

1 [Finding appeal of the statutory exemption for Wharf J-10 untimely.]

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3 **Motion finding the appeal of the statutory exemption issued on April 15, 2003 for Wharf**  
4 **J-10 not timely filed.**

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6 WHEREAS, On April 15, 2003, the Environmental Review Officer of the Planning  
7 Department determined that the proposed work for Wharf J-10 was excluded from review  
8 under the California Environmental Quality Act ("CEQA") because the proposed work  
9 consisted of specific actions necessary to prevent or mitigate an emergency as provided in  
10 California Public Resources Code Section 21080(b)(4) and the CEQA Guidelines, 14  
11 California Code of Regulations Section 15269(c); and,

12 WHEREAS, On May 6, 2003, 21 days after the determination by the Planning  
13 Department, F. Alioto Fish Company ("Appellant") appealed the Planning Department's  
14 decision to find the proposed work statutorily exempt from CEQA and supplemented the  
15 appeal with a copy of the Environmental Review Officer's determination on May 7, 2003; and,

16 WHEREAS, The California Public Resources Code Section 21151(c) was amended  
17 effective January 1, 2003, to provide that such determinations are appealable to the elected  
18 decision-making body, but the Board of Supervisors has not yet adopted specific procedures  
19 or time lines providing for appeals of such determinations; and

20 WHEREAS, Section 21151(c) previously provided for appeals to the elected decision-  
21 making body of a certification of an environmental impact report and the Board of Supervisors  
22 through San Francisco Administrative Code Section 31.16 requires submittal of an appeal of  
23 an environmental impact report to the Board within twenty (20) calendar days of a certification  
24 of an environmental impact report by the Planning Commission; and,

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1           WHEREAS, The Board of Supervisor's held a duly noticed public hearing on June 10,  
2   2003, to consider whether the appeal filed by Appellant was timely; and

3           WHEREAS, This Board reviewed and considered the written record before the Board  
4   and all of the public comments made in support of and opposed to the question of whether the  
5   appeal was timely; and

6           WHEREAS, Appellant have been aware for some time that Wharf J-10 has not been  
7   considered a safe structure and has been aware of the efforts by the Port of San Francisco  
8   ("Port") to resolve the unsafe status of the building, including the following information: (1) the  
9   Port declared the structure unsafe for occupancy in August 2000, issued and enforced a  
10   Notice to Vacate and installed temporary shoring and vertical support of the Wharf J-10  
11   building; (2) following winter storms with high winds, on January 30, 2003, Port engineers  
12   issued a report stating that the condition of the Wharf J-10 had continued to deteriorate since  
13   the measures previously taken by the Port; (3) on March 12, 2003 the Chief Harbor Engineer  
14   of the Port issued a written recommendation to the Port Director concluding that a dangerous  
15   condition exists at Wharf J-10 given the continued deterioration of the substructure and  
16   recommended its demolition; (4) on March 14, 2003, the Port Director submitted a request to  
17   the Planning Department for a determination that the proposed work for Wharf J-10 is exempt  
18   from environmental review under California Public Resources Code Section 21080(b)(4) and  
19   the CEQA Guidelines, 14 California Code of Regulations Section 15269(c) because it is a  
20   specific action necessary to prevent or mitigate an emergency; (3) on March 18, 2003 the Port  
21   Director advised Appellant of the Port staff findings and of its request to Planning for a  
22   statutory exemption because of the need to take immediate steps to demolish the Wharf J-10  
23   superstructure and portions of the substructure due to the imminent threat of structural failure;  
24   (4) on March 26, 2003 Appellant's Attorney, Marc Libarle, wrote to the Port Director to say that  
25   F. Alioto objected to the statutory exemption that the Port was seeking, but offered no

1 evidence to contradict the finding of the Chief Harbor Engineer that the condition of the  
2 structure poses an imminent and substantial hazard to life, health or safety; and (5) on April  
3 14, 2003 the Port Director issued an emergency order and notice to the tenant and Appellant  
4 advising that the tenant must take action within 48 hours to demolish the building or the Port  
5 would do so; (6) Appellant took no action pursuant to that notice and offered no evidence to  
6 the Port to contradict the findings that the structure presents a serious and imminent hazard to  
7 the public health and safety; (7) on April 15, 2003, the Environmental Review Officer  
8 determined that the proposed work for Wharf J-10 was statutorily exempt from CEQA under  
9 California Public Resources Code Section 21080(b)(4) and the CEQA Guidelines, 14  
10 California Code of Regulations Section 15269(c) Planning issued and on April 17, provided  
11 mailed notice to interested parties including Appellant as required by San Francisco  
12 Administrative Code Section 31.08(f); and

13 WHEREAS, On April 16, 2003, the San Francisco Fire Marshall notified the Chief  
14 Harbor Engineer that the building at Wharf J-10 is structurally unsafe and fully supports the  
15 Port's request to demolish Wharf J-10; and

16 WHEREAS, Following the determination by the Planning Department that the work at  
17 Wharf J-10 was statutorily exempt from the California Environmental Quality Act, the Port  
18 informed the public and Appellant about the Port's progress in carrying out the work by  
19 providing a briefing on the work on April 15, 2003 to the Fisherman's Wharf Advisory Group,  
20 of which Appellant is a member and which Appellant attended, on April 22, 2003 to the Port  
21 Commission, at which Appellant and Appellant's counsel spoke and on April 28, 2003 by  
22 teleconference between Port engineers and Appellant's consulting engineer; and

23 WHEREAS, The Port has implemented the directives in the Emergency Order requiring  
24 the removal of lead and asbestos from the structure and selected a contractor to undertake  
25 the demolition of the structure; and

1           WHEREAS, There is no reasonable basis for the Board of Supervisors to provide for a  
2 longer time limit for appeal of a statutory exemption from CEQA than the twenty (20) calendar  
3 days that the Board has provided for environmental impacts reports, particularly the appeal of  
4 an exemption determination which involves an action to prevent a serious and imminent public  
5 hazard; and

6           WHEREAS, The documentation provided by the Port regarding the emergency nature  
7 of this work and in support of the facts set forth in this motion is on file with the Clerk of the  
8 Board of Supervisors in File No. 030838, which is hereby declared to be a part of this motion  
9 as if set forth fully herein; now, therefore, be it

10           MOVED, this Board finds this appeal of the emergency exemption to be not timely filed  
11 for all of the reasons set forth above.

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