

1 [Adopting findings related to the determination that the appeal of the negative declaration for  
2 the 329 Bay Street project was timely.]

3 **Motion adopting findings related to the determination that the appeal of the negative**  
4 **declaration for the 329 Bay Street project was timely filed.**

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6 On May 29, 2004, the Environmental Review Officer of the Planning Department  
7 issued a preliminary mitigated negative declaration for 329 Bay Street in accordance with the  
8 California Environmental Quality Act ("CEQA"), the CEQA Guidelines and San Francisco  
9 Administrative Code Chapter 31. The negative declaration stated that no trees would be  
10 removed to accommodate the project and that the project sponsor would hire an arborist to  
11 develop procedures during construction of the project for protecting the existing Acacia tree  
12 that fronts the project site on Vandewater Street.

13 On June 22, 2004, having received no appeal of the preliminary negative declaration,  
14 the Environmental Review Officer of the Planning Department issued a final mitigated  
15 negative declaration for 329 Bay Street ("negative declaration") in accordance with  
16 Administrative Code Section 31.11(h). A copy of said document is on file with the Clerk of the  
17 Board of Supervisors in File No. 041641 and is incorporated by reference herein.

18 On November 23, 2004, the Planning Department issued an addendum to the final  
19 mitigated negative declaration that determined that removal of the tree would not result in a  
20 significant impact.

21 On November 29, 2004, the Clerk of the Board received an appeal of the negative  
22 declaration from Arthur Chang, Katherine Petrin and Carolyn Blair ("Appellants").

23 The California Public Resources Code Section 21151(c) was amended effective  
24 January 1, 2003, to provide that negative declarations are appealable to the elected decision-

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1 making body. The Board of Supervisors has not adopted specific time limits for appeals of  
2 such negative declarations.

3 This Board held a duly noticed public hearing on January 4, 2005, to consider whether  
4 the appeal filed by Appellants was timely. Following the conclusion of the public hearing the  
5 Board determined that the appeal was timely filed, based on the whole record before the  
6 Board, including the written record in File No. 041644, which is hereby declared to be a part of  
7 this motion as if set forth fully herein, as well as written submission to, public testimony at, and  
8 official written, video and audio records of the Planning Department determination on the  
9 negative declaration and subsequent determinations of the Planning Department related to  
10 the 329 Bay Street project, and deliberation of the oral and written testimony at the public  
11 hearing before the Board of Supervisors by all parties and the public in support of and  
12 opposed to the question of whether the appeal was timely.

13 MOVED, That the Board of Supervisors finds that the Appellants first became  
14 knowledgeable that the project sponsor intended to remove the Acacia tree on Vandewater  
15 Street in August 2004, when the project sponsor applied for a permit to cut down the tree and  
16 then became aware that ~~around the time that~~ the project sponsor had submitted a report from  
17 Roy C. Leggitt, Consulting Arborist, to the Department of Public Works ("DPW")<sub>‡</sub>  
18 recommending removal of the tree. By this time, the deadline for filing an appeal of the  
19 preliminary negative declaration to the Planning Commission had passed.

20 FURTHER MOVED, That the Board of Supervisors finds that Appellants did not appeal  
21 the preliminary negative declaration to the Planning Commission because the preliminary  
22 negative declaration stated that the project sponsor intended to retain the tree and would  
23 consult with an arborist and DPW as to how to protect the tree during construction.

24 FURTHER MOVED, That the Appellants first became aware that the Planning  
25 Department had determined that removal of the tree would not result in a significant impact

1 when the Planning Department issued an addendum to the final mitigated negative  
2 declaration on November 23, 2004.

3 FURTHER MOVED, That Appellants filed the appeal to the Board of Supervisors on  
4 November 29, 2004, six days after the issuance of the addendum and prior to the issuance of  
5 a permit from DPW that is required for removal of the tree.

6 FURTHER MOVED, That in light of all of the facts and circumstances of the matter the  
7 Board of Supervisors finds that the Appellants brought the appeal of the negative declaration  
8 within a reasonable period of time.

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