING LAND  
USE:

This site and the entire Civic Center is located in a P District (land that is owned by a governmental agency and is some form of public use). The courtyard is designated OS (Open Space) and the applicable height and bulk district is 96-X.

East across Van Ness Avenue is the City Hall; south across Grove Street is a parking lot occupying a full block and owned by the city; to the north and west are mixed uses, largely commercial and residential. The Central Freeway cuts a diagonal path through the blocks to the west of Franklin Street.

E I G H T H  D I S T R I C T

THE AMERICAN LEGION  
DEPARTMENT OF CALIFORNIA  
WAR MEMORIAL VETERANS BUILDING  
ROOM 226-A  
SAN FRANCISCO, CA 94102-4587

May 28, 2012

Mr. Richard Sucre  
Historic Preservation Technical Specialist  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2479

re: Veterans' Building, 410 Van Ness Avenue  
Cases Nos. 2011.0420A and 2011.0420U

Dear Mr. Sucre:

The Eighth District of The American Legion Department of California is composed of all of the Posts of The American Legion in San Francisco.

We are aware of the letters from The American Legion War Memorial Commission to you dated today regarding the above Cases. To avoid overburdening the record, we will not repeat the statements made in that letter. Instead, by this reference we incorporate all of the objections to the project, for all the reasons, stated in that letter. We join in the opposition to the proposed project.

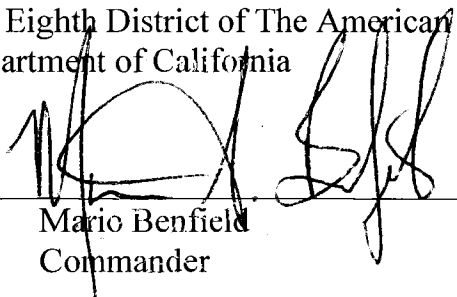
We request that the objections to the proposed project and the reasons for them be called to the attention of the Historic Preservation Commission and that this letter be made part of the record of these proceedings.

If you have any questions regarding our joinder in the opposition of The American Legion War Memorial Commission, please contact the undersigned.

Very truly yours,

The Eighth District of The American Legion  
Department of California

By

  
Mario Benfield  
Commander



American Legion War Memorial Commission

May 28, 2012

Mr. Richard Sucre  
Historic Preservation Technical Specialist  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2479

re: Veterans' Building, 410 Van Ness Avenue  
Case No. 2011.0420A

Dear Mr. Sucre:

As we indicated in our presentation on April 4, 2012, The American Legion War Memorial Commission does not object to the repairs and refurbishing of the exterior of the Veterans' Building . The Trustees of the War Memorial have neglected to maintain and repair the Veterans' Building far too long.

However, we do object to two aspects of this agenda item and recommend that the Historic Preservation Commission recommend an addition to the project.

The first objection we have is that the case report in this matter includes the interior and seismic work addressed in the case report in Case No.2011.0420U. We object to inclusion of that material in the report for this case because we do not want the Commission by implication to find appropriate the work proposed in Case No. 2011.0420U if it approves the case report in Case No. 2011.0420A and issues a Certificate of Appropriateness. As indicated in our letter addressing Case No. 2011.0420U, we have serious objections to the work proposed in that matter.

The second objection we have is that, as discussed in our letter of objections in Case No. 2011.0420U, from the schematics for the interior remodeling of the first floor of the Veterans' Building that are part of the agenda materials for that case, it appears to us that the proposed interior remodeling of the first floor will actually include alterations of the exterior of the Veterans' Building. The two areas on the north and south sides of the schematic drawing of the first floor that are labeled "public use" and "arts commission gallery" show extensions of the exterior walls. Those extensions will reduce light and ventilation into the basement spaces and

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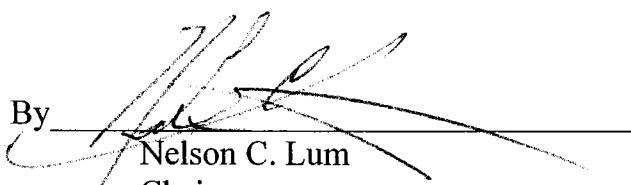
will require removal of window sills on both the north and south sides of the historic façade of the Veterans' Building to create access doors to the exterior public spaces. These extensions will alter the current exterior walls and the adjacent gardens under the guise of "interior remodeling." Thus, the so-called "interior" remodeling actually includes exterior remodeling and will cause the exterior alterations to exceed merely preservation, rehabilitation, or restoration of existing features. Because these material alterations are not addressed in either case report, we infer that they have not been reviewed for appropriateness. We contend that they are not appropriate and should not be included in any Certificate of Appropriateness related to the exterior maintenance and repairs of the Veterans' Building.

The addition to the proposed project that we recommend has to do with solar energy. As discussed with you by Mr. Paul Cox, the proposal for exterior alterations to the Veterans' Building do not include any solar energy additions to the roof. The Trustees have determined that the skylight system at the roof is beyond repair. It will be replaced with a similar-looking system that meets current code requirements. Since these elements must be replaced anyway, solar panels could readily be added to the southern roof line without disturbing the appearance of the Veterans' Building. In addition, there are numerous grants and subsidies available at this time to encourage public transition to solar power. That might make such an effort attractive financially. The Trustees of the War Memorial do not appear to have considered energy conservation in their proposed alterations of the building. We recommend that the Historic Preservation Commission refer this matter back to the proponents of the project so they consider the possible addition of solar panels and whether that addition will be appropriate.

Thank you for considering these remarks. We request that this letter be brought to the attention of the Historic Preservation Commission and be made part of the record of this proceeding.

Very truly yours,

American Legion War Memorial Commission

By   
Nelson C. Lum  
Chairman



American Legion War Memorial Commission

May 28, 2012

Mr. Richard Sucre  
Historic Preservation Technical Specialist  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2479

re: Veterans' Building, 410 Van Ness Avenue  
Case No. 2011.0420U

Dear Mr. Sucre:

By this letter, The American Legion War Memorial Commission will comment on and oppose the case report dated April 4, 2012. We request that this letter be brought to the attention of the Historic Preservation Commission and be made part of the record of this proceeding.

**1. The City's ownership of the Veterans' Building is subject to the 1921 Trust Agreement.**

The City and County of San Francisco did not acquire the Veterans' Building in fee simple absolute. It acquired the Veterans' Building subject to a written Trust Agreement that requires the City to hold the Veterans' Building for the benefit of the San Francisco Posts of the American Legion and such patriotic organizations as the San Francisco Posts desire to invite into the building.

With the assistance of The American Legion Posts, between 1918 and 1920 funds were raised to build San Francisco's war memorial. On August 19, 1921, a trust agreement for the construction and maintenance of a war memorial was made between the Regents of the University of California and Walter S. Martin, and others as Trustees. We attach a copy of the Trust Agreement as Exhibit 1. For brevity, we will refer to it as the "Trust Agreement" or as the "Trust."

The purpose of the trust is ". . . to honor the memory of the soldiers, sailors, marines and war workers – men and women – who brought imperishable glory to California by their splendid contributions to the winning of the World War . . . ."

War Memorial Veterans Building  
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Trust Agreement, p. 1, first “Whereas” clause. The War Memorial was to consist of a Memorial Court, surrounded by buildings, one of which is:

a building to be used by the San Francisco Posts of the American Legion, an organization composed of veterans of the late World War, all for the purpose of commemorating in perpetuity the victory achieved by the United States of America . . . .

Pages 15 and 16 of the Trust Agreement set forth the requirements of the trust in favor of the San Francisco Posts of the American Legion. Article C, paragraph (1), of the Trust Agreement says that the Veterans’ Building is to be occupied by the San Francisco Posts of The American Legion and that the Posts may establish rules and conditions for other Veterans’ groups and “such other patriotic organizations as the San Francisco Posts of the American Legion may from time to time desire to install.”

Paragraph (2) of Article C says that the Veterans’ Building is to be occupied by the San Francisco Posts and “used by them as club and meeting-rooms and for executive offices and auditorium purposes.”

In June, 1927, the electorate approved a bond issue for the War Memorial. The ballot argument in support of the bond issue by the Civic League of Improvement Clubs and Associations of San Francisco described the Veterans’ Building:

One of them will be the Veterans’ Building, housing all the veterans’ organizations in San Francisco. It was to give these splendid organizations a permanent headquarters in the name of the public which honors their deeds that the War Memorial fund was originally launched.

On November 12, 1930, the Board of Supervisors accepted the assets of the Trust subject to “the trusts, terms, and conditions set out in” the Trust Agreement. It accepted the offer of the Regents and the private War Memorial Board to assign all of the privately subscribed funds and other assets to the City subject to the Trust Agreement. The Board of Supervisors accepted title to all real property “in trust” and authorized the board of Trustees of the War Memorial to “perform the terms and conditions of the trust” as set forth in the Trust Agreement. It authorized the Trustees to use the assets “only for the purpose of constructing a War Memorial in the City and County of San Francisco as

provided in” the Trust Agreement. We attach as Exhibit 2 a copy of the Resolution of the Board of Supervisors dated November 12, 1930.

By that resolution, the Board of Supervisors obligated the City to operate the War Memorial complex in accordance with the Trust Agreement. That agreement gives Veterans’ and other patriotic organizations priority in the use and occupancy of the Veterans’ Building.

Thus, with one exception, since the Veterans’ Building was built, its historic and intended uses have been dictated by the Trust Agreement. The only exception is that the City only built two of the three buildings contemplated by the Trust Agreement, so the Veterans’ Building was shared with one of the other trust beneficiaries, San Francisco Art Association, which was given use of the fourth floor of the Veterans’ Building. However, the successor of the San Francisco Art Association became the Museum of Modern Art, but MOMA abandoned the Veterans’ Building in 1995.

Consequently, the San Francisco Posts of The American Legion and patriotic organizations it invites are the only beneficiaries of the Trust as to the Veterans’ Building. They are to use the Veterans’ Building, in the words of the Trust Agreement, “as club and meeting-rooms and for executive offices and auditorium purposes.”

For decades, The American Legion War Memorial Commission has exercised the powers, authority, and responsibilities of the San Francisco Posts of The American Legion concerning the Veterans’ Building. It is our mandate, and that of the War Memorial Trustees, to preserve the Veterans’ Building not just for current Veterans, but also for future generations of Veterans, their groups, and future patriotic organizations.

**2. The proposed alterations may not proceed unless the Commission grants a Certificate of Appropriateness.**

We disagree with the conclusion that the War Memorial Board of Trustees (herein the “Trustees”) must merely consult with the Historic Preservation Commission on any proposed interior alterations to the publicly accessible spaces within the Veterans’ Building. It is our conclusion that the seismic upgrade and interior alterations do require a Certificate of Appropriateness. Limiting a Certificate of Appropriateness only to external work would be equivalent to saying that the building is but a façade. It is more than a façade. The interior of the Veterans’ Building defines its historic uses.

It is our opinion that Article 10 of the San Francisco Planning Code requires a Certificate of Appropriateness in any case in which there is an alteration of a structure on a landmark site or in the Civic Center. The Veterans' Building is part of the Civic Center Historic District. Therefore:

- Section 1004(c) of Article 10 of the Planning Code makes the Veterans' Building subject to the controls and standards in Article 10.
- Section 1004(c)(1) requires review of proposed changes to significant interior architectural features of the Veterans' Building.
- Section 1005(a) prohibits any alteration of the Veterans' Building except in conformity with Article 10.
- Section 1006 requires a Certificate of Appropriateness in the case of any "alteration" of a structure in a historic district. It applies "In the case of: (1) Any . . . alteration . . . of a structure . . . on a landmark site or in a historic district; . . ."
- Section 1006 prohibits the ordinance that designates an historic district from modifying the requirements of a Certificate of Appropriateness under Section 1006.

More specifically, Appendix J to Article 10 of the San Francisco Planning Code expressly requires a Certificate of Appropriateness in this case. Even if Article 10 itself did not require a Certificate of Appropriateness, Section 7 of Appendix J contains additional requirements for Certificates of Appropriateness. Section 7 says that, if there is any inconsistency between its provisions and Article 10, then the requirements affording stricter protection to the Historic District must prevail except for the provisions of Section 8 of Appendix J. Section 7 states, in part:

In addition, the following provisions shall apply to all such applications. In the event of any inconsistency between the following provisions and Article 10, the procedures, requirements, controls and standards affording stricter protection to the Historic District shall prevail, except for the provisions of Section 8 . . . .

The requirement of a Certificate of Appropriateness gives more strict protection to the Veterans' Building (as part of the Civic Center Historic District) than would mere consultation by the Trustees with Historic Preservation Commission.

Section 8 of Appendix J does not exempt the Trustees from a Certificate of Appropriateness. Specifically:

- Section 8(a) requires all governmental bodies to cooperate with the Landmarks Preservation Advisory Board<sup>1</sup> on proposed interior changes to guarantee compliance with the Secretary of the Interior's Standards for Rehabilitation, but it contains no words exempting any entity from a Certificate of Appropriateness for the Veterans' Building.
- Although Section 8(b) recognizes the powers of the Trustees, it too does not exempt them from the requirement of a Certificate of Appropriateness. To the contrary, the Board of Supervisors expressly retained both its own authority and the authority of the Historic Preservation Commission and the Planning Commission over historic preservation decisions. It states in part:

It is the intent of the Board of Supervisors, however, to retain its authority, and the authority of the Landmarks Preservation Advisory Board and the Planning Commission, over historic preservation decisions in the Civic Center Historic District in order to ensure the appropriate treatment of the historical elements of this historic district.

- Section 8(c) of Appendix J does require the Trustees to consult with the Landmarks Preservation Advisory Board on any proposed interior alterations, regardless of whether a Certificate of Appropriateness is required or not. However, it does not exempt the Trustees from the requirement of a Certificate of Appropriateness. It only says that the Trustees “. . . shall consult with the Landmarks Preservation Advisory Board on any proposed interior alterations to the publicly accessible spaces of the buildings, regardless of whether a Certificate of Appropriateness is required by this Ordinance or by Article 10.” That is not an

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<sup>1</sup> We understand that the Landmarks Preservation Advisory Board is now called the Historic Preservation Commission.

exemption from a Certificate of Appropriateness. To the contrary, it says that consultation is also required whenever a Certificate of Appropriateness is required.

In the absence of any contrary provision in Section 8 of Appendix J, the mandates of Article 10 and of Section 7 of Appendix J state the circumstances under which a Certificate of Appropriateness is required for alterations to the Veterans' Building. As noted above, Article 10, Section 1006 requires a Certificate of Appropriateness for any "alteration." Appendix J, Section 7 is even more explicit. It requires a Certificate of Appropriateness for all "major alterations." The second paragraph of Section 7 begins, "A Certificate of Appropriateness shall be required for all major alterations, as set forth below, . . . ."

Paragraph (a)(2) of Section 7 defines a "major alteration" to include any alteration that would affect all or any substantial part of the interior or exterior column or load-bearing walls. To quote paragraph (a)(2):

(a) An alteration is considered major if any of the following apply:

\* \* \* \*

(2) The alteration would affect all or any substantial part of a structure's interior or exterior column or load-bearing wall, exterior walls or exterior ornamentation; . . . .

Page 3 of the Case Report dated April 4, 2012, makes clear that the interior load-bearing walls will be affected by the proposed alteration. The alterations will include additions of concrete shear walls at various locations throughout the building; strengthening of stage walls; strengthening of perimeter walls in northeast and southeast corners of the building; strengthening of diaphragm collectors on all floors; strengthening of third and fourth floor diaphragms; strengthening of the roof diaphragm; addition of lateral bracing many places; and other alterations that will affect virtually all of the interior load-bearing walls.

In addition, we note that the definition of a "major alteration" in Subparagraph (a) (2) of Section 7 does not limit the phrase "load-bearing wall" to a "vertical-load-bearing wall." It just refers to "load-bearing" wall. No other provisions in Article 10 of the Planning Code of which we are aware limit the term "load-bearing" to simply gravity loads. The existing terra-cotta walls throughout the building are lateral load-bearing walls. They are stiff, brittle, and weak -- and therefore inadequate. The project includes removing some

of the current lateral-load-bearing walls and stabilizing others in place, replacing their load-bearing function with new concrete shear walls that are to be erected in both directions throughout the building. These, too, are therefore by definition “major alterations.”

Because the proposed interior alterations of the Veterans’ Building are “major alterations” as defined in Section 7, the alterations may not proceed unless the Trustees first obtain a Certificate of Appropriateness. 10 City Planning Code, Appendix J, Section 7.

Moreover, we call to your attention that the schematics for the interior remodeling of the Veterans’ Building actually contain exterior alterations to the building. In addition to altering the interior floor plan of the first floor, the two areas on the north and south sides that are labeled “public use” and “arts commission gallery” and related offices appear to show extensions of the exterior walls. They will apparently cover the existing light wells for the basement spaces along the north and south sides and use those spaces for a café patio on the south side and a sculpture garden on the north side. Not only will this reduce light and ventilation into the basement spaces, but it also will require removal of historic façade window sills on both the north and south sides to provide direct access to the new exterior public spaces. These extensions will alter the current exterior walls and the adjacent gardens under the guise of “interior remodeling.” Although they are not mentioned in the case report, they show that the so-called interior remodeling actually includes exterior remodeling and will cause the exterior alterations to exceed merely preservation, rehabilitation, or restoration of existing features. Because they are not addressed in either case report, we infer that these material alterations have not been reviewed for appropriateness. We contend that they are not appropriate.

We acknowledge that you disagree with our analysis of the requirement of a Certificate of Appropriateness. However, we request that you reconsider and that a Certificate of Appropriateness be a prerequisite to this project. Conversely, if you are aware of any authority that holds that the plain wording of Article 10 and its Appendix J does not mean what it says, please call that authority to our attention.

As discussed in the following sections of this letter, we also submit that the case report is incorrect because it accepts the representations of the proponents of the alterations of the Veterans’ Building and therefore does not completely evaluate the proposed alterations under the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

### **3. The proposed alterations do not comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties.**

Because the proposed alterations of the Veterans' Building will radically alter an historic building, the Historic Preservation Commission should evaluate the proposal under the Secretary of the Interior's Standards for the Treatment of Historic Properties. When the Commission evaluates the alterations of the Veterans' Building under those standards, it will find that the proposed alterations do not comply with them.

As mentioned above, the Veterans' Building is more than a façade. If its interior can be altered without heed to historic spatial relationships, then that may preserve the outside appearance of the Veterans' Building, but it will destroy the historic significance of the interior. This is what some commentators have called the "Disneyland" effect. The building's outside walls look the same, but a person entering the building will not find much, if anything, of historic significance inside.

To put the violations of those standards and the Disneyland effect of the proposed alterations in context, you should understand that the Trustees have for many years violated Planning Code Article 10, Section 1008. The Trustees have neglected to maintain either the exterior or the interior of the Veterans' Building. These violations have not been because of lack of funds. The Trustees participate in revenue from such sources as the Hotel Tax and rental income. The bond issue after the 1989 earthquake appropriated funds for work on the Veterans' Building. Instead of using such funds to maintain the Veterans' Building, the Trustees spent the money elsewhere and allowed the Veterans' Building to go into a state of disrepair. Walls are grimy; furniture and carpets have been removed or are threadbare; rooms available to Veterans lack adequate light and electric outlets; few people are allowed to have keys to the restrooms, and those accessible to Veterans are unusable by disabled Veterans. Attached as group Exhibit 3 are a few photographs showing the deterioration of the interior of the building. The deterioration of the Veterans' Building, and the restrictions imposed by the Trustees on use of the building by Veterans' organizations and patriotic groups, discourage them from using the building.

The Veterans' Building should be preserved and restored. Instead, it is clear from page 2 of the case report dated April 4, 2012, that the Planning Commission considers the proposed alterations to be rehabilitation, rather than preservation, restoration, or reconstruction. We will therefore focus our remarks on the Secretary of the Interior's

Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (herein Secretary's Standards). If the proposed alterations are not deemed to be rehabilitation, then we request clarification about which objectives under the Secretary's Standards would apply, so we can comment on the proposed alterations in light of those objectives.

The Secretary's Standards do not contemplate radical changes of a floor plan or interior spaces, including individual rooms. To the contrary, they contemplate identifying, retaining, and preserving the floor plan and interior spaces that are important in defining the overall historic character of the Veterans' Building. "This includes the size, configuration, proportion, and relationship of rooms and corridors; the relationship of features to spaces; and the spaces themselves such as lobbies, reception halls, entrance halls . . . ." See National Park Service Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, Interior Features, Spaces/Features/Finishes, Identify Retain and Preserve interior spaces, at [http://www.nps.gov/hps/tps/standguide/rehab/rehab\\_spacefeatfinish.htm](http://www.nps.gov/hps/tps/standguide/rehab/rehab_spacefeatfinish.htm).

In addition, the Secretary of the Interior's standards for interior structural systems recommend identifying, retaining and preserving structural systems and their individual systems that are important in defining the overall historic character of the Veterans' Building. They do not recommend demolishing a loadbearing masonry wall that could be augmented and retained, and replacing it with a new wall, using the historic masonry only as an exterior veneer. See [http://www.nps.gov/hps/tps/standguide/rehab/rehab\\_strucsystems.htm](http://www.nps.gov/hps/tps/standguide/rehab/rehab_strucsystems.htm)

For brevity, we will refer to these standards as "Interior Standards."

As you will see *infra*, the plans submitted to you do not retain or preserve the floor plans, spatial relationships, and interior spaces that define the historic character of the Veterans' Building. To the contrary, they radically alter them permanently, and they appear to demolish loadbearing masonry walls throughout the building.

Consistent with the Secretary's Standards, San Francisco Preservation Bulletin No. 21 contains standards that require preservation of the historic use of the Veterans' Building, not new uses that require material changes of floor plans and interior spaces. For brevity, we will sometimes refer to them as the "Standards." In the following quotations from the Standards, we will occasionally bold phrases that prove the point:



Standard 1 requires that the Veterans' Building be used as it was historically or that it only be given a new use that requires only minimal changes. "A property **will be used as it was historically** or be given a new use that **requires minimal change to its distinctive materials, features, spaces, and spatial relationships.**"

Standard 2 also requires that the historic character of the Veterans' Building be retained and preserved, and it prohibits alteration of features, spaces, and spatial relationships. "**The historic character of a property will be retained and preserved.** The removal of distinctive materials or **alteration of features, spaces, and spatial relationships** that characterize a property **will be avoided.**

Standard 3 prohibits the proposed alterations from changing the Veterans' Building in ways that create a false sense of the history of the building. "Each property will be recognized as a physical record of its time, place, and use. **Changes that create a false sense of historical development**, such as adding conjectural features or elements from other historic properties, **will not be undertaken.**"

Standard 6 requires repair of deteriorated parts of the Veterans' Building, not replacement of them with other structures. "Deteriorated historic features **will be repaired rather than replaced.** Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Standard 9 prohibits new additions or construction that will destroy historic features and spatial relationships of the Veterans' Building. "**New additions**, exterior alterations, or related new construction **will not destroy historic materials, features, and spatial relationships** that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment."

Standard 10 requires that new additions to the Veterans' Building be such that, if they are later removed, the essential form and integrity of the building will not be impaired. "New additions and adjacent or related new construction will be undertaken in such a manner that, **if removed in the future**, the essential form and integrity of the historic property and its environment would be **unimpaired.**"

As we will discuss in the following paragraphs, the proposed alterations of the Veterans' Building violate the Secretary's Standards and every Standard from Preservation Bulletin No. 21 mentioned above. They entirely ignore the historic use of the Veterans' Building and will cause maximum, irreversible changes in its features, spaces, and spatial relationships.

The historic floor plan and spaces in the basement contain two band practice rooms, a hall for small dance gatherings and social affairs, storage space, locker rooms, and fan and boiler rooms. Over the objections of The American Legion War Memorial Commission, since the Museum of Modern Art moved out the Trustees have used the basement rooms as storage space for that museum. It appears that the proposed alterations will not preserve the floor plans and spatial relationships or restore the historic uses of the basement. Instead, they will convert the basement into a gardener shop, machine shop, engineers' offices, a bar and lounge, an usher room, storage for the opera and the arts commission a storage locker for the Arts Commission. The alterations therefore violate the Interior Standards and Standards 1, 2, 3, 6, 9, and 10.

The historic spaces of the first floor include the Veterans' Auditorium [now called the Herbst Theater]. It is to be used for Veteran affairs and musical and theatrical productions. The Veterans' Auditorium has historically been surrounded by thirty two offices, a conference room and a kitchen. Those offices have been the offices of The American Legion Department of California, The American Legion Auxiliary Department of California Headquarters, and of various Veterans' organizations. In recent years, four offices located on the South side have been occupied by the Trustees' staff. Over the objections of Veterans' posts, the Trustees surrendered the northeast corner of the first floor to the Arts Commission. In addition, because the Trustees have forbidden Veterans' and patriotic organizations that the San Francisco Posts of The American Legion desire to bring into the building<sup>2</sup> to use office space on the third floor, there are too few offices on the first and second floors of the Veterans' Building for the number of organizations that want to – and are entitled to - use them. As a result, there are offices that are occupied by numerous organizations, so that crowding, privacy, and security are real issues. No one organization can trust that its papers, furniture and equipment will be secure or that its personnel can have privacy. This also interferes with the smooth operation of Veterans' organizations and chills their ability to serve Veterans and their

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<sup>2</sup> This right is expressly granted to the San Francisco Posts of the American Legion by the Trust. See Exhibit 1, p. 15, paragraph (1)

families. Moreover, the Trustees have systematically diverted to other purposes money that should have been used for maintenance of the Veterans' Building, so the offices, meeting rooms, and other areas Veterans should be able to use are run down and ill equipped.

In contrast to the historic uses and spatial arrangement of the first floor, the proposed alterations will evict Veterans' organizations from that entire floor except the two rooms that the Trustees' plans label the Veterans' Trophy Room and the Veterans' Main Office. All of the offices on the north, west, and south sides of the building will be gutted, and they will be replaced with a new floor plan that has no relationship to the 75-year history of Veterans' uses of the Veterans' Building. Instead of the historic uses and spaces, more than ninety percent of the first floor will become a café, an Arts Commission Gallery, reception room, dressing rooms, a multipurpose room, storage, and a ticket office. The Disneyland effect will be apparent. The historic spatial relationships will permanently be sent into oblivion, never to be seen again. As discussed above, one drawing even depicts a café and adjacent café patio, which would require alteration of the southern exterior of the Veterans' Building, while the proposed new sculpture gallery on the north side will require alteration of the northern exterior. Thus, the proposed alterations violate the Interior Standards and Standards 1, 2, 3, 6, 9, and 10.

Historically, the second floor of the Veterans' Building contained a beautiful library and lounge. It was a restful place for those who wanted to read, write a letter, or other quiet activities. Nearby were the War Memorial Club rooms, where men and women could lounge, eat, play cards, pool or billiards, and enjoy themselves. The second floor also has six meeting rooms that were specifically designed for meetings and ceremonies of Veterans' and other patriotic organizations. They were heavily carpeted, with desks and altars for meetings of from 50 to 250 people. Each meeting room has adjoining anterooms, candidates' rooms, and kitchenettes. As with the other floors, the Trustees have not maintained or improved the second floor in decades. The rooms that still have carpets are worn. Wiring is inadequate. In most of these rooms, there is only one available electrical outlet. Lighting is inadequate. The library, lounge and club rooms are no more. The Trustees have given away or discarded the furnishings that used to be in them. By not maintaining the rooms, the Trustees have systematically discouraged their use. Similarly, when Veterans tried to install a new patriotic activity in unused space on the third floor, they were rejected by the Trustees without cause or reason. The American Legion War Memorial Commission wanted to install a Veterans' Success

Center in a vacant room on the third floor which has been upgraded with modern electrical wiring. Instead, the Trustees forced the Veterans to use for the Veterans' Success Center only a room on the second floor that the Veterans had planned to convert as a lounge. That, of course, reduced the space available for Veterans' activities, further decreasing the desire of Veterans' organizations to use the building of which they are the beneficial owners. Another example of the creeping encroachment is that one American Legion Post had a band as part of its related organizations. Having deprived the Veterans of the practice rooms in the basement, the Trustees refused to allow the band to practice in a meeting room on the second floor, falsely claiming that some of the band members were not affiliated with that Post and that noise from the rehearsals disturbed activities and performances in the Green Room or the Herbst Theater [formerly called the Veterans' Auditorium]. If the band rehearsal rooms in the basement were available for use by the San Francisco Posts of The American Legion, as those rooms were historically used, then there would be no cause for the Trustees to refuse that use of the building.

Ignoring the historic spaces, relationships, and uses of the second floor, the alterations the Trustees propose would demolish the existing walls on the north, west, and south sides of the floor. The meeting rooms for Veterans' and patriotic organizations will be reduced from six large rooms to five smaller rooms. The American Legion Department of California offices will be moved to smaller quarters occupying less than half of the west side of the floor. Local Veterans' offices that used to occupy most of the north side of the first floor will be confined to one communal office with five small sub-offices or cubicles. No post will ever have its own office, and any post that wants to store its equipment will have to use one small storage area on the south side of the floor. No room will be left for expansion to accommodate additional Veterans' organizations and patriotic organizations that the San Francisco Posts of The American Legion want to invite to use the Veterans' Building.

Given current wars, there will be thousands of Veterans who will need more uses of the Veterans' Building, but the Trustees' refusals to allocate sufficient space as required by the Trust Agreement will discourage them from exercising their rights under the Trust. More space will be allocated on the first and second floors to the Arts Commission and a commercial café and administrative offices for an apparently expanded Trustees' bureaucracy than will be allowed for the beneficiaries of the trust. All of these alterations, of course, will reduce the spaces available for meeting rooms and will further impair the ability of Veterans' and other patriotic organizations to exercise their rights

under the Trust. The proposed alterations of the second floor violate the Interior Standards and Standards 1, 2, 3, 6, 9, and 10.

The historic spaces and special relationships of the third floor are that it contained ten meeting halls similar to those now on the second floor plus the genealogical library of the Sons of the American floor to the City for offices. As a temporary measure after the 1989 earthquake, the Mayor's office was on the third floor. Municipal Railway, the Mayor's Office on Disabilities, and other offices have been housed there. As a result of alterations for those activities, some of the third floor now has somewhat less inadequate electrical and lighting services. However, while the third floor has been partially vacant, the Trustees have refused to allow the San Francisco Posts of The American Legion to establish a Veterans' Success Center on that floor and have refused to allow the San Francisco Posts to admit patriotic organizations the San Francisco Posts want to install on that floor.

The motive of the Trustees in refusing to allow Veterans' and other patriotic organizations to exercise their rights to use the third floor for its historic purposes has been made clear by the proposed alterations you are considering. The Trustees want to permanently alter the entire third floor and destroy its historic spaces. They will install in new configurations more administrative offices for the Trustees' apparently expanded bureaucracy on the south and west sides of the floor and administrative offices for the arts commission on the north side. The Arts Commission is neither a beneficiary of the Trust nor an entity that has historically occupied the Veterans' Building. If the demolition and alterations of space to accommodate the Arts Commission will impair the use of the Veterans' Building by the San Francisco Posts and patriotic organizations, then that is not permissible under the Trust pursuant to which the Trustees are required to manage the Veterans' Building. From the perspective of the Historic Preservation Commission, these changes will also permanently destroy the historic spaces on the third floor and will permanently erode the historic uses of the building by Veteran beneficiaries of the Trust. This scheme will require major, permanent changes in the features, spaces and spatial relationships of the third floor. The proposed alterations of the third floor violate the Interior Standards and Standards 1, 2, 3, 6, 9, and 10.

The historic use of the fourth floor was that it housed the San Francisco Art Association. That was a budgetary accident. Originally, the Trust required a third building, which would have housed the Art Association. Due to lack of funds, the third building was not built. In any event, the Art Association was succeeded by the Museum of Modern Art,

which has now vacated the Veterans' Building and thereby abandoned its rights under the Trust. Since then, the Trustees have allowed other, temporary uses, such as a café, the Museum of Performing Arts, and the San Francisco Law Library.

Again, the proposed alterations to the fourth floor will permanently alter and destroy forever the historic spaces and spatial relationships of the Veterans' Building. The proponents want to demolish all of the existing walls and spaces and create new permanent spaces for the use of a performance center, costume shops, offices, storage and other facilities for the Opera, which is not a beneficiary of the part of the Trust that governs the Veterans' Building. The alterations will be major, permanent changes to the features, spaces, and spatial relationships of the fourth floor. They therefore will violate Standards 1, 2, 3, 6, 9, and 10.

**4. The interior alterations are neither necessary nor permitted by the Trust.**

In allocating space in the Veterans' Building, the Trustees are constrained by the terms of Section C of the 1921 Trust Agreement. City Attorney Opinion Number 33-651, at page 3, cautioned the Trustees that the San Francisco Posts of The American Legion and other Veterans' organizations ". . . are to be given preference in all matters, since one of the primary purposes of the War Memorial is to provide headquarters and space for these organizations." At page 4, that opinion even stated that the then proposed use of part of the first floor of the Veterans' Building by the San Francisco Art Association for its offices was subject to the restriction that its use must

. . . not conflict with the reasonable use of this floor by the veteran organizations. If there be any conflict it must be resolved in favor of the veterans because the general plan of the building contemplates that the veterans should occupy the first floor separate from the Art Association.

Exhibit 4 to this letter is a copy of Opinion 33-651.

This does not mean that The American Legion Posts have unfettered discretion. However, it does mean that the needs of the San Francisco Posts and patriotic organizations they decide to install in the Veterans' Building must be given deference. See City Attorney Opinion Number 33-651. As stated on page 3 of that opinion, "It would seem under the circumstances that while the Veterans are not entitled to any exclusive portion of the so-called Veterans' Building, they are entitled to all space necessary for their use."

At the hearing on April 4, 2012, Ms. Murray said that the Trustees had public hearings and that American Legion Posts attended and provided input. What she did not disclose is that, during hearings last year, The American Legion War Memorial Commission presented facts showing that the San Francisco Posts and patriotic organizations that they desire to install in the Veterans' Building reasonably need 38,000 square feet for their offices, meeting rooms, and related activities. The Trustees studiously ignored that presentation. Concurrently, the Trustees refused to allow the San Francisco Posts to install patriotic organizations that are Veterans' Service Organizations that would provide needed services for today's Veterans such as vocational counseling, assistance in pursuing employment and disability benefits, and rehabilitative services. We will address the Trustees' violation of their duties under the Trust Agreement in another forum.

However, those Veterans' Service Organizations, the San Francisco Posts of The American Legion, and other Veterans' organizations can conduct their activities in the existing spaces and using the existing spatial relationships of the Veterans' Building. Consistent with the Secretary's Standards and the San Francisco Planning Code, repairs, refinishing, and upgrading the spaces, such as repainting, recarpeting, repairing cracks, modernizing electrical and lighting services, and providing access for disabled persons, can be performed without significantly altering the interior features of the Veterans' Building.

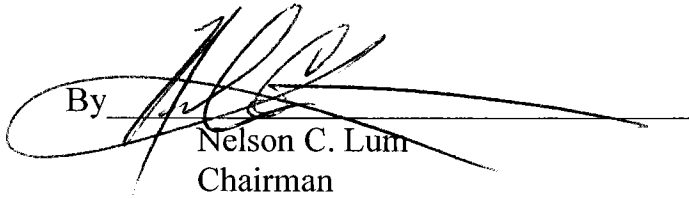
At the same time, the Trustees can allow suitable other organizations to use space in the Veterans' Building that the San Francisco Posts and patriotic organizations they want to install but do not immediately need. Those other organizations should be accommodated in spaces and spatial relationships that also preserve the history of the Veterans' Building. The permanent alterations of the Veterans' Building now before the Historic Preservation Commission would, instead, permanently destroy the historical spaces and special relationships of the building. The Commission should hold that those alterations are not appropriate and deny a Certificate of Appropriateness.

Mr. Richard Sucre  
May 28, 2012  
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Thank you for taking the time to consider these comments. If you have questions about anything related to this matter, please contact us.

Very truly yours,

American Legion War Memorial Commission

By  \_\_\_\_\_  
Nelson C. Lum  
Chairman

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# War Memorial

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## Agreement

*between*

The Regents of the University of California

*and*

Walter S. Martin, Charles Templeton Crocker, John D. McKee,  
E. S. Heller, Charles H. Kendrick, Frank F. Kilsby,  
Milton H. Esberg, Herbert Fleishhacker,  
William H. Crocker *and* John S. Drum

*Trustees*

This Agreement made this 19th day of August one thousand nine hundred and twenty-one, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; a corporation of the State of California, party of the first part, hereinafter for convenience called "Regents", and WALTER S. MARTIN, CHARLES TEMPLETON CROCKER, JOHN D. MCKEE, E. S. HELLER, CHARLES H. KENDRICK, FRANK F. KILSBY, MILTON H. ESBERG, HERBERT FLEISHHACKER, WILLIAM H. CROCKER and JOHN S. DRUM, Trustees, parties of the second part, hereinafter for convenience called "Trustees",

**Witnesseth:**

WHEREAS it is intended by this agreement to honor the memory of the soldiers, sailors, marines and war workers—men and women—who brought imperishable glory to California by their splendid contribution to the winning of the World War; and,

WHEREAS, a committee of citizens of San Francisco, represented by the said Trustees, has for such purposes conceived the plan of a *War Memorial* in the ownership of the University of California, and to that end has recommended the purchase of a block of land, consisting of six fifty vara lots in the City and County of San Francisco, State of California, described as follows:

Bounded by Van Ness Avenue, Franklin Street, Hayes Street and Grove Street; saving and excepting therefrom approximately sixty-four hundred (6400) square feet conveyed or to be conveyed to the City and County of San Francisco;—and the erection thereon of a *War Memorial* consisting of a Memorial Court enclosed or partially enclosed by a building or group of buildings, viz.: a theatre or auditorium building, a building to be used by the San Francisco Art Association, also called The San Francisco Institute of Art (and

sometimes known as The Mark Hopkins Institute of Art) and a building to be used by the San Francisco Posts of the American Legion, an organization composed of veterans of the late World War, all for the purpose of commemorating in perpetuity the victory achieved by the United States of America, and it is contemplated that said group of buildings, or a part thereof, will be used for educational purposes in connection with the University Work and University Extension Work of the University of California; and,

WHEREAS, to accomplish the aforesaid objects, arrangements have already been made by the Trustees to acquire said block of land with funds to be obtained from the subscriptions hereinafter mentioned; and,

WHEREAS, the said Trustees have procured from numerous and divers persons, associations, partnerships and corporations, subscriptions payable in terms to the University of California to provide the funds towards carrying out the said objects; and,

WHEREAS, the aggregate amount of such subscriptions at the present time, including cash subscriptions, is the sum of two million six hundred and seventy-nine (2,000,679) dollars, or thereabouts; and,

WHEREAS, said Trustees have already incurred various expenses for the purpose of carrying out said objects and purposes, which expenses should be deducted from said subscriptions, including cash subscriptions; and,

WHEREAS, the said Trustees may hereafter obtain other subscriptions in the same form for the same purposes as aforesaid; and,

WHEREAS, it was made conditional in said subscription agreements that the same as to each subscriber would be of no effect unless at least a total of one million five hundred thousand (1,500,000) dollars were subscribed to carry out the said objects; and whereas more than said sum has now been subscribed; and,

WHEREAS, the Regents have heretofore accepted subscriptions to said fund and will hereafter accept subscriptions thereto only upon condition that each subscriber consents to this agreement and to the appointment of the said Trustees as his irrevocable and perpetual agents for the carrying out of said trust and the terms of this agreement and any amendment or amendments hereof;

Now, Therefore, this Agreement Witnesseth:

(1) The Trustees agree that they will take immediate steps to secure the consent in writing of all the subscribers to the execution of this agreement and to the expenditure of the subscriptions in accordance herewith. This agreement shall not become operative as to the Regents until the consent of subscribers whose subscriptions aggregate at least one million eight hundred thousand (1,800,000) dollars have been secured thereto. In addition, immediately after the execution of this agreement, written notice thereof, and either a copy thereof or a reference to a place where such copy may be examined, shall be sent to each subscriber who has not already given his said written consent hereto. Such notice and copies shall be prepared by the Trustees and shall be sent by the secretary of the Regents.

The Trustees hereby jointly and severally warrant their authority to execute this agreement in behalf of all the subscribers to the end that at all times the Regents may deal with the said Trustees, their successors and assigns, in such trust, as the sole agents and representatives of all the subscribers for every purpose connected with this agreement.

The Trustees shall remain in existence as an organized committee as long as the Regents continue to hold the War Memorial and shall constitute a self-perpetuating body. In case of the death, resignation, incapacity or removal from the State of any of said Trustees,

the remaining Trustees or a majority of them shall appoint a successor from the particular organization from which the vacancy occurs, as in this paragraph designated. Said Trustees shall consist in the first instance of the following persons: Walter S. Martin and Charles Templeton Crocker, representing the San Francisco Art Association; John D. McKee and E. S. Heller, representing the Musical Association of San Francisco; Charles H. Kendrick and Frank F. Kilsby, representing the San Francisco Posts of the American Legion; Milton H. Esberg, Herbert Fleishhacker, William H. Crocker and John S. Drum. If requested by the Regents, but not otherwise, the Trustees shall cause a corporation to be organized under the laws of the State of California and shall advise the Regents thereof in writing, and thereafter all the rights and powers of the Trustees hereunder shall be vested in and devolve upon such corporation, including the perpetual and irrevocable right to act for and on behalf of the subscribers in connection with the trusts herein recited or referred to. The term subscribers, as hereafter used herein, shall mean those who have contributed or may hereafter contribute funds for the *War Memorial*. The Trustees shall be reimbursed out of the moneys paid in by the subscribers for the various expenses thus far or hereafter incurred in carrying out the objects and purposes of the trust.

(2) The acts of the Trustees, or a majority of them, shall be binding upon all the Trustees, and shall be evidenced by a writing signed by the Trustees, or a majority of them. The Trustees may delegate any of their powers to an executive committee, in which event the acts of the executive committee (to be composed in part of representatives of the organizations which are given rights in the buildings to be erected) shall be evidenced by a writing signed by them or a majority of them. The Regents shall be bound by a resolution duly passed by them.

(3) The Trustees shall take all steps necessary, convenient or requisite to secure the payment of said subscriptions to the Regents. The moneys and funds obtained through the payment of said subscriptions shall immediately be deposited in a bank or banks selected by the Regents to the credit of the Regents in an account to be designated "War Memorial Building Account", and such funds shall be paid out and expended upon the check or order of the Regents, but only when and if a written demand therefor is made upon the Regents by the Trustees or a majority of them, or by their executive committee, or a majority of it.

(4) The Trustees shall construct said building or buildings upon said lot of land in accordance with plans and specifications to be adopted by them. Before any contracts are let for the construction of such buildings or any of them, or any part thereof, the general plan for the *War Memorial* shall first receive the approval of the Regents in writing. The Trustees shall employ the architect, superintendent of construction, contractor or contractors, and all other agents necessary or convenient for the construction of said building or buildings, and the erection and completion thereof shall be exclusively under their direction and control. The contracts therefor shall be made in the name of the Regents. The Regents shall not be called upon to execute any contract for the construction, equipment or furnishing of any of the buildings or any part thereof, or to incur any liability of any character in connection therewith, unless the necessary funds to meet the financial obligations imposed have been paid into said War Memorial Building Account and are not otherwise appropriated. Neither the Regents nor the State of California shall be under any liability whatever in the construction of said buildings or any of them, or at all, beyond the amount of said moneys actually collected and deposited in banks and available for such purpose or purposes as herein prescribed, nor shall any pay-

ment be made therefrom except upon the written demand of the Trustees, or a majority of them, or their executive committee, or a majority of it, as aforesaid.

(5) Inasmuch as said building or buildings are to be erected to comply with certain representations made by the said Trustees in obtaining said subscriptions, it is understood and agreed that when said building or buildings are completed, the same shall by the said Trustees be turned over to the Regents, subject, however, to the carrying out by the Regents of the trusts herein set forth, and which trusts the Regents agree, as herein provided, to carry out and perform; provided, however, that in no event shall the Regents be responsible or liable hereunder for any moneys beyond the actual receipts from said group of buildings and the amounts of the subscriptions actually paid to them.

(6) After said building or buildings are completed and turned over to the Regents, it is agreed that the Regents (a) will keep the exterior and roof of the buildings devoted to the San Francisco Posts of the American Legion and to the San Francisco Art Association in good order, repair and condition, except as to any part of the buildings or any windows, glass or skylights which become broken through any act of the respective occupants; (b) will keep the theatre or auditorium, its exterior and interior, and every part thereof, and the approaches thereto, in good order, repair and condition; (c) will maintain the Memorial Court and approaches thereto in good order, repair and condition; but this covenant is not intended to exonerate the City and County of San Francisco from the maintenance of any part of the Memorial Court, which it has agreed or may hereafter agree to maintain.

(7) The Trustees shall make written demand upon the Regents for the said funds actually collected and deposited only for the pur-

chase of the real property above described and for the construction of the following:

(a) The theatre or auditorium and its equipment; (b) the building for the use and occupancy of San Francisco Art Association; (c) the building for the use and occupancy of the San Francisco Posts of the American Legion and its equipment.

(8) Out of the funds collected as aforesaid, said Trustees shall completely furnish and equip in a modern manner the buildings to be occupied by the San Francisco Posts of the American Legion as executive offices, club and meeting rooms, and auditorium, expending a reasonable amount of money for these purposes.

(9) The occupation of the respective buildings and parts thereof to be used by the San Francisco Posts of the American Legion and the San Francisco Art Association, respectively, shall be under the following covenants and conditions:

(a) The respective occupants shall be under no obligation to pay rent.

(b) Any wilful and continued violation by the respective occupants of the covenants and conditions herein expressed, or of any of them, shall give the Regents the right to terminate the occupancy. No failure to exercise this right at any time shall be deemed a waiver of a subsequent breach of this subdivision.

(c) Each respective occupant shall comply with all laws, rules, orders, ordinances and regulations, Federal, State, County and Municipal, or any of their departments, which shall impose any duty upon the occupants with respect to the premises, including health, police and fire regulations.

(d) Each respective occupant will keep the interior of the building cleanly and in good order and repair, and promptly make and pay for all necessary repairs, replacements and renovations.



(e) No alterations, additions or improvements of any kind may be made without the written consent of the Regents.

(f) The Regents or their agents may enter upon the premises or any part thereof at all reasonable hours for the purpose of examining the same, or making such repairs, additions or alterations as the Regents deem necessary or proper for the safety or preservation thereof; but the stipulations in this subdivision (f) carry no obligation of any kind upon the Regents.

(g) The Regents shall not be liable to any occupant for any damage occurring to person or property, whether occasioned by or resulting from the flow, leakage, breakage, or obstruction of any pipes, including oil, steam, water, gas, air, vacuum, electricity or soil pipes, or from any roof conduits or drain-ducts, or other leakage or overflow from water, oil, gas, air, electricity, or steam in and about said premises, or from any carelessness, negligence or improper conduct on the part of the respective occupants, or their agents or guests in or about said premises; and the Regents shall not be liable for any damage, loss or injury to any persons or property occurring by reason of any present, future, latent or other defects in the form, character or condition of the buildings, or any part thereof.

(h) Should the buildings or any of them be injured or destroyed by any cause, there shall be no obligation on the part of the Regents to restore or replace the same. But if insurance is carried thereon by the Regents, the insurance moneys received shall be used for the restoration or replacement of the building or buildings so injured or destroyed in so far as they are sufficient for that purpose. The Regents, however, shall not be under any obligation to carry insurance on any of said buildings.

(i) The respective occupants shall not assign, transfer or set over their respective rights without the written consent of the Regents. Neither shall the respective occupants lease, sublet or

underlet any part or portion of said premises without the written consent of the Regents. Should the rights of the occupant be assigned by operation of law in any manner, then the Regents may at their option terminate the occupancy; provided that any auditorium in the American Legion building and rooms necessary to be used in connection therewith may be sublet by the San Francisco Posts of the American Legion, but no leasing or renting or subletting or hiring shall be had to any tenant or tenants or to any one or for any purpose or purposes objectionable to the Regents. The Regents are hereby expressly given the right to forbid or determine or veto any contract or agreement of letting, subletting, or renting or hiring, of any part of said buildings.

(j) The respective occupants shall not use the said premises nor any part thereof for any purpose deemed extra-hazardous by the Regents on account of fire, or use the said premises for any immoral or illegal purposes.

(k) The respective occupants shall pay all taxes, assessments and municipal charges whatsoever upon any property belonging to them within said premises.

(l) The respective occupants shall pay for all heat, light, gas, electricity, water, steam or other public utility used in or about their respective premises, and shall pay for all janitor and elevator service. This enumeration shall not be deemed exclusive, and the said respective occupants shall pay in full for all services and material of every character used in or about their respective premises, and the Regents shall be under no obligation to pay for any part thereof.

(m) The respective occupants will repair and restore all glass in windows, doors and skylights, and all plumbing and wiring which have become broken through the acts, omissions or carelessness of the respective occupants.

(n) The respective occupants will not use, or permit to be used, the said respective premises for the purpose of any business, trade or manufacture, or for lodging or for a hotel or boarding house, but said respective occupants may permit necessary watchmen to lodge upon said premises.

(o) The respective occupants shall not carry on upon said premises, or permit to be carried thereon, any offensive noises or odors, or permit any nuisance of any kind.

(p) The respective occupants shall not permit any signs to be affixed to the exterior of said premises, or upon any windows or doors, unless the size, form and location thereof are approved by the Regents in writing.

(q) The respective occupants shall not cover any window or door with awnings unless the size, color and design of such awnings are first approved in writing by the Regents.

(r) Should the Regents decide upon maintaining a garden in any court in or about said buildings, or in or about the sidewalk adjacent to the same, the said respective occupants shall not interfere with the maintenance of such garden by the Regents.

(s) Should any injury, loss or destruction of the said premises occur through the carelessness or negligence of the respective occupants or of their guests, then the respective occupants will pay the Regents for the damage caused thereby.

(t) The respective occupants agree that all signs upon or adjacent to doors in the interior of said buildings shall be at their own expense, but the form, character and location thereof shall be approved by the Regents in writing before the installation thereof.

(10) The trusts to be carried out by the said Regents are as follows:

A.

REQUIREMENTS OF TRUST IN FAVOR OF SAN FRANCISCO ART ASSOCIATION.

The building to be occupied by San Francisco Art Association shall be used by that corporation (or by a non-profit association organized under the laws of the State of California, under the name of "Trustees of San Francisco Museum of Art" and authorized under the constitution and by-laws of San Francisco Art Association to act in association and conjunction with San Francisco Art Association in the matter of and in connection with the possession, custody, care, display and exhibition of fine paintings, statuary and other objects of art) to maintain therein an Art Gallery and Museum of Fine Arts, and the public shall have access thereto at reasonable times, and under conditions to be fixed by said San Francisco Art Association with the approval of the Regents. Such parts or portions of said building as shall for the time being not be necessary to be used for the Art Gallery and Museum of Fine Arts may be used by the Regents for any purpose the Regents may desire. Such use and occupation on the part of the San Francisco Art Association shall be independent from any of the provisions of the so-called "Edward F. Searles Trust". For the purpose of maintaining exhibits the San Francisco Art Association may receive from donors or trustors works of art or endowments for maintenance or endowments for the purchase of works of art independent of the provisions of said "Edward F. Searles Trust." No works of art shall be maintained or exhibited in said Art Gallery or Museum of Fine Arts which are objectionable to the Regents.

B.

REQUIREMENTS OF TRUST IN FAVOR OF MUSICAL ASSOCIATION OF SAN FRANCISCO AND SAN FRANCISCO SYMPHONY ORCHESTRA.

The theatre or auditorium to be erected upon said property and sufficient space about the same for convenient access thereto may be used and occupied by the Musical Association of San Francisco (a California corporation), which maintains the "San Francisco Symphony Orchestra", upon the following conditions:

(1) The Musical Association of San Francisco shall pay such rent for each performance in said theatre or auditorium as may be fixed by the Regents. In case any rent remains due and unpaid for a period of two months after the same accrues and becomes due, the Regents shall have and they are hereby given the right and option of refusing to permit said theatre or auditorium to be used by the Musical Association of San Francisco or said San Francisco Symphony Orchestra until such rent is paid in full. In case any rent remains due and unpaid for a period of four months after the same has accrued pursuant to the provisions hereof, then and in that event the Regents shall have and they are hereby given the right and option of terminating the occupancy of said theatre or auditorium by said Musical Association of San Francisco or said San Francisco Symphony Orchestra, and thereafter neither said Musical Association nor said San Francisco Symphony Orchestra shall have any preferential rights of any character in or to said theatre or auditorium or any part thereof, and the Regents shall, in their discretion, manage and operate the said theatre or auditorium and permit same to be used by those persons or organizations whom, in their discretion, they deem proper.

(2) The theatre or auditorium shall be maintained and kept in good order and repair by the Regents at their own expense.

(3) The Regents shall at each performance and rehearsal given under the auspices of the Musical Association of San Francisco furnish at their own expense sufficient and proper light, heat, steam, water, electricity, gas and other public utility in all parts of said theatre or auditorium and the street approaches thereto.

(4) The Regents shall at each performance and rehearsal given under the auspices of the Musical Association of San Francisco furnish necessary, proper, full and adequate service on the stage and in front of the stage, including footmen, box office service, ticket takers, ushers and first-class stage service.

(5) The Regents shall at each performance and rehearsal given under the auspices of the Musical Association of San Francisco use their best endeavors to maintain proper order and decorum in all parts of said theatre or auditorium and the approaches thereto.

(6) The Musical Association of San Francisco shall have the following preferential rights and privileges.

(a) The first preferential right to use the theatre or auditorium for its future annual regular series of symphony, popular or choral concerts as well as all rehearsals therefor, such season not to exceed seven (7) consecutive months of each year between September fifteenth and the following April fifteenth, upon as favorable terms and arrangements as to lease, license or occupancy as are or may be made during such time with any other lessee, licensee or occupant giving symphony, popular or choral concerts in said theatre or auditorium, excepting the University of California or any Department thereof or activity directly affiliated therewith.

(b) The first preferential right to use the theatre or auditorium for a season of musical festival, including rehearsals therefor, to be given under the auspices of said Musical Association of San Fran-

cisco after the conclusion of the regular series of concerts above mentioned, such season not to exceed two (2) consecutive months in any year between April fifteenth and June fifteenth, upon as favorable terms and arrangements as to lease, license or occupancy as are or may be made during such time with any other lessee, licensee or occupant giving musical performances of a similar character in said theatre or auditorium.

(c) The concerts or musical performances above mentioned may be given in the day or night or both, as may be determined by said Musical Association.

(d) The preferential rights above mentioned shall mean a first right and option to be exercised by said Musical Association of San Francisco before any arrangements shall be made by the Regents directly or indirectly with any other orchestra or musical organization or those in control thereof or any impresario or concert manager for any concerts or musical performances during the season that the Musical Association of San Francisco may desire to give the above mentioned concerts or musical performances. The preferential rights herein given to said Musical Association of San Francisco shall not extend to or cover the period in any calendar year from June fifteenth to September fifteenth. Such preferential rights shall be exercised by written notice given to the Regents on or before August first in any calendar year for any use desired before the succeeding June fifteenth, and upon such written notice being given, the Musical Association of San Francisco shall become obligated to pay the rental to the Regents for such use of the theatre or auditorium unless otherwise agreed by the Regents in writing.

(7) Said Regents may, if so advised, appoint any member of the Regents and/or any of the Faculty of the University of California and/or any agent as a Board of Administration to manage

said auditorium or theatre and to provide for the entertainments to be given therein, and may, if so advised, appoint a Business Manager who will have such supervision and control over said auditorium or theatre as said Regents may decide to confer; but nothing herein contained shall be deemed to deprive said Musical Association of the right to control and manage such concerts or musical performances as it may give in said theatre or auditorium.

C.

REQUIREMENTS OF AND TRUST IN FAVOR OF SAN FRANCISCO POSTS OF THE  
AMERICAN LEGION.

(1) The building to be occupied by the San Francisco Posts of the American Legion shall be occupied and used by the various duly organized and authorized San Francisco Posts of the American Legion without rent charge. The San Francisco Posts of the American Legion, or a majority of them, shall under such rules and conditions as they may prescribe, provide headquarters for Veterans of the Mexican War, Grand Army of the Republic, Spanish-American War Veterans, and such other patriotic organizations as said San Francisco Posts of the American Legion may from time to time desire to install. Should the San Francisco Posts of the American Legion be consolidated with or merged into some other national organization, then the organizations duly authorized by such other national organization shall have the same rights of occupancy as the San Francisco Posts of the American Legion, and the rights and obligations of the successor organization shall be the same as the rights and obligations of the San Francisco Posts of the American Legion, as set forth herein.

(2) The said building to be occupied by the San Francisco Posts of the American Legion shall be used by them as club and meeting-rooms and for executive offices and auditorium purposes.



(3) Should said San Francisco Posts of the American Legion or their successor by consolidation or merger cease to exist, then said building may be used by said Regents for any purpose the Regents may determine.

#### GENERAL PROVISIONS.

(1) The Regents shall in no event be liable for the erection or completion of the group of buildings herein described or any of them. Their only obligation in this connection shall be to pay out the subscriptions actually collected in the manner herein provided.

(2) The Regents shall in no event be under any financial liability or responsibility for the maintenance, repair, or upkeep of said group of buildings, or any of them, over and above the net financial returns which may be received from the operation of the theatre or auditorium.

(3) In case the San Francisco Posts of the American Legion should cease to exist and there be no similar patriotic organization of like membership in existence at that time, the building to be erected for use by the San Francisco Posts of the American Legion shall thereafter be under the exclusive direction and control of the Regents.

(4) In case the Musical Association of San Francisco should cease to exist as an active musical association, the building to be erected for use by the Musical Association of San Francisco shall thereafter be under the exclusive direction and control of the Regents.

(5) After the erection of the group of buildings herein provided for is completed and possession thereof delivered to the Regents, neither the Trustees nor any of them, nor their executive committee, shall have any further connection with the said real property or group of buildings, except as provided in paragraphs (6) and (8) following.

(6) The Regents may withdraw and retire from the trust hereby created in relation to said *War Memorial* at any time and resign as trustee hereunder. In case the Regents determine so to withdraw and retire, a resolution to that effect shall be passed by the Regents and a copy thereof deposited in the United States Mail at San Francisco, California, postage prepaid, addressed to each of the following at San Francisco, California: Each Post of the American Legion in San Francisco or its successor organization, if any; the Musical Association of San Francisco; the San Francisco Symphony Orchestra; San Francisco Art Association, the trustees herein individually named; and the corporation formed by the Trustees hereunder, if any. Within sixty (60) days after the completion of such mailing, the Trustees or the corporation formed by them pursuant hereto shall designate in writing a person, corporation, city, county or other governmental agency or political subdivision of the State of California, to whom the Regents shall convey the said trust property and moneys then in their hands pursuant hereto. In case no such person, corporation, city, county or other governmental agency or political subdivision of the State of California is designated in writing by the Trustees or said corporation to be formed pursuant hereto, if any, and written notice of such designation given to the Regents by depositing the same in the United States Mail with the postage thereon prepaid, addressed to The Regents of the University of California, Berkeley, California, within said sixty (60) day period, then the Regents may in their discretion convey the trust property and any moneys then in their hands pursuant hereto to any city, county, municipal corporation or political subdivision or agency of the State of California, as trustee, and upon making such conveyance the Regents shall thereafter be under no further obligation of any char-

acter on account of the execution of this agreement, or in connection with the said *War Memorial* or the property or funds thereof.

(7) In order to protect the Regents against any loss or liability in connection with the carrying out of the trusts herein recited and referred to, it is agreed that there shall first be deducted from the total amount of the moneys received by the Regents the sum of one hundred thousand (100,000) dollars; and in addition all of the net profits of the operation of said *War Memorial* buildings or any part thereof shall be accumulated by the Regents and added to said fund of one hundred thousand (100,000) dollars. The said fund shall be invested in such interest-bearing securities as the Regents shall in their discretion deem proper and the Regents may, in their discretion, invest and reinvest the same or any part thereof. Said fund shall be designated as the "War Memorial Contingent Fund" and either the income or the principal thereof may be used by the Regents at any time, in their discretion, to make up any deficit in the operation of said *War Memorial* or for the purpose of making any necessary, convenient or desirable renewals, replacements, repairs or betterments in connection with said buildings, or the furnishing or equipment thereof.

(8) The Trustees hereby jointly and severally agree in their individual capacities that they will indemnify and hold harmless the Regents against any financial loss of any character in the construction of the said *War Memorial*, and they hereby jointly and severally promise and agree that they will pay to the Regents, upon demand, any loss which may have been suffered at any time by the Regents in the construction of the said *War Memorial*. It is the intention hereof that the Regents shall never be called upon to make any payments on account of the construction of the said *War Memorial* except from moneys actually paid to them by the said subscribers.

(9) In case any differences or disagreements arise between the Regents and the Trustees or its successor corporation, if any, concerning the interpretation of this agreement or the purchase of said real property or the construction or operation of said buildings thereon or any other matter or thing concerning said *War Memorial* or this agreement or any amendment thereof, the parties hereto hereby agree to submit the same for decision to a board of arbitration consisting of three persons, to wit, the Chief Justice of the Supreme Court of California, the Presiding Justice of the United States Circuit Court of Appeals for the Ninth Circuit and the Presiding Justice of the District Court of Appeal of the State of California for the First Appellate District, First Division, and the parties hereto shall be bound by the decision of said board, and no suit or action shall be maintained hereunder unless the matter in controversy shall first have been submitted to said board of arbitration. If for any reason any one of said three members of such board of arbitration shall not be able to serve, then the other two members thereof shall select a third arbitrator.

(10) The Trustees shall be deemed to be the representatives of and their acts shall bind the San Francisco Posts of the American Legion, the San Francisco Art Association and the Musical Association of San Francisco, in all transactions with the Regents pertaining to the *War Memorial*.

(11) This Agreement is executed by the Trustees for their own account and as their own act and as the act of each of them and for the account of the said subscribers and as their act and as the act of each of them.

(12) It is expressly agreed and understood that this Agreement may be in any way modified and amended at any time by subsequent agreement in writing between the parties hereto, or their respective successors in interest.

In Witness Whereof, the Regents has, by its officers thereunto duly authorized, caused its corporate name to be hereto subscribed and its corporate seal to be hereto affixed, and the Trustees have hereunto subscribed their names, all on the day and year first above written.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,

By *W. D. Stephens*  
Governor of the State of California and ex-officio President of The Regents of the University of California.

(Seal)

By *R. L. Arnold*  
Secretary of The Regents of the University of California.

*Frederick M. ...*  
*Charles Poppleton Crocker*  
*Wm. F. McKel*  
*E. ...*  
*Chas. H. Kendrick*  
*Frank J. Kilaly*  
*Milton H. Eby*  
*Henry ...*  
*W. G. ...*  
*Wm. W. ...*

RESOLUTION No. 33407  
(New Series)

BE IT RESOLVED THAT:

Section 1. The offer of The Regents of the

University of California and of Walter S. Martin, R.I. Bentley, John D. McKee, Frank R. Havenner, Charles H. Kendrick, Frank F. Kilsby, Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, John S. Drum, James B. McSheehy, and Jesse C. Colman, as trustees of the privately subscribed funds of the San Francisco War Memorial, to assign, transfer, and convey all of the property, real, personal, and mixed, now held by them in trust under the terms of that certain agreement between The Regents of The University of California and Walter S. Martin, Charles Templeton Crocker, John D. McKee, E. S. Heller, Charles H. Kendrick, Frank F. Kilsby, Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, and John S. Drum, dated August 19th, 1921, and all amendments thereto heretofore made, to the City and County of San Francisco, in trust, is hereby accepted, subject to the following terms and conditions:

(a) The City and County of San Francisco accepts all cash, choses-in-action, and other property so assigned and transferred, upon the trusts, terms, and conditions set out in that certain agreement, dated August 19, 1921, hereinabove in Section 1 hereof referred to, and all amendments thereto heretofore made, and said City and County agrees to perform or cause to be performed all the duties which by the terms of said agreement devolved upon The Regents of The University of California and/or Walter S. Martin, Charles Templeton Crocker, John D. McKee, E. S. Heller, Charles H. Kendrick, Frank F. Kilsby, Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, and John S. Drum, and/or their successors, as trustee.

CERTIFIED COPY

(b) The title to all real property so conveyed to the City and County of San Francisco, in trust, shall vest in said City and County, but said real property shall be used only as a site for the War Memorial referred to in that certain agreement of August 19, 1921.

(c) All cash, choses-in-action, and all other personal property of every kind and sort so assigned and transferred to the said City and County, together with all income and interest therefrom, shall be set aside for the use and benefit of the "Board of Trustees of the War Memorial", which said Board was created by an amendment to the Charter of the City and County of San Francisco, designated as Article XIV-d of said Charter.

(d) The Supervisors of the City and County of San Francisco hereby authorize the said Board of Trustees of the War Memorial to administer, execute, and perform the terms and conditions of the trust set forth in that certain agreement of August 19, 1921, hereinabove in Section 1 hereof referred to, and all amendments thereto heretofore made.

(e) The cash, choses-in-action, and personal property of every kind and sort, so assigned and transferred, in trust, to the City and County of San Francisco, together with all income and interest therefrom, and such sums of money as may be added thereto, shall be used by the said "Board of Trustees of the War Memorial" only in conjunction with the proceeds from the War Memorial bond issue, and only for the purpose of constructing a War Memorial in the City and County of San Francisco as provided in that certain agreement, dated August 19, 1921, hereinabove in Section 1 hereof referred to and all amendments thereto heretofore made.

Section 2. The Mayor and the Clerk of the Board of Supervisors of the City and County of San Francisco are hereby authorized to execute, in duplicate, full and complete receipt to The Regents of The University of California and to Walter S. Martin, R. I. Bentley, John D. McKee, Frank R. Havenner, Charles H. Kendrick, Frank F. Kilsby, Milton H. Esberg, Herbert Fleishacker, William H. Crocker, John S. Drum, James B. McSheehy, and Jesse O. Selman, and/or their successors, as trustees, for and on behalf of the City and County of San Francisco for all the property so transferred.

The foregoing document is certified to be a full, true, and correct copy of the original on file.

Gloria L. Young, Clerk  
Board of Supervisors  
City and County of San Francisco

By: *Gloria L. Young*

Date: SEP - 5 2002

(Seal)

NOV 10 1930

Adopted—Board of Supervisors, San Francisco.

Ayes: Supervisors Andriano, Canepa, ~~Colman~~, Gallagher, Havenner, Hayden, McGovern, McSheehy, Miles, Peyer, Power, ~~Riverieri~~, Rossi, Shannon, Spaulding, Stanton, ~~Smir~~, Toner.

Noes: Supervisors \_\_\_\_\_

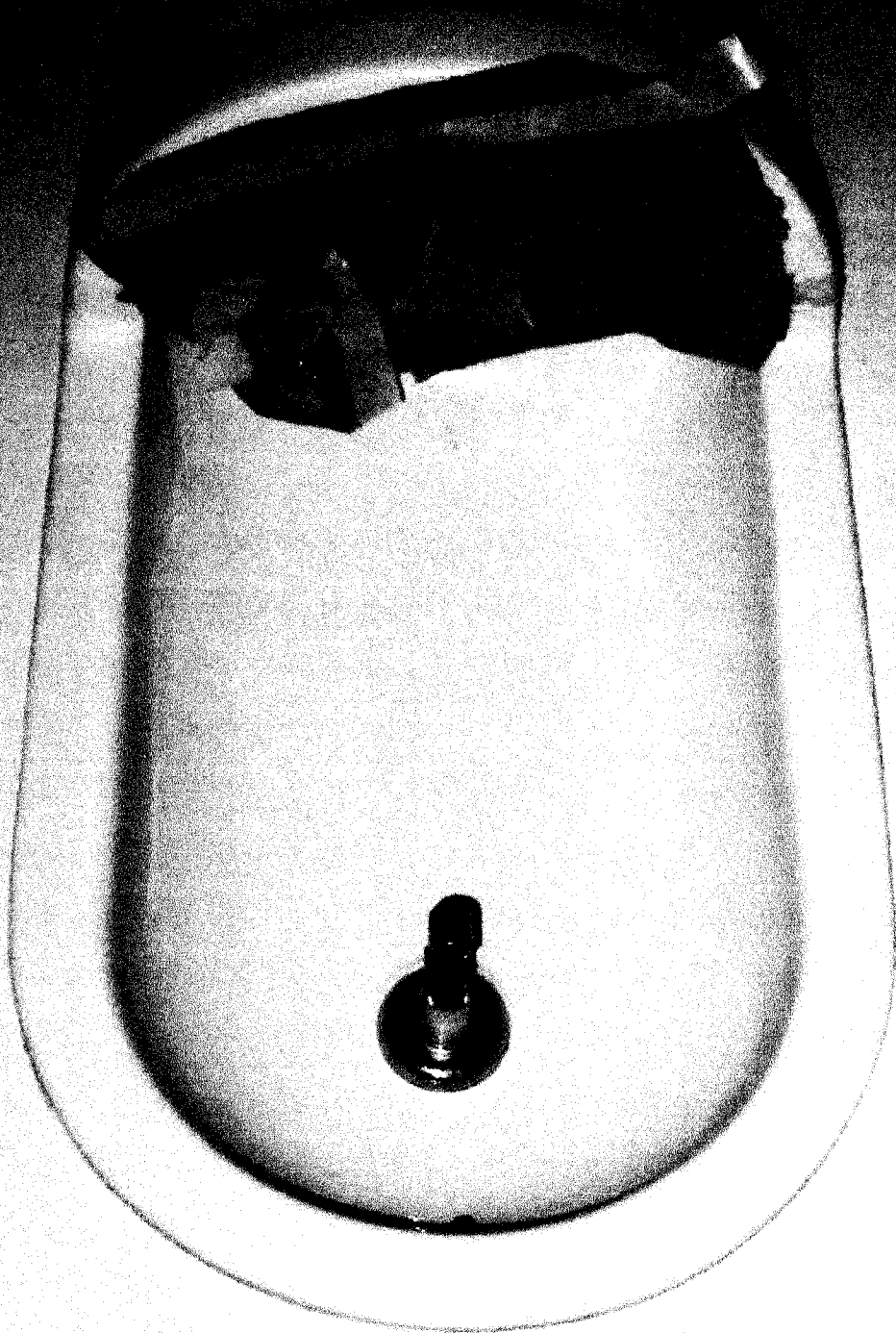
Absent: Supervisors *Colman Peyer Gonzales Peller*

Approved San Francisco *12-1-30*

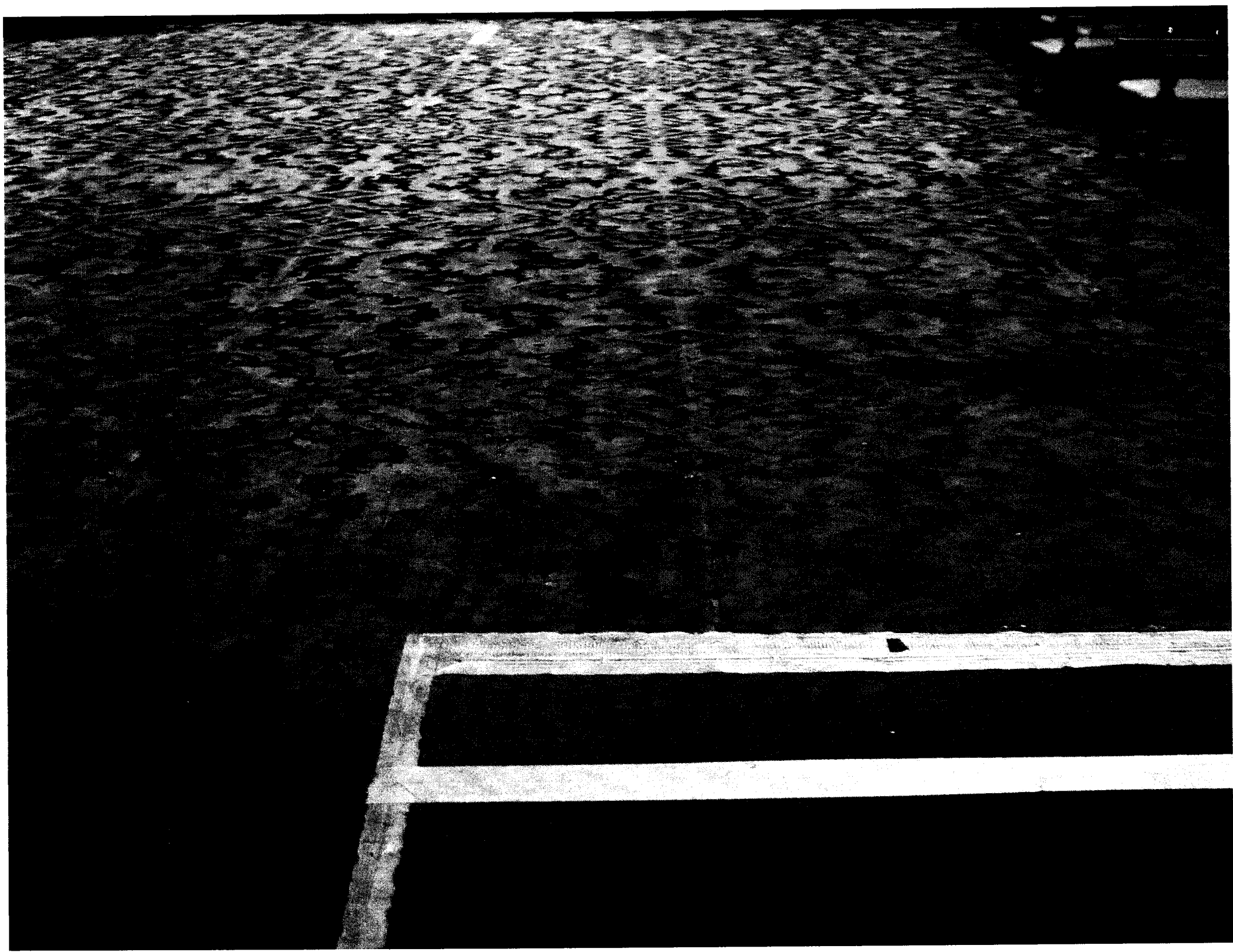
Clerk

Mayor

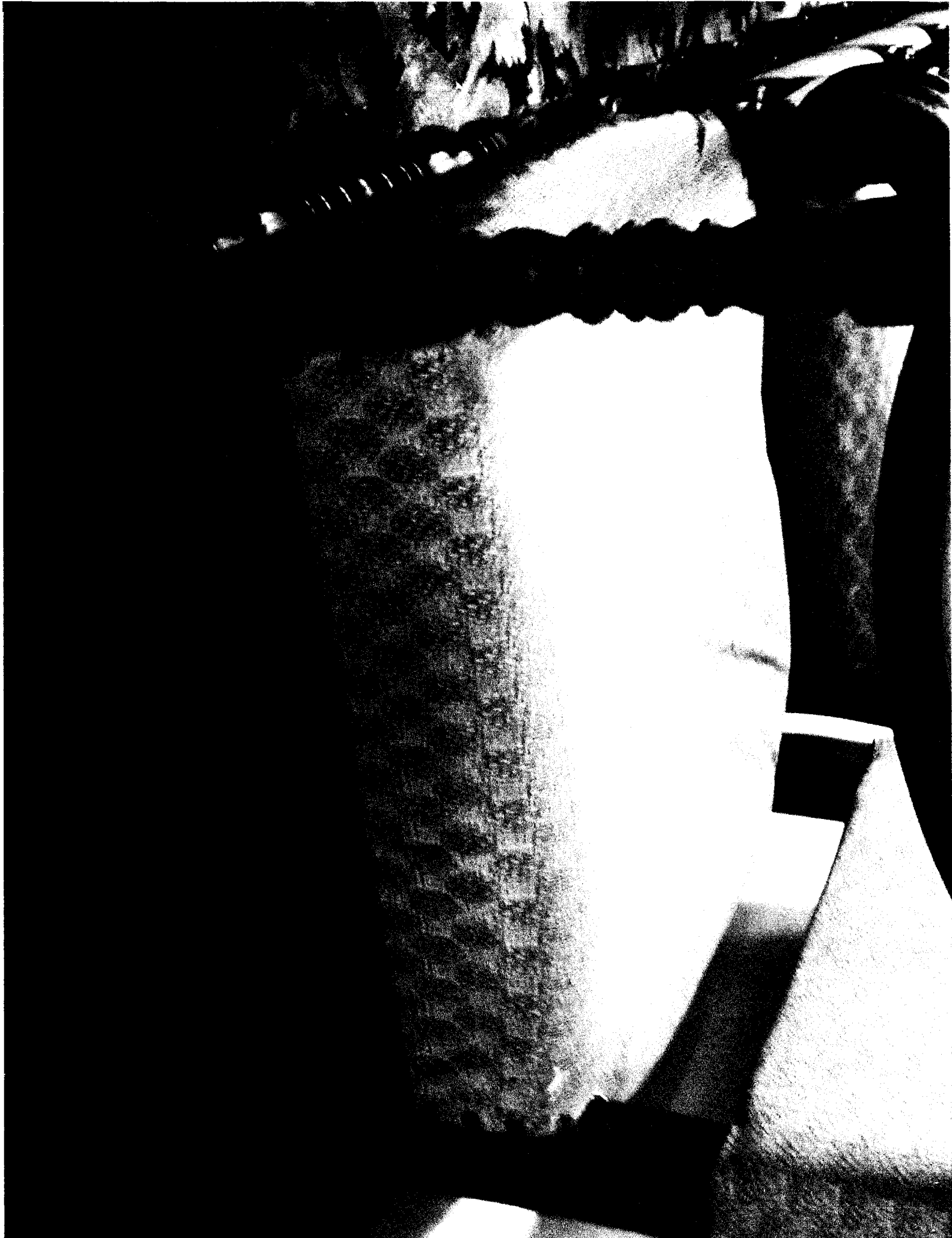


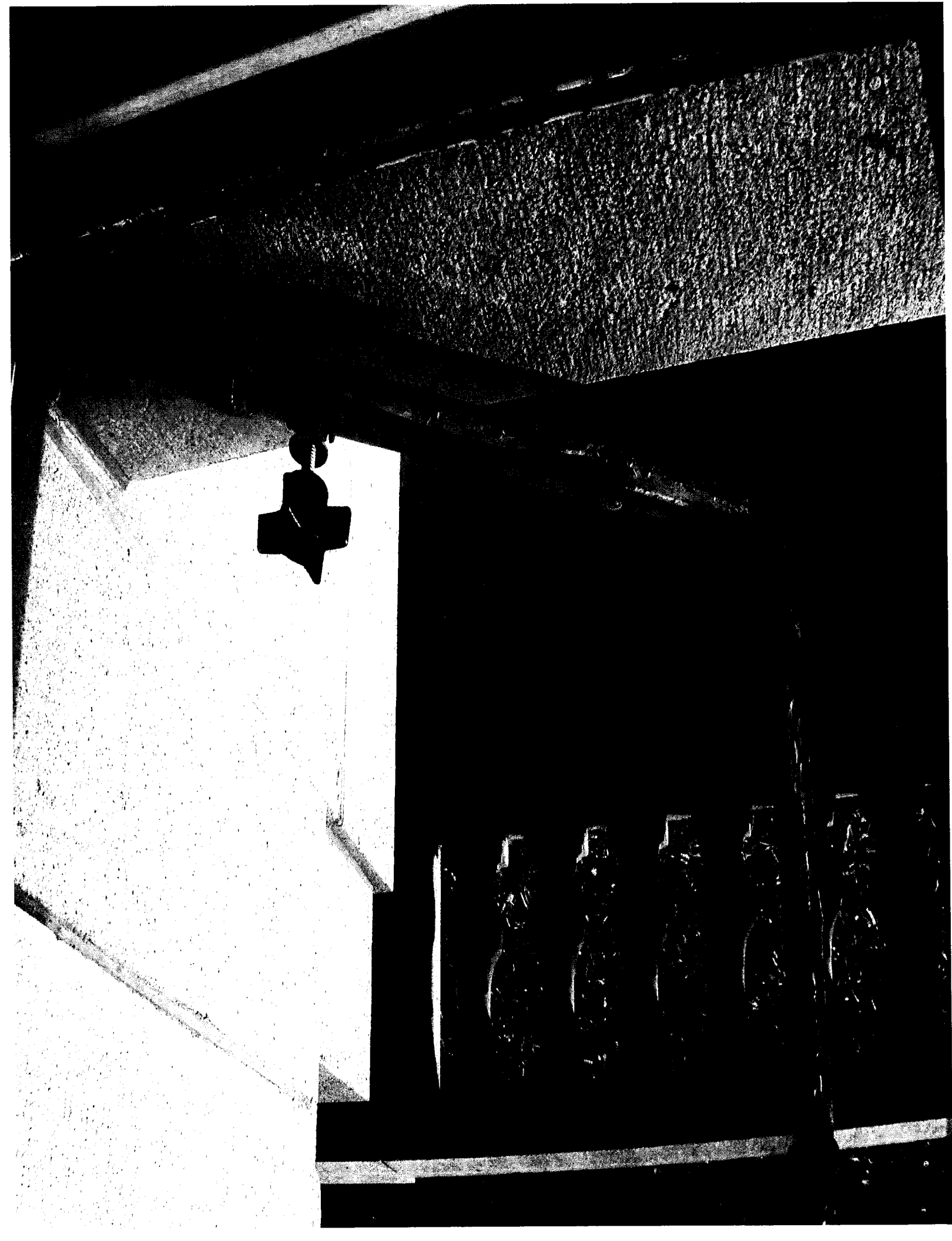














657

January 12, 1933.

**SUBJECT:** Rights of American Legion posts in connection with War Memorial.

Gentlemen:

The following questions have been asked of this office:

- (1) Has the Board of Trustees the right to use Room 101, a large office space on the first floor of the Veterans' Building of the War Memorial, for the use of its secretarial offices or must this room be devoted to the use of the San Francisco posts of the American Legion?
- (2) Has the Board of Trustees the right to allocate Rooms 134 and 135 to the San Francisco Art Association, bearing in mind that these rooms are on the first floor of the Veterans' Building? The American Legion posts of San Francisco claim this space.
- (3) Have the American Legion posts of San Francisco the power to assess a service charge against other veteran or patriotic organizations occupying the War Memorial, other than the Veterans' Auditorium?
- (4) What charges must the Board of Trustees exact for the use of the Veterans' Auditorium?
- (5) Can the American Legion posts pay the Board of Trustees a flat charge for the use of the Veterans' Auditorium based on maintenance?

#### OPINION

In answering the various questions propounded, it is probably advisable to refer to some of the early events which occurred prior to the actual construction of the War Memorial. You will recall that in 1927 a proposed bond issue was submitted to the people of San Francisco with respect to whether the city and county should incur a bonded indebtedness in the sum of four million dollars for the "acquisition, construction and completion" of the War Memorial. This was voted upon favorably. The ordinance calling and providing for the special election anent this bond issue contained the following language:

"Section 1. A special election is hereby called and ordered to be held in the City and County of San Francisco on Tuesday, the fourteenth day of June, 1927, for the purpose of submitting to the electors of said City and County the following proposition, to-wit: To incur a bonded debt of the City and County of San Francisco to the amount of four million (\$4,000,000) dollars for the purpose of the acquisition, construction and completion of a permanent



improvement, to-wit: The construction, completion and equipment of permanent buildings in or adjacent to the Civic Center in the City and County of San Francisco, to be used as a memorial hall for war veterans and for educational, recreational, entertainment and other municipal purposes and the purchase of all equipment and furnishings necessary for said buildings."

You will note from the foregoing quotation that it was the intention of the people of San Francisco that the bond issue should be used for the "construction, completion and equipment" of a memorial hall for war veterans and was also "for educational, recreational, entertainment and other municipal purposes". Thus, we find that the people of San Francisco, at the time of their voting upon the bond issue, had in mind that the war veterans of San Francisco should be given consideration, but not that they should be given any exclusive rights with respect to the proposition. In fact, the ballots used at the said special election contained precise language to the effect that a bonded indebtedness was to be incurred and that the money obtained therefrom was to be used for the purpose of constructing a permanent improvement "to be used as memorial halls for war veterans and for educational, recreational, entertainment and other municipal purposes and the purchase of all equipment and furnishings necessary for said buildings". There is no language in the ordinance calling the special election to indicate any intent to give the war veterans of San Francisco any exclusive rights in the proposed War Memorial. From a reading of the ordinance and the language used, it appears that the voters had in mind that the war veterans of San Francisco should be given the utmost consideration but not exclusive rights. (See Ordinance No. 7516 (New Series).)

In 1928 the people of San Francisco voted upon a charter amendment providing for a Board of Trustees of the San Francisco War Memorial which was proposed to be erected and maintained in the Civic Center. The Board of Trustees was thereby created under this charter amendment, which provided that the board should "have charge of the construction, administration, management, superintendence and operation of the War Memorial". The Board of Trustees was given power to administer, execute and perform the terms of any trust accepted by the Board of Supervisors and to make rules and regulations not inconsistent with the provisions of the charter and the ordinances of the Board of Supervisors for the administration, government and protection of the War Memorial and its affairs.

It was provided further in said charter provision that the title to all property owned or thereafter acquired for the War Memorial should vest in the City and County of San Francisco when not inconsistent with the terms of its acquisition. (See Article XIV - D of 1899 Charter.)

Subsequently, and on May 9, 1930, an ordinance, No. 8746 (New Series), of the City and County of San Francisco became effective. This ordinance provided in detail for the construction of the War

Memorial and the administration, management, superintendence and operation of the War Memorial by the Board of Trustees theretofore provided for in the previously mentioned charter provision.

On November 12, 1930, the City and County of San Francisco accepted a transfer of the trust set up in 1921 which provided for a War Memorial in San Francisco. Subsequently, and on February 24, 1931, Ordinance No. 8931 (New Series) became effective. This ordinance provided more effectually for the construction, administration, management, superintendence and operation of the War Memorial.

With the advent of the new charter we have Section 44 which provides that the Board of Trustees of the War Memorial should have charge of the construction, administration and operation of the War Memorial and of the grounds set aside for it.

Thus it will be readily seen that in order to reach a proper conclusion concerning any of the questions asked, all of the various matters heretofore mentioned must be considered together as a whole. The various ordinances, charter provisions and agreement must be read in conjunction with each other in order to properly understand the situation. It is my opinion that the people of San Francisco vested complete control of the War Memorial in the Board of Trustees subject only to the provisions of the 1921 Trust Agreement, unless the Supervisors had no power to accept the trust on the terms set forth in the trust agreement. I have heretofore taken, and will continue to take, the position, however, that the acceptance of the trust was on a lawful basis.

(1) I have failed to find anything in the trust agreement which would prevent the Board of Trustees from occupying office space on the first floor of the Veterans' Building of the War Memorial for the use of its secretarial offices. In fact, it would seem that the trustees might be charged with being derelict in their duty if they did not provide for their offices in a place readily accessible to the general public and where most of the persons using the War Memorial would find it convenient. In this connection it must be remembered that the Trustees have charge of the management of the War Memorial. However, if Room 101 should be a large room which the Trustees do not require because of its size, or in the event that this room should conflict with the occupancy of the building by the veteran organizations, the use thereof would be unreasonable and therefore in violation of the trust agreement, which apparently contemplated that the veterans in the building were to be left to themselves. It would seem under the circumstances that while the veterans are not entitled to any exclusive portion of the so-called Veterans' Building, they are entitled to all space necessary for their use. This, of course, cannot prevent the use of office space by the Trustees on the first floor of the building. The Board of Trustees, however, must bear in mind that the American Legion posts of San Francisco and other veteran organizations are to be given preference in all matters, since one of the primary purposes of the War Memorial is to provide headquarters and space for these organizations. However, since the management of the War Memorial is vested in the Trustees they are the final determinators of all questions of policy.

(2) So far as the rights are concerned of the San Francisco Art Association to have offices on the first floor of the Veterans' Building, I see no objection to such an arrangement, provided they do not conflict with the reasonable use of this floor by the veteran organizations. If there be any conflict it must be resolved in favor of the veterans because the general plan of the building contemplates that the veterans should occupy the first floor separate from the Art Association. You will recall that the San Francisco Art Association has also been given certain preferential rights under the Trust Agreement. These rights must be respected. I would suggest that, so far as possible, the veteran organizations be kept separate and apart from the San Francisco Art Association in order to avoid conflict and confusion. It is my opinion that neither the people of San Francisco nor the makers of the Trust Agreement had in mind that these two diverse organizations should be compelled to conflict with each other in any way. There is no set amount of space in the War Memorial to which any particular group is entitled as a matter of right.

(3) There is nothing in the Trust Agreement which would permit the American Legion posts of San Francisco to assess a service charge against any other veteran or patriotic organization occupying the Veterans' Building, except, of course, that portion known as the Veterans' Auditorium. The only language that might give any such impression is that contained in Subdivision (1) of Section (C) of the Trust Agreement which provides that the San Francisco posts, or a majority of them, shall provide headquarters for other veteran and patriotic organizations under rules and conditions prescribed by the San Francisco posts. Such rules and conditions, however, could not be made to include a service charge which would be, in effect, a charge for rent. Whether the service charge be large or small it could not be exacted from these other organizations. However, I see no objection whatever to a voluntary contribution on the part of these organizations towards paying administrative expenses. In fact, it would be logical that such contributions should be made.

(4) The charges to be made by the Board of Trustees to the American Legion posts in connection with the sub-letting of the Veterans' Auditorium by the American Legion posts should cover the full cost of maintenance. This should be readily calculable and could be worked out on a business basis by the use of proper accountancy methods. However, it is my opinion that the American Legion posts of San Francisco should not be made to pay any charges for the use of the Veterans' Auditorium when used for their own functions for which no charge for admission is made. When the Auditorium is used for profit I think that it is within the spirit of the Trust Agreement and the charter that a maintenance charge should be exacted by the Trustees. There is no provision in the Trust Agreement for the exemption from payment of a reasonable rental by other organizations when they use the Veterans' Auditorium whether an admission charge is made or not. The Board of Trustees have the power, however,

#5

to permit the use of the Auditorium without charge at any time when not used for profit.

(5) I can perceive of no reason why a flat charge, based upon the cost of maintenance, cannot be made in the place of calculating each day's use.

Respectfully submitted,

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CITY ATTORNEY

BOARD OF TRUSTEES OF THE WAR MEMORIAL  
OF SAN FRANCISCO,  
Opera House,  
San Francisco, Calif.

BE IT RESOLVED THAT:

Section 1.

The offer of The Regents of the University of California and of Walter S. Martin, R.I. Bentley, John D. McKee, Frank R. Havenner, Charles H. Kendrick, Frank F. Kilsby, Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, John S. Drum, James B. McSheehy, and Jesse O. Colman, as trustees of the privately subscribed funds of the San Francisco War Memorial, to assign, transfer, and convey all of the property, real, personal, and mixed, now held by them in trust under the terms of that certain agreement between The Regents of The University of California and Walter S. Martin, Charles Templeton Crocker, John D. McKee, E. S. Heller, Charles H. Kendrick, Frank F. Kilsby, Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, and John S. Drum, dated August 19th, 1921, and all amendments thereto heretofore made, to the City and County of San Francisco, in trust, is hereby accepted, subject to the following terms and conditions:

(a) The City and County of San Francisco accepts all cash, choses-in-action, and other property so assigned and transferred, upon the trusts, terms, and conditions set out in that certain agreement, dated August 19, 1921, hereinabove in Section 1 hereof referred to, and all amendments thereto heretofore made, and said City and County agrees to perform or cause to be performed all the duties which by the terms of said agreement devolved upon The Regents of The University of California and/or Walter S. Martin, Charles Templeton Crocker, John D. McKee, E. S. Heller, Charles H. Kendrick, Frank F. Kilsby, Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, and John S. Drum, and/or their successors, as trustee.

CERTIFIED COPY

(b) The title to all real property so conveyed to the City and County of San Francisco, in trust, shall vest in said City and County, but said real property shall be used only as a site for the War Memorial referred to in that certain agreement of August 19, 1921.

(c) All cash, choses-in-action, and all other personal property of every kind and sort so assigned and transferred to the said City and County, together with all income and interest therefrom, shall be set aside for the use and benefit of the "Board of Trustees of the War Memorial", which said Board was created by an amendment to the Charter of the City and County of San Francisco, designated as Article XIV-d of said Charter.

(d) The Supervisors of the City and County of San Francisco hereby authorize the said Board of Trustees of the War Memorial to administer, execute, and perform the terms and conditions of the trust set forth in that certain agreement of August 19, 1921, hereinabove in Section 1 hereof referred to, and all amendments thereto heretofore made.

(e) The cash, choses-in-action, and personal property of every kind and sort, so assigned and transferred, in trust, to the City and County of San Francisco, together with all income and interest therefrom, and such sums of money as may be added thereto, shall be used by the said "Board of Trustees of the War Memorial" only in conjunction with the proceeds from the War Memorial bond issue, and only for the purpose of constructing a War Memorial in the City and County of San Francisco as provided in that certain agreement, dated August 19, 1921, hereinabove in Section 1 hereof referred to and all amendments thereto heretofore made.

Section 2. The Mayor and the Clerk of the Board of Supervisors of the City and County of San Francisco are hereby authorized to execute, in duplicate, full and complete receipt to The Regents of The University of California and to Walter S. Martin, R. I. Bentley, John D. McKee, Frank R. Havenner, Charles H. Kendrick, Frank P. Kilsby, Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, John S. Drum, James B. McSheehy, and John C. Selman, and/or their successors, as trustees, for and on behalf of the City and County of San Francisco for all the property so transferred.

The foregoing document is certified to be a full, true, and correct copy of the original on file.

Gloria L. Young, Clerk  
Board of Supervisors  
City and County of San Francisco

By: *Gloria L. Young*  
Date: SEP - 5 2002

(Seal)

NOV 10 1930

Adopted—Board of Supervisors, San Francisco

Ayes: Supervisors Andriano, Canepa, ~~Colman~~, Gallagher, Havenner, Hayden, McGovern, McSheehy, Miles, Peyster, Power, ~~Romani~~, Rossi, Shannon, Spaulding, Stanton, ~~Smir~~, Toner.

Noes: Supervisors

Absent: Supervisors

Approved San Francisco

*Colman Peyster* *Francisco Selman*  
*W. J. 11/30* *Gloria L. Young* Clerk.  
*Alfred Kohler* Mayor



CHICAGO TITLE COMPANY

PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Nebraska corporation.

**Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.**

*Morris Evans*  
Countersigned



Chicago Title Company

BY *[Signature]* President

ATTEST *[Signature]* Secretary





# Chicago Title Company

**ISSUING OFFICE:** 2150 John Glenn Drive, Suite 300 • Concord, CA 94520  
925 288-8000 • FAX 925 521-9562

## PRELIMINARY REPORT

**Amended**

Title Officer: Martha Kendall

Title No.: 11-**36910532**-A-MK

Locate No.: CACTI7738-7738-2369-0036910532

TO: Chicago Title Company  
455 Market Street, 21st Floor  
San Francisco, CA 94105

ATTN: Nicki Carr  
YOUR REFERENCE: 160310572

**PROPERTY ADDRESS:** 301 & 401 Van Ness Avenue, San Francisco, California

**EFFECTIVE DATE: May 24, 2011, 07:30 A.M.**

The form of policy or policies of title insurance contemplated by this report is:

ALTA Loan Policy (6/17/06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:  
  
A Fee
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:  
  
**City and County of San Francisco, a municipal corporation**
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:  
  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

MK\MK 06/08/2011

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

Beginning at a point on the northerly line of Grove Street, distant thereon 110 feet easterly from the northeasterly corner of Grove Street and Franklin Street and running thence easterly along said line of Grove Street 27 feet and 6 inches; thence at a right angle northerly 68 feet and 9 inches; thence at a right angle westerly 27 feet and 6 inches; thence at a right angle southerly 68 feet and 9 inches to the point of beginning.

Being part of Western Addition Block No. 75.

PARCEL TWO:

Commencing at a point of intersection of the southerly line of McAllister Street and the westerly line of Van Ness Avenue; running thence westerly and along said line of McAllister Street 219 feet and 9 inches; thence at a right angle southerly 120 feet to the northerly line of Ash Street (as said street existed prior to the close and abandonment thereof by Resolution 29031); thence at a right angle easterly along said line of Ash Street 219 feet and 9 inches to the westerly line of Van Ness Avenue; thence at a right angle northerly along said line of Van Ness Avenue 120 feet to the point of commencement.

Being part of Western Addition Block No. 76.

PARCEL THREE:

Beginning at the point of intersection of the northerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915) and the westerly line of Van Ness Avenue; and running thence westerly along said line of Fulton Street 109 feet and 9 inches; thence at a right angle northerly 120 feet; thence at a right angle easterly 109 feet and 9 inches to the westerly line of Van Ness Avenue; and thence at a right angle southerly along said line of Van Ness Avenue 120 feet to the point of beginning.

Being a part of Western Addition Block No. 76.

PARCEL FOUR:

Beginning at a point on the northerly line of Grove Street, distant thereon 137 feet and 6 inches easterly from the northeasterly corner of Grove and Franklin Streets; and running thence easterly along the northerly line of Grove Street 27 feet and 6 inches; thence at a right angle northerly 68 feet and 9 inches; thence at a right angle westerly 27 feet and 6 inches; and thence at a right angle southerly 68 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL FIVE:

Beginning at the point of intersection of the southerly line of McAllister Street and the easterly line of Franklin Street; running thence easterly along the said line of McAllister Street 165 feet; thence at a right angle southerly 120 feet to the northerly line of Ash Street (as said street existed prior to the close and abandonment thereof by Resolution 29031); thence at a right angle westerly along the said line of Ash Street 165 feet to the easterly line of Franklin Street; and thence at a right angle northerly along the said line of said Franklin Street 120 feet to the point of beginning.

Being a part of Western Addition Block No. 76.

PARCEL SIX:

Beginning at the point of intersection of the easterly line of Franklin Street and the northerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915) running thence easterly along the said line of Fulton Street 275 feet to a point distant thereon 109 feet and 9 inches westerly from the westerly line of Van Ness Avenue; thence at a right angle northerly 120 feet to the southerly line of Ash Street (as said street existed prior to the close and abandonment thereof by Resolution 29031); thence at a right angle westerly along the said line of Ash Street 275 feet to the easterly line of Franklin Street; and thence at a right angle southerly along the said line of said Franklin Street 120 feet to the point of beginning.

Being a part of Western Addition Block No. 76.

PARCEL SEVEN:

Beginning at a point formed by the intersection of the southerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915) and the westerly line of Van Ness Avenue; and running thence southerly along said line of Van Ness Avenue 45 feet; thence at a right angle westerly 109 feet and 9 inches; thence at a right angle northerly 45 feet to the southerly line of said Fulton Street; and thence at a right angle easterly along said line of Fulton Street 109 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL EIGHT:

Beginning at a point on the westerly line of Van Ness Avenue, distant thereon 45 feet southerly from the southwesterly corner of Van Ness Avenue and Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915); and running thence southerly along the westerly line of Van Ness Avenue 25 feet; thence at a right angle westerly 109 feet and 9 inches; thence at a right angle northerly 25 feet; and thence at a right angle easterly 109 feet and 9 inches to the westerly line of Van Ness Avenue and the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL NINE:

Beginning at a point on the westerly line of Van Ness Avenue, distant thereon 70 feet southerly from the southwesterly corner of Van Ness Avenue and Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915); and running thence southerly along the westerly line of Van Ness Avenue 25 feet; thence at a right angle westerly 109 feet and 9 inches; thence at a right angle northerly 25 feet; and thence at a right angle easterly 109 feet and 9 inches to the westerly line of Van Ness Avenue and the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL TEN:

Beginning at the point on intersection of the northerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032) and the westerly line of Van Ness Avenue; and running thence northerly along said line of Van Ness Avenue 25 feet; thence at a right angle westerly 109 feet and 9 inches; thence at a right angle southerly 25 feet to the northerly line of said Birch Street; and thence at a right angle easterly along said line of Birch Street 109 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL ELEVEN:

Beginning at the point formed by the intersection of the southerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032) and the westerly line of Van Ness Avenue; thence running thence southerly along the westerly line of Van Ness Avenue 30 feet and 1 inch; thence at a right angle westerly 109 feet and 9 inches; thence at a right angle northerly 30 feet and 1 inch to the southerly line of said Birch Street; and thence at a right angle easterly along said line of Birch Street 109 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL TWELVE:

Beginning at a point on the westerly line of Van Ness Avenue distant thereon 60 feet northerly from the northwesterly corner of Van Ness Avenue and Grove Street; and running thence northerly along the westerly line of Van Ness Avenue 30 feet; thence at a right angle westerly 109 feet and 9 inches; thence at a right angle southerly 30 feet; thence at a right angle easterly 109 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL THIRTEEN:

Beginning at the point on intersection of the northerly line of Grove Street and the westerly line of Van Ness Avenue; and running thence northerly along said line of Van Ness Avenue 60 feet; thence at a right angle westerly 109 feet and 9 inches; thence at a right angle southerly 60 feet to the northerly line of Grove Street; and thence at a right angle easterly along said line of Grove Street 109 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL FOURTEEN:

Beginning at a point on the northerly line of Grove Street, distant thereon 109 feet and 9 inches westerly from the northwesterly corner of Grove Street and Van Ness Avenue; and running thence westerly along the northerly line of Grove Street 55 feet; thence at a right angle northerly 120 feet to the southerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032); thence at a right angle easterly along the southerly line of said Birch Street 55 feet; thence at a right angle southerly 120 feet to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL FIFTEEN:

Beginning at a point on the southerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915), distant thereon 166 feet and 9 inches easterly from the southeasterly corner of said Fulton street and Franklin Street; and running thence easterly along the southerly line of said Fulton Street 25 feet and 9 inches; thence at a right angle southerly 120 feet to the northerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032); thence at a right angle westerly 25 feet and 9 inches along said line of said Birch Street; and thence at a right angle northerly 120 feet to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL SIXTEEN:

Beginning at a point on the southerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915), distant thereon 164 feet and 9 inches westerly from the southwestly corner of said Fulton Street and Van Ness Avenue; and running thence westerly along the southerly line of said Fulton Street 27 feet and 6 inches; thence at a right angle southerly 120 feet; thence at a right angle easterly 27 feet and 6 inches; and thence at a right angle northerly 120 feet to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL SEVENTEEN:

Beginning at a point on the southerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915), distant thereon 137 feet and 3 inches westerly from the southwestly corner of said Fulton Street and Van Ness Avenue; and running thence westerly along the southerly line of said Fulton Street 27 feet and 6 inches; thence at a right angle southerly 120 feet to the northerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032); thence at a right angle easterly along the northerly line of said Birch Street 27 feet and 6 inches; and thence at a right angle northerly 120 feet to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL EIGHTEEN:

Beginning at a point on the southerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915), distant thereon 109 feet and 9 inches westerly from the southwesterly corner of said Fulton Street and Van Ness Avenue; and running thence westerly along the southerly line of said Fulton Street 27 feet and 6 inches; thence at a right angle southerly 120 feet to the northerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032); thence at a right angle easterly along the northerly line of said Birch Street 27 feet and 6 inches; thence at a right angle northerly 120 feet to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL NINETEEN:

Beginning at a point on the northerly line of Grove Street, distant thereon 164 feet and 9 inches westerly from the northwesterly corner of Grove Street and Van Ness Avenue; and running thence westerly along the northerly line of Grove Street 27 feet and 6 inches; thence at a right angle northerly 120 feet to the southerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032); thence at a right angle easterly along the southerly line of said Birch Street 27 feet and 6 inches; and thence at a right angle southerly 120 feet to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL TWENTY:

Beginning at a point on the northerly line of Grove Street, distant thereon 165 feet easterly from the northeasterly corner of Grove and Franklin Streets; and running thence easterly along the northerly line of Grove Street 27 feet and 6 inches; thence at a right angle northerly 120 feet to the southerly line of Birch Street (as said street existed prior to the close and abandonment thereof by Resolution 29032); thence at a right angle westerly along the southerly line of said Birch Street 25 feet and 9 inches; thence at a right angle southerly 51 feet and 3 inches; thence at a right angle westerly 1 foot and 9 inches; thence at a right angle southerly 68 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL TWENTY ONE:

Beginning at a point on the northerly line of Grove Street distant thereon 82 feet and 6 inches easterly from the northeasterly corner of Grove and Franklin Streets; and running thence easterly along the northerly line of Grove Street 27 feet and 6 inches; thence at a right angle northerly 68 feet and 9 inches; thence at a right angle westerly 27 feet and 6 inches; and thence at a right angle southerly 68 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL TWENTY TWO:

Beginning at the point of intersection of the northerly line of Grove Street and the easterly line of Franklin Street; and running thence easterly along the northerly line of Grove Street 82 feet and 6 inches; thence at a right angle northerly 68 feet and 9 inches; thence at a right angle westerly 82 feet and 6 inches to the easterly line of Franklin Street; and thence at a right angle southerly along said line of Franklin Street 68 feet and 9 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL TWENTY THREE:

Beginning at a point on the easterly line of Franklin Street, distant thereon 68 feet and 9 inches northerly from the point formed by the intersection of the easterly line of Franklin Street with the northerly line of Grove Street; running thence northerly and along said easterly line of Franklin Street 103 feet and 1 1/2 inches; thence at a right angle easterly 166 feet and 9 inches; thence at a right angle southerly 103 feet and 1 1/2

inches; thence at a right angle westerly 166 feet and 9 inches to the easterly line of Franklin Street and the point of commencement.

Being a part of Western Addition Block No. 75.

PARCEL TWENTY FOUR:

Beginning at the point formed by the intersection of the southerly line of Fulton Street (as said street existed prior to the close and abandonment thereof by Resolution 29915) and the easterly line of Franklin Street; and running thence easterly along the southerly line of said Fulton Street 166 feet and 9 inches; thence at a right angle southerly 103 feet and 1-1/2 inches; thence at a right angle westerly 166 feet and 9 inches to the easterly line of Franklin Street; and thence at a right angle northerly along said line of Franklin Street 103 feet and 1-1/2 inches to the point of beginning.

Being a part of Western Addition Block No. 75.

PARCEL TWENTY FIVE:

That portion of Birch Street (formerly Birch Avenue) closed and abandoned by Resolution 29032 on May 21, 1928, lying west of the west line of Van Ness Avenue in the Western Addition Block No. 75.

PARCEL TWENTY SIX:

That portion of Fulton Street closed and abandoned by Resolution 29915 on November 5, 1928, lying between the westerly line of Van Ness Avenue and the easterly line of Franklin Street.

PARCEL TWENTY SEVEN:

That portion of Ash Street closed and abandoned by Resolution 29031 on May 21, 1928, lying between the westerly line of Van Ness Avenue and the easterly line of Franklin Street in Western Addition Block No. 76.

APN: 0786A-001

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2011-2012.
2. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
3. **Matters** contained in that certain document entitled "Agreement" dated June 30, 1928, executed by and between The Regents of the University of California and Water S. Martin, et al, trustees recorded December 27, 1930, Book 2128, Page 377, of Official Records.

Reference is hereby made to said document for full particulars.

Affects:                      Parcels Five through Twenty

4. Restrictions as contained in a Deed to City and County of San Francisco from The Regents of the University of California recorded January 28, 1931, Book 2155 Official Records, page 157.

Affects:                      Parcels Five through Twenty

5. **Notice of Special Restrictions** under the City Planning Code of the City and County of San Francisco upon the terms and conditions contained therein

Recorded:                      April 18, 1995, Instrument No. 95-F780922, of Official Records

Reference is made to said document for full particulars.

6. **Notice of Special Restrictions** under the City Planning Code of the City and County of San Francisco upon the terms and conditions contained therein

Recorded:                      April 18, 1995, Instrument No. 95-F780924, of Official Records

Reference is made to said document for full particulars.

7. **Any right, title or interest** of persons, known or unknown, who claim or may claim adversely to the vested owners herein by reason of the record title to said property not having been established and quieted under the provisions of the "Destroyed Land Records Relief Act of 1906, as Amended", commonly known as the "McEnerney Act".

Affects:                      Parcels 25, 26 and 27 (vacated street parcels)

8. **Matters** which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said land that is satisfactory to this Company, and/or by inquiry of the parties in possession thereof.
9. **Any rights of the parties in possession** of a portion of, or all of, said land, which rights are not disclosed by the public record.

This Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage. The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

#### END OF ITEMS

- Note 1.** There are NO deeds affecting said land, recorded within twenty-four (24) months of the date of this report.
- Note 2.** No taxes are currently assessed for this parcel.
- Note 3.** If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.
- Note 4.** Please contact Escrow Office for Wire Instructions.
- Note 5.** Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

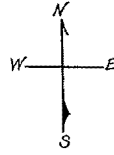
#### END OF NOTES



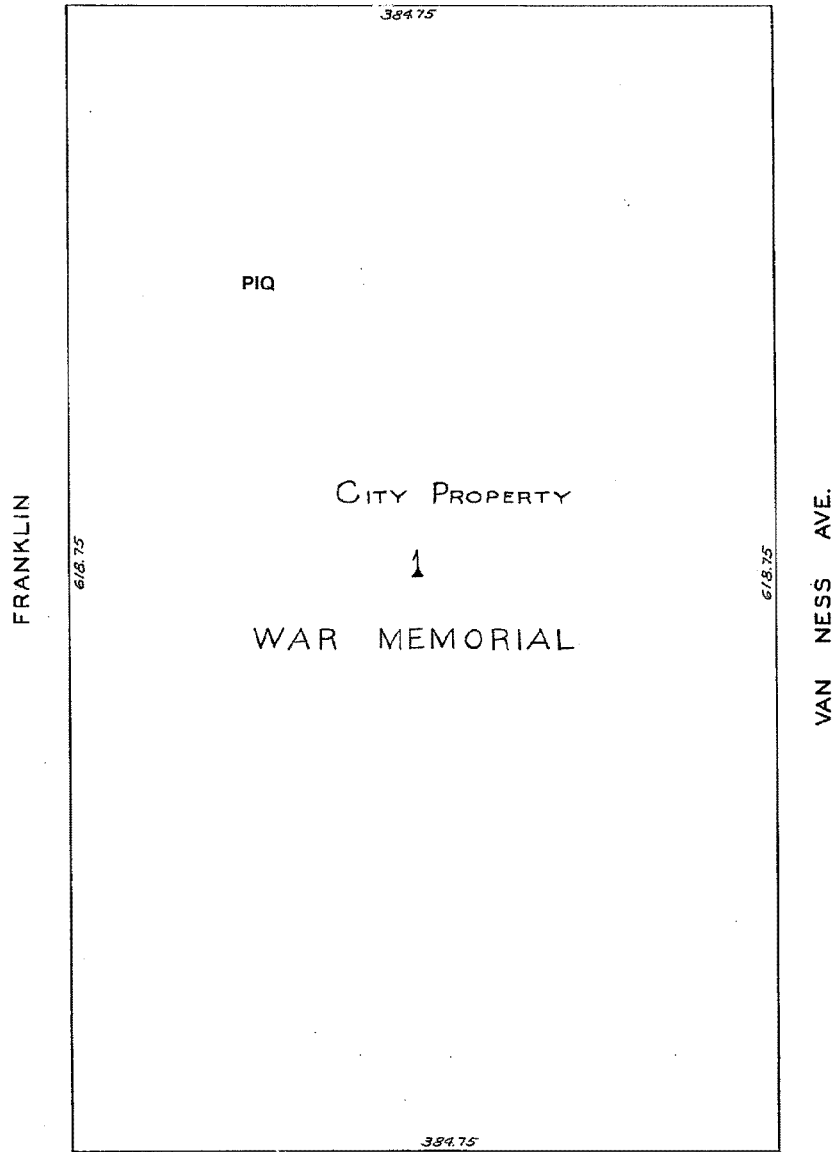
Important: This plat is not a survey. It is furnished as a convenience to locate the land in relation to adjoining streets and other lands and not to guarantee any dimensions, distances, bearings or acreage.

786<sup>A</sup>

W A BLK 76



Mc ALLISTER



GROVE

VAN NESS AVE.

FRANKLIN

**ATTACHMENT ONE**  
**AMERICAN LAND TITLE ASSOCIATION**  
**RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - land use
  - improvements on the land
  - land division
  - environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
  - a notice of exercising the right appears in the public records on the Policy Date
  - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

3. Title Risks:
  - that are created, allowed, or agreed to by you
  - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
  - that result in no loss to you
  - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - to any land outside the area specifically described and referred to in Item 3 of Schedule A
  - or
  - in streets, alleys, or waterways that touch your landThis exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.
4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:

- (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
  5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
  6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**SCHEDULE B, PART I  
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

**PART I**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)  
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:  
(a) created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or

material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:  
(i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or  
(ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or  
(iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:  
(a) to timely record the instrument of transfer; or  
(b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records;
- (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy, or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. Land use
  - d. improvements on Land
  - e. Land division
  - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14:	1.00% of Policy Amount or \$ 2,500.00 (whichever is less)	\$ 10,000.00
Covered Risk 15:	1.00% of Policy Amount or \$ 5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 16:	1.00% of Policy Amount or \$ 5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 18:	1.00% of Policy Amount or \$ 2,500.00 (whichever is less)	\$ 5,000.00



**ATTACHMENT ONE  
(CONTINUED)**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	<u>1.00%</u> of Policy Amount Shown in Schedule A or <u>\$ 2,500.00</u> (whichever is less)	\$ <u>10,000.00</u>
Covered Risk 18:	<u>1.00%</u> of Policy Amount Shown in Schedule A or <u>\$ 5,000.00</u> (whichever is less)	\$ <u>25,000.00</u>
Covered Risk 19:	<u>1.00%</u> of Policy Amount Shown in Schedule A or <u>\$ 5,000.00</u> (whichever is less)	\$ <u>25,000.00</u>
Covered Risk 21:	<u>1.00%</u> of Policy Amount Shown in Schedule A or <u>\$ 2,500.00</u> (whichever is less)	\$ <u>5,000.00</u>

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) created, suffered, assumed or agreed to by the Insured Claimant;  
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;  
(c) resulting in no loss damage to the Insured Claimant;  
(d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or  
(e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:  
(a) The time of the advance; or  
(b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (02/03/10)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed, or agreed to by the Insured Claimant;  
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;  
(c) resulting in no loss or damage to the Insured Claimant;  
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or  
(e) resulting in loss or damage that would not have been

sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

## **Notice**

You may be entitled to receive a \$20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19, 1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is subject of your current transaction, you must - prior to the close of the current transaction - inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount which is subject to other terms and conditions.

Fidelity National Financial, Inc.  
**Privacy Statement**

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

**Personal Information Collected**

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

**Disclosure of Personal Information**

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Disclosure to Affiliated Companies - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

#### **Confidentiality and Security of Personal Information**

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

#### **Access To Personal Information/ Requests for Correction, Amendment, or Deletion of Personal Information**

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer  
Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, FL 32204

#### **Changes to this Privacy Statement**

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

## **Notice of Available Discounts**

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

### **FNF Underwritten Title Company**

CTC – Chicago Title Company

### **FNF Underwriter**

CTIC – Chicago Title Insurance Company

### **Available Discounts**

#### **CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (CTIC)**

Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 or 36 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge.

#### **FEE REDUCTION SETTLEMENT PROGRAM (CTC and CTIC)**

Eligible customers shall receive a \$20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in *The People of the State of California et al. v. Fidelity National Title Insurance Company et al.*, Sacramento Superior Court Case No. 99AS02793, and related cases.

#### **DISASTER LOANS (CTIC)**

The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

#### **CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC)**

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% or 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 32% or 50% of the appropriate title insurance rate, depending on the type of coverage selected.