

1 [Adopting findings related to the determination that the appeal of 701 Lombard St. negative  
2 declaration was timely.]

3 **Motion adopting findings related to the determination that the appeal of the negative**  
4 **declaration issued on January 15, 2003 for 701 Lombard Street was timely filed.**

5  
6 On December 21, 2002, the Environmental Review Officer of the Planning Department  
7 issued a preliminary mitigated negative declaration for 701 Lombard Street in accordance with  
8 the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and San Francisco  
9 Administrative Code Chapter 31.

10 On January 15, 2003, the Environmental Review Officer of the Planning Department  
11 issued a final mitigated negative declaration for 701 Lombard Street ("negative declaration") in  
12 accordance with Administrative Code Section 31.11(h). A copy of said document is on file  
13 with the Clerk of the Board of Supervisors in File No. 031840 and is incorporated by reference  
14 herein.

15 On November 6, 2003, the Clerk of the Board received a facsimile of an appeal of the  
16 negative declaration from the Telegraph Hill Dwellers Association ("Appellant"), with original  
17 correspondence received on November 10, 2003.

18 The California Public Resources Code Section 21151(c) was amended effective  
19 January 1, 2003, to provide that negative declarations are appealable to the elected decision-  
20 making body, but the statute does not put time limits on the right of appeal. The Board of  
21 Supervisors has not yet adopted specific procedures or time lines providing for appeals of  
22 such negative declarations.

23 This Board held a duly noticed public hearing on December 16, 2003, to determine  
24 whether the appeal was timely. Following the conclusion of the public hearing, the Board  
25 determined that the appeal was timely filed, based on the whole record before the Board,

1 including the written record in File No. 031840, which is hereby declared to be a part of this  
2 motion as if set forth fully herein, as well as the written submissions to, public testimony at,  
3 and official written, video and audio records of the Planning Department determination on the  
4 negative declaration and subsequent determinations of the Planning Commission, the Zoning  
5 Administrator and the Board of Appeals related to the 701 Lombard Street project, and  
6 deliberation of the oral and written testimony at the public hearing before the Board of  
7 Supervisors by all parties and the public in support of and opposed to the question of whether  
8 the appeal was timely.

9           MOVED, That the Board of Supervisors finds that the appellants first became  
10 knowledgeable about a Notice of Special Restriction D897907, recorded November 12, 1986  
11 (“NSR”), in July, 2003. The Planning Department’s Major Environmental Analysis staff  
12 testified before the Board of Supervisors on December 16, 2003, that they would have  
13 included information about the notice of special restriction if they had known about the notice  
14 at the time they prepared the negative declaration. The Planning Department’s Property  
15 Information Report form has a space for providing information about any notices of special  
16 restrictions but the Property Information Report for the site did not include any information  
17 about the NSR.

18           FURTHER MOVED, That the Board of Supervisors finds that details about the height of  
19 the project changed after January 15, 2003. The negative declaration states that the building  
20 will be approximately 40 feet in height per Planning Code measurement requirements but new  
21 information required changes to the building design and configuration in order for the building  
22 to actually conform to the 40 foot height limit under the Planning Code. Included in the new  
23 information was a Letter of Determination Regarding Height Measurement issued by the  
24 Zoning Administrator on June 26, 2003, that interpreted how the requirements of the Planning  
25

1 Code would be interpreted by the Zoning Administrator to apply to the 701 Lombard Street  
2 project.

3 FURTHER MOVED, That the Board of Supervisors finds that the public was not made  
4 aware in the negative declaration that the project applicant would need a variance from open  
5 space requirements for the project and the Zoning Administrator did not issue a variance  
6 decision for the project until July 17, 2003.

7 FURTHER MOVED, That as a result of these changes made in the design of the  
8 project after January 15, 2003, the negative declaration did not contain a completely accurate  
9 description of the project or fully disclose the approvals that were needed for the project.

10 FURTHER MOVED, That the Board of Supervisors finds that the record of the Planning  
11 Commission action on its decision not to take discretionary review and to approve the project  
12 on June 26, 2003, as set forth in a Zoning Administrative letter of July 11, 2003 summarizing  
13 the Planning Commission action on the 701 Lombard Street project (Case No. 2003.0346D)  
14 does not indicate that the Planning Commission adopted the negative declaration at that time  
15 and the only reference to the negative declaration is a finding that shadow impacts on the  
16 North Beach Playground as addressed in the Final Mitigated Negative Declaration are  
17 considered as less than significant.

18 FURTHER MOVED, That the Board of Supervisors finds that the Zoning  
19 Administrator's variance decision issued on July 17, 2003 (Case No. 2003.0346V), does not  
20 indicate that the Zoning Administrator adopted the negative declaration for the project at that  
21 time and instead states that the project was determined to be categorically exempt from  
22 environmental review even though the Planning Department did not issue a categorical  
23 exemption for the project.

24 FURTHER MOVED, That the Board of Supervisors finds that the first decision-making  
25 body to expressly adopt the negative declaration for the project was the Board of Appeals as

1 part of its decisions on October 8, 2003, to uphold the June 26, 2003 Letter Determination of  
2 the Zoning Administrator (Board of Appeal No. 03-108) and the July 17, 2003 Variance issued  
3 by the Zoning Administrator (Board of Appeal No. 03-116).

4 FURTHER MOVED, That the Board of Supervisors finds that the appellants filed the  
5 appeal of the negative declaration to the Board of Supervisors within 30 days of the adoption  
6 of the negative declaration by the Board of Appeals.

7 FURTHER MOVED, That the Board of Supervisors finds that at the time of the appeal  
8 of the negative declaration on November 6, 2003, the Board of Appeals had scheduled for a  
9 hearing on November 12, 2003, a request for rehearing on the appeals of the Letter  
10 Determination and Variance issued by the Zoning Administrator for the 701 Lombard Street  
11 project and the applicant had not yet obtained a building permit.

12 FURTHER MOVED, That in light of all of the facts and circumstances of the matter the  
13 Board of Supervisors finds that the appellants brought the appeal of the negative declaration  
14 within a reasonable period of time.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25