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Memorandum

To: Landmarks Commission
From: Brian Running
Re: Former Health and Human Services Building

The County has prepared a Power Point presentation to support their arguments for razing the Moor Mud Baths building. The 20th slide is headed, "Legal Argument," and it contains references to an unconstitutional regulatory taking. This memo is a very brief explanation of the issue of regulatory takings, so you have some background.

The Fifth Amendment prohibits the taking of private property by the government without just compensation. Sometimes a taking is an actual physical seizure of property, such as an eminent domain proceeding. Sometimes, however, a claim can be made that the government has deprived an owner of the use of his or her property by regulations, without actually physically seizing the property. That's a "regulatory taking." If a regulatory taking is successfully proven, then just compensation must be paid to the owner.

In order to show that a regulatory taking has occurred, the property owner must prove that he or she has been deprived of all or substantially all practical uses of the property. Essentially, the owner must prove that the property has been left worthless by government regulation. It is a high burden of proof.

Whether a regulatory taking has occurred or not is matter that must be decided by the courts. It is very questionable whether a regulatory taking occurs by the imposition of a historic landmark designation on a building. Specifically, the County would have to prove that the former HHS building has been rendered completely worthless by the imposition of historic regulation by the City.

Although there is a legal argument to be made, the County's statement that a refusal to allow the razing of the building without just compensation by the City would be unconstitutional is a considerable leap, and is not a conclusion that can be drawn at this time. That would be a matter for the courts to decide, not the Landmarks Commission.