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October 7, 2024

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

## **APPEAL RESPONSE; COUNCIL FILE 24-1084**

On April 24, 2024, the Director of Planning adopted Categorical Exemption No. ENV-2021-1539-CE and approved the project located at 1115 and 1117 North Berendo Street, determining that based on the whole of the administrative record as supported by the justification prepared and found in the environmental case file, the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32 (In-Fill Development Project), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies. The Project includes the demolition of a duplex and a detached garage and the construction, use and maintenance of a five-story, 15,479 square-foot, 30-unit residential building.

On May 9, 2024, the Department of City Planning received one appeal of the Director of Planning's decision to conditionally approve a TOC Affordable Housing Incentive Program and Project Permit Compliance Review. One appeal point also pertained to the Project's qualification for a Class 32 (In-Fill Development Project) Categorical Exemption due to cumulative impacts surrounding past, present and future projects based upon the proposed project at the adjacent site at 1114 North Heliotrope Drive.

The Appeal Report and all associated documents were presented to the City Planning Commission (CPC) at its meeting on July 25, 2024, which, following its consideration of the materials and oral testimony, denied the appeal and sustained the Planning Director's determination dated April 24, 2024, via Case No. DIR-2021-1538-TOC-SPP-HCA.

On August 27, 2024, Jaime T. Hall, Channel Law Group LLP, on behalf of Fred Stifter, Linoleum City Inc., filed an appeal on the Environmental Case No. ENV-2021-1539-CE. The appeal filed by the Appellant mainly rely on the same arguments and information as presented in a previous letter to the City. Appeals were not filed by any other aggrieved parties, other than the aforementioned.

A summary of the appeal points and staff's responses are provided as follows:

**Appellant, Fred Stifter – Linoleum City Incorporated:**

- A-1 *The City has failed to examine the “whole of the project” by CEQA piecemealing and considered an easement as justification for processing separate applications for the project proposed at 1115 and 1117 North Berendo Street and 1114 North Heliotrope Drive. The Project does not qualify for a Class 32 (In-Fill Project) Categorical Exemption due to cumulative effects surrounding past, present and future projects including the project proposed at 1114 North Heliotrope Drive.*

A local agency's determination that the project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the CEQA Guidelines apply. Instead, the burden shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category. (Berkley Hillside Preservation v. City of Berkley (2015) 60 Cal.4th 1086; San Francisco Beautiful v. City and County of San Francisco (2014) 226 Cal.App.4th 1012, 1022-23.) Here, the Appellant has not met its burden as no facts were submitted in the administrative record to conclude that there will be a cumulative impact of successive projects of the same type in the same place, over time that is significant. The cumulative impact exception applies when the environmental impact at issue generally affects the environment in general and does not apply to activity that has an impact on only some particular persons. (Santa Monica Chamber of Commerce v. City of Santa Monica (2002) 101 Cal.App.4th 786, 799.) Speculation that significant cumulative impacts will occur simply because other development projects may be or were previously approved in the same area is insufficient to trigger this exception. Simply listing other projects occurring in the area that might cause significant cumulative impacts is not evidence that the proposed project will have adverse impacts or that the impacts are cumulatively considerable. (Hines v. California Coastal Comm'n (2010) 186 Cal.App.4th 830, 857.)

As demonstrated in the Class 32 Justification for Project Exemption Case No. ENV-2021-1239-CE (Exhibit E), the proposed project meets all criteria to qualify as an infill site under the Class 32 CEQA Exemption, California Environmental Quality Act & CEQA Guidelines Section 15332. Relevant to this matter, CEQA Guidelines Section 15300.2(b) states that a categorical exemption is inapplicable “when the cumulative impact of successive projects of the same type in the same place, over time is significant.” CEQA Guidelines Sections 15065(a)(3) and 15064(h) state that a “cumulatively considerable” impact means that the incremental effects of an individual project are significant when viewed in connection with the effects of other related projects.

The Appellant has submitted no evidence that there will be a cumulative adverse impact caused by the proposed project and other projects of the same type in the same place over time that is significant. Moreover, the Appellant does not state which cumulative effects are at issue or provide any supporting facts regarding those impacts.

As set forth in the administrative record, the proposed project and other projects in the vicinity are subject to Regulatory Compliance Measures (RCMs) related to air quality, noise, hazardous materials, geology, and transportation. Numerous RCMs in the City's Municipal Code and State law provide requirements for construction activities and ensure impacts from construction related air quality, noise, traffic, and parking are less than significant. For example, the South Coast Air Quality Management District (SCAQMD) has District Rules related to dust control during construction, type and emission of construction vehicles, architectural coating, and air pollution. All projects are subject to the City's Noise Ordinance No. 144,331, which regulates construction equipment and maximum noise levels during construction and operation.

Additionally, the Appellant identifies the proposed project at the adjacent property at 1115 and 1117 North Berendo Street as one project that would create a cumulative impact in conjunction with the subject project. The Appellant's argument is speculative in nature. Here, the Appellant has not identified which cumulative impacts, e.g., noise, aesthetics, dust, are at issue.

Furthermore, the existence of an easement at the rear of the property was the reason given by the Applicant for not designing one continuous building over the abutting sites. The easement was not a reason for issuing two separate CEQA determinations for the projects at 1114 North Heliotrope Drive and 1115 North Berendo Street. In addition, the Applicant submitted a shared noise, greenhouse gas and air quality study prepared by Yorke Engineering that demonstrated the proposed projects at 1114 North Heliotrope Drive and 1115 North Berendo Street will not have a significant impact upon the environment. The technical study can be found in Case No. ENV-2021-1539-CE. There is no substantial evidence in the record that the proposed incentives will have a specific adverse impact. As such, the project qualifies for a CEQA Exemption under Categorical Exemption, Class 32.

Finally, there is no substantial evidence in the record that the proposed incentives will have a specific adverse impact. A "specific adverse impact" is defined as, "a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" (Chapter 1 of the Los Angeles Municipal Code Section 12.22.A.25(b)). The Appellant has not identified an objective public health or safety standard upon which to base this argument. Consequently, there is no substantial evidence to make the finding to deny the proposed project.

For the reasons explained above, the Class 32 Categorical Exemption adequately addresses all impacts relative to the proposed project at 1115 North Berendo Street.

### Conclusion

Planning Staff recommends that the PLUM Committee and City Council deny the appeal and sustain the Determination of the City Planning Commission to determine that based on the whole of the administrative record as supported by the justification prepared and found in the environmental case file, the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32 (In-Fill Development Project), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning



Danalyne Dominguez  
City Planner

VPB:JC:DD