

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-

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"),
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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City and County of San Francisco

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Tails Motion

File Number: 050044

Date Passed: January 25, 2005

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

January 6, 2005 Board of Supervisors — REFERRED: Board of Supervisors

January 25, 2005 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE


Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval


January 25, 2005 Board of Supervisors — APPROVED AS AMENDED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 050044

I hereby certify that the foregoing Motion
was **APPROVED AS AMENDED** on
January 25, 2005 by the Board of
Supervisors of the City and County of San
Francisco.



 Gloria L. Young
Clerk of the Board