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Berkeley Must Follow State Law and Approve 50% Affordable Housing Project on Fourth Street

Berkeley, CA (June 28, 2018) -- West Berkeley Investors (WBI) today submitted a detailed response to the City of Berkeley's letter of June 6 that affirms the lawfulness and applicability of SB 35 and addresses all questions that were raised by the City. Pursuant to State law, the Project is entitled to approval within 180 days of submission of the Initial Application. Therefore, the City must grant the Project a ministerial permit pursuant to SB 35 by September 4, 2018.

The thorough response from WBI opens with key reminders, overlooked by the City in its June 6 letter:

- * Berkeley has fallen far short of building affordable housing, having created only 17 units, or 4%, of its recent RHNA fair-share housing goals for low-income housing.
- * 1900 Fourth would create 130 units of affordable housing, 130 units at market-rate housing, ground-floor retail to complement the 4th Street corridor plus a community center and public open spaces for all to enjoy.
- * 1900 Fourth will pay prevailing wages to construction workers, add housing adjacent to numerous transit options, and bring with it a host of community benefits.

"The City's June 6 response is exactly what SB 35 was designed to stop: A continuation of a 5-year-long process marked by delays and roadblocks to this much-needed housing. WBI greatly respected and appreciated Mayor Jesse Arreguin's statement on the date of the Initial Application acknowledging that "SB35 is now state law and we must follow it." The City's approach now attempts to eviscerate SB 35 -- contending that the City will not approve the project even if the project satisfies all of SB 35's criteria, as well as creatively re-interpreting the law to require discretionary approvals that the statute was designed to preclude. WBI hopes the City will reconsider their apparent retreat from the Mayor's admirable statement. The City has no ground on which it could legally refuse to meet its obligations under State law to do its part to help address California's affordable housing crisis" said Lauren Seaver, Vice President of Development for Blake Griggs Properties. WBI is an affiliate of Blake Griggs Properties.

The City Letter primarily focuses on two issues. This is why they are incorrect.

1) "Historic" structures and "landmarking." With respect to historic structures, the City Letter contends that the Project is precluded by SB 35's exception for projects that "would require the demolition of a historic structure" [Gov. Code § 65913.4(a)(7)(C)] despite the fact the Project does not propose to demolish any historic structure that is listed on any federal, state or local register. There are no historically designated "structures" on the Project site – the project is within a landmarked "site" or "area," but the statute only exempts landmarked "structures." Regardless, it has been definitively demonstrated that the West Berkeley shellmound *is not* located on the Project site and will not be affected by the Project.

Furthermore, the City has already confirmed the intent of the “landmark area” is not to prevent development, but rather to require the detailed archeological review -- which has already been completed. In a brief filed in Alameda Superior Court, the City stated that the shellmound “Landmark” boundaries are only “approximate,” and further: “It is important to emphasize...that the City’s decision to designate the West Berkeley Shellmound as a City “Landmark” does not in itself prevent any development or use of the property affected. Rather, it requires additional review. That is, it will require that appropriate further investigation be done.” Memorandum of Points and Authorities in Opposition to Motion for Writ of Mandate, at pp. 2-3, 620 Hearst Group v. City of Berkeley, Case No. 834470-2 (Alameda Cty. Sup. Ct. Aug. 20, 2001). That investigation has been completed – and even the City itself, and its independent consultants, acknowledged in the Draft EIR for the Project that development of the site would have no significant impacts on any cultural resources. WBI has reiterated its commitment to provide both archaeological and tribal monitoring during all ground-disturbing activities, and in the unlikely event any human remains are found, to rigorously observe state legal requirements for handling them and coordinating with tribal authorities.

2) Affordable housing regulations. The City Letter states that the City is inclined to reject the 1900 Fourth *50% affordable project* because it does not meet technical aspects of the City’s Affordable Housing Mitigation Fee (AHMF) ordinance, which are applicable to projects which provide 20% or less of their units for affordable housing. For a City that is so far from meeting its regional requirements for low-income housing, it very surprising that the City would invoke the requirements of its 20% affordable housing ordinance to try to kill a 50% affordable project. As set forth in the response letter, this contention is legally incorrect and does not permit the City to reject the Project.

Furthermore, using the City’s own Affordable Housing Mitigation Fee formula, the Project proposes to provide an additional \$14 million in affordable housing benefit beyond what would otherwise be required by Berkeley’s affordable housing mitigation fee.

In conclusion, the proposed project, which is located in a designated Priority Development Area, complies with the City’s objective zoning and planning standards and must be approved in a ministerial review devoid of subjective standards. The City’s attempts at new interpretations are continuations of the delay tactics that have stopped development of this prime infill location for years.

“WBI remains confident that the proposed housing project at 1900 Fourth is exactly what SB 35 was designed for -- requiring the approval of much-delayed projects -- and that it will ultimately be approved and constructed” said Lauren Seaver of WBI.

For more information on 1900 Fourth, visit www.1900FourthSt.com

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