

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.

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

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

17 The California Public Resources Code Section 21151(c) was amended effective  
18 January 1, 2003, to provide that negative declarations are appealable to the elected decision-  
19 making body. The Board of Supervisors has not adopted specific time limits for appeals of  
20 such negative declarations.

21 This Board held a duly noticed public hearing on January 4, 2005, to consider whether  
22 the appeal filed by Appellants was timely. Following the conclusion of the public hearing the  
23 Board determined that the appeal was timely filed, based on the whole record before the  
24 Board, including the written record in File No. 041644, which is hereby declared to be a part of  
25 this motion as if set forth fully herein, as well as written submission to, public testimony at, and

1 official written, video and audio records of the Planning Department determination on the  
2 negative declaration and subsequent determinations of the Planning Department related to  
3 the 329 Bay Street project, and deliberation of the oral and written testimony at the public  
4 hearing before the Board of Supervisors by all parties and the public in support of and  
5 opposed to the question of whether the appeal was timely.

6           MOVED, That the Board of Supervisors finds that the Appellants first became  
7 knowledgeable that the project sponsor intended to remove the Acacia tree on Vandewater  
8 Street in August 2004, around the time that the project sponsor submitted a report from Roy  
9 C. Leggitt, Consulting Arborist, to the Department of Public Works ("DPW"). By this time, the  
10 deadline for filing an appeal of the preliminary negative declaration to the Planning  
11 Commission had passed.

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

16           FURTHER MOVED, That the Appellants first became aware that the Planning  
17 Department had determined that removal of the tree would not result in a significant impact  
18 when the Planning Department issued an addendum to the final mitigated negative  
19 declaration on November 23, 2004.

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

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

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