

**APPENDIX H**  
**TO THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT**  
**COMMENTS AND RESPONSES TO COMMENTS**  
**RECEIVED ON THE DRAFT EIR**

### III. RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR

This section includes all of the comments contained in letters or emails received during the 45-day review period advertised for this DEIR, and responses to those comments. The comments are organized under headings containing the source of the letter and its date. The responses to all of the letters and emails are grouped in this section according to their source into the following categories:

- Public Agencies
- Organizations

The CEQA Guidelines, in §15086, require that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section I of this First Amendment to the DEIR lists all of the recipients of the DEIR.

One of the comment letters received is from a public agency, an appointed commission of the City of San José, the Lead Agency.

The specific comments from each of the letters or emails are presented as “Comment” below, with each response to that specific comment directly following. Copies of the actual letters and printouts of the emails received are attached in their entirety (with any enclosed materials) in Section V of this First Amendment.

## **C. COMMENTS FROM ORGANIZATIONS**

### **1. RESPONSES TO LETTER FROM PRESERVATION ACTION COUNCIL OF SAN JOSÉ, DATED NOVEMBER 12, 2007:**

**COMMENT C1-a:** The following are Preservation Action Council\*San Jose's comments to the Park View Towers DSEIR:

Our first comment is that we would like to commend the project for retaining the First Church of Christ Scientist historic building. We have concerns about not completing the restoration of the church building in Phase I, but will comment on that further in our closing comments. We also appreciate leaving the lot to the east of the church vacant. This will allow the church to be viewed in its entirety from the east. The space and landscaping to the west of the church is also to be complimented. One of the most important structures on St. James Park in the St. James Historic District is the First Church of Christ Scientist and the attempt of this project to frame it and separate it from the new construction is admirable.

**RESPONSE C1-a:** This comment does not ask any question or raise any issue related to the DSEIR. No response is required.

**COMMENT C1-b:** Letcher's Garage is a contributing structure to the St. James Historic District. As noted in the St James Historic District Design Guidelines (SJHDG) "the building has unique architectural features such as an expansive wood truss roof design and segmental-arched eastern wall windows with their metal fire shutter." The project proposes the demolition of this historic building. Alternative B, which proposes saving the walls of Letcher's Garage, would remove the existing trusses and roof of the building. Although the windows are still there, they are blocked up and the outside coated with stucco. This is easily reversible. The primary feature that is missing is the front façade and roofing over the front section. This can be replicated given the excellent resolution pictures available. The historic structure would no longer contain one of its defining features - the roof - under this alternative. Note: the environmentally superior alternative stated on page x is Alternative C which would preserve Letcher's Garage. Is there an additional alternative that would preserve Letcher's Garage in its entirety that is not included in the DSEIR?

Recommendation: Develop an alternative that does retain the existing Letcher's Garage in its entirety.

**RESPONSE C1-b:** Interior alterations to a building in conformance with the Building Code and other relevant regulations are not subject to CEQA. Building permits are not discretionary actions. The changes to the interior, including removal of structural elements, is not therefore subject to CEQA review.

Alternative B in the DSEIR, the "Preserve Letcher's Alternative", would preserve the exterior walls of the existing Letcher's building and also minimize the loss of dwelling units from the proposed project by incorporating Letcher's into the proposed Tower Two. As explained in more detail in the text amendments in Section IV of this First Amendment to the DSEIR, this configuration was developed by the City to support the project's objectives to some extent, and to reduce the impact of the loss of the historic structure. Since Alternative B would reduce the impacts from the loss of Letcher's to a less than significant level, there is no requirement under CEQA that a further alternative

preserving even more of the existing building be evaluated. Although not required by CEQA, the text amendments in Section IV of this First Amendment to the DSEIR include a discussion of an alternative that preserves all of the Letcher's Garage building.

**COMMENT C1-c:** Putting three levels of underground parking on this site presents several problems. The first being the impact the construction could have on the adjacent historic buildings (First Church of Christ Scientist and the Saint Claire Building). The second being the fact that the water table is so high at this geographic location in San Jose, and that the ongoing solution to keeping the garage levels dry could have unexpected consequences on the historic buildings.

Recommendation: That the parking levels be limited to two. This reduction in parking would require a reduced project, but one that would reduce the risk to the historic buildings and allow the overall height of the project to be reduced.

**RESPONSE C1-c:** All known impacts from construction of underground parking and the high water table are addressed in the DSEIR, and avoidance measures (including monitoring) to ensure that those impacts are less than significant levels are identified on page 43 and are included in the proposed project.

The suggestion in this comment does not, therefore, address a mitigation to reduce a significant impact. The desirability of the design modification requested is a project issue which may be considered by the Director of Planning, Building and Code Enforcement when the proposed Historic Preservation Permit is considered for approval.

**COMMENT C1-d:** Although Tower One is located outside the SJHD, its close proximity to the First Church of Christ Scientist Church does require that it be sensitive to this historic building. The mass and height of Tower Two do not respect the spirit of the guidelines.

Recommendation: An alternative be developed that redesigns Tower Two to be more in keeping with the intention of the guidelines, "where new buildings are to be constructed adjacent to historic buildings, the mass of the new buildings should be sensitive to, and harmonious with, the scale of the older buildings."

**RESPONSE C1-d:** As specifically discussed on pages 33-34 of the DSEIR, the City has determined that the proposed project design is consistent with the Design Guidelines direction to be sensitive to and harmonious with the older buildings. In addition to those elements identified on page 34, it should be noted that:

- (1) The proposed 11.5 foot setback is similar to that of the church and provides greater visibility for the church than would be the case if the new building were built to the property line (which is allowed by the zoning). This is consistent with page 23 of the Design Guidelines' direction to match setbacks of historic structures.
- (2) The proposed first floor of the proposed Tower Two is approximately 15 feet, which is similar to the height of the church lobby entrance and is also consistent with the first floor height of the nearby historic structures on the west side of First Street.

- (3) The 45 foot height of the first tier of Tower Two matches the height of the roofline of the church.

The response to Comment B1-d also speaks to the issue of building height and the factors taken into account in determining that the building design and height would not create a significant CEQA impact. Mitigation has been incorporated into the project design to reduce impacts from the proposed building heights to less than significant.

The City has determined that the project, as proposed, meets the St. James Square Historic District Design Guidelines and does not represent a significant impact under CEQA. Therefore, CEQA does not require that additional alternatives be explored with respect to the proposed project's conformance with the Guidelines. However, while it is not required by CEQA, a discussion of such an alternative is included in Section IV of this First Amendment to the DSEIR.

**COMMENT C1-e:** The SDEIR points out that "the fenestration and curtain wall glazing treatment in the middle of Tower Two is somewhat inconsistent with Design Guidelines and with the patterns of existing building fenestrations in the District" is a design flaw that should be addressed.

Recommendation: The design of Tower Two meet the Surface Treatment - Fenestration guideline in the SJHDG.

**RESPONSE C1-e:** As reflected in the DSEIR, the inconsistencies with the Design Guidelines are considered minor and do not create significant environmental impacts. The recommendation reflected in this comment will be taken into consideration by the Director of Planning, Building, and Code Enforcement when the proposed Historic Preservation Permit is considered for approval.

**COMMENT C1-f:** In conclusion, PAC\*SJ is distressed at the loss of the historically significant Letcher's Garage building and does not support the alternative that destroys the roof of the building. PAC\*SJ feels that in addition to the mitigation measures outlined in the SDEIR, the completion of the restoration of the First Church of Christ Scientist be completed in the Phase I of the project. The First Church of Christ Scientist Church should not only be restored, but ready for occupancy in Phase I. Occupancy ready would include construction of restrooms within the Church and ADA accessibility.

We look forward to your responses to our comments.

**RESPONSE C1-f:** This comment appears to combine the restoration of the church with other mitigation measures. The restoration of the church is not proposed as mitigation for the loss of Letcher's. They are two different resources and the preservation of one does not compensate for the loss of the other. The DSEIR identifies the loss of Letcher's as an unavoidable significant impact. The importance of the church restoration for the project objectives is that its cost is linked to the economic feasibility of the overall project. The proposed timing of project elements, including the church restoration, is described in the Project Description and will be addressed in the City's permits for the project. See also Response B1-e.

## **B. PUBLIC AGENCY COMMENTS**

### **1. RESPONSE TO LETTER FROM CITY OF SAN JOSÉ HISTORIC LANDMARKS COMMISSION, DATED NOVEMBER 14, 2007:**

**COMMENT B1-a:** At the November 5, 2007 Historic Landmarks Commission (HLC) meeting, the Commission reviewed the Park View Towers Draft Environmental Impact Report. In a 6-0-1 decision (Thacker absent), the Commission voted to forward this comment letter signed by the Chair, to the Director of Planning, Building and Code Enforcement and the Planning Commission in consideration of the EIR. Historic Landmarks Commission recommendations for work within the Historic District will be forwarded to the Director in the Historic Preservation Permit process, as required by the provisions of the Historic Preservation Ordinance.

**RESPONSE B1-a:** Responses to the letter's individual comments on the Draft EIR are provided below.

#### **COMMENT B1-b: I. CONSISTENCY WITH PLANS AND POLICIES**

The San Jose 2020 General Plan Urban Conservation/Preservation Major Strategy addresses the preservation of historic resources as a strategy due to the "inestimable character and interest" such resources lend to the City's image. Historic, Archeological and Cultural Resources Goals and Policies of the General Plan call for new development to be designed to be compatible with the character of proximate designated historic landmark structures and districts. In particular, proposals located within the Areas of Historic Sensitivity designation, such as the St. James Square Historic District Area, should be review for such design sensitivity.

The document states that the project is essentially consistent with the Urban Design Concept identified in the Strategy 2000 plan place new development around St. James Square Park. The document should include an analysis of the extent to which the project is consistent with the Strategy 2000 plan and/or the St. James Square Historic District Guidelines.

**RESPONSE B1-b:** The relationship between the Downtown 2000 Strategy Plan and the proposed project is an unusual one, but something that will occur with every project that tiers off of the certified Downtown FEIR. The "project" that was the subject of the Downtown FEIR was the Downtown 2000 Strategy Plan; CEQA therefore requires that the analysis of any subsequent project tiering from that FEIR evaluate inconsistencies between the subsequent project and the Plan as one basis for determining the presence of potentially significant environmental impacts.

The Initial Study for Park View Towers (Appendix A of the DSEIR) addresses in great detail, throughout its length, the consistency of the proposed project with the *San José Downtown Strategy 2000 Plan*. As stated on page iv of the DSEIR and on page 1 of the Initial Study in Appendix A, the project evaluated in the Downtown EIR, and subsequently approved by the City Council, was adoption of the *Strategy 2000 Plan*. Consistent with CEQA requirements, the Initial Study therefore evaluated the consistency of the proposed Park View Towers project with that previously approved project (*Downtown Strategy 2000 Plan*) in order to determine whether or not it was consistent with the analysis in the FSEIR.

Every aspect of the proposed Park View Towers project that was found by the Initial Study to be substantially inconsistent with that previously approved project (the *Downtown Strategy 2000 Plan*) was also found to result in a possibly significant environmental impact, requiring analysis in a new Supplemental EIR. See specifically pages 15-17, pages 25-29, and pages 40-41 of the Initial Study in Appendix A.

For clarity's sake, the Text Amendments in Section IV of this First Amendment to the Draft SEIR also includes a summary of the project's consistency with the *Downtown Strategy 2000 Plan*.

**COMMENT B1-c:** II. EXISTING SETTING. IMPACTS AND MITIGATION MEASURES

The Commission concurs with the conclusion that the demolition of Letcher's Garage; located at 200 N. First St. and listed as a Contributing Structure to the St. James Square National Register and City Landmark Historic District; is a significant unavoidable impact of the proposed project.

**RESPONSE B1-c:** This comment does not raise any question about the DSEIR, and no response is required.

**COMMENT B1-d:** While at least one Commissioner did not agree that the visual and aesthetic impacts of the 200 foot high Tower I outside of the Historic District are less than significant, given that adjacent buildings are two to four stories in height; the general Commission expressed concern that the construction of Tower II, within the Historic District, does not meet the St. James Square Historic District Design Guidelines (Guidelines) included in the DEIR. The Guidelines note that most of the Contributing Structures range from two to four stories in height, that the mass of new buildings should be sensitive to and harmonious with the scale of older buildings, that building heights for a one lot depth (137 feet) on blocks fronting directly on the Park should not deviate by more than one story from the heights of immediately adjacent historic buildings, and that in no case should they exceed 70 feet. Tower II, on the other hand, rises to 100 feet in height at a distance of 43-feet from the property line on St. James St. immediately adjacent to the 60-foot high historic First Church of Christ Scientist building.

Commissioners did not agree that the design modification of setting Tower II back from St. James St. 11.5 feet to align with the front of the adjacent historic First Church of Christ Scientist structure and limiting the height of the project to 45-feet for the next 31.5 feet while exceeding the height Guideline by 30-feet for the remaining 26 feet of lot depth, mitigates the impact of Tower II to a less than significant level; because the modified design does not meet the District 70 foot height guideline.

**RESPONSE B1-d:** Tower One is proposed adjacent to buildings, including the First Church of Christ Scientist and structures on Devine Street, that are two to four stories in height. These are not signature towers within the City such that exceeding their height would change their ability to be recognized. While they share a lower height, height is not intrinsic to their ability to be recognized. The large height difference between Tower One in the background and the church in the foreground would not be a significant impact to the church under CEQA, as it constitutes a backdrop to the district rather than an alteration to the streetscape setting within the district itself. The setting and integrity of the historic district

is left intact by Tower One and height outside of the district does not constitute a significant impact under CEQA.

The DSEIR describes, on pages 33-34, why the proposed design, including Tower Two was found to be consistent with the St. James Square Historic District Design Guidelines' height guideline (which is set forth in its exact language on page 33).

The language in the Design Guidelines balances a number of design elements, including setbacks, massing, and building height, in achieving compatibility. A 70 foot tall building on the property line could be less compatible with the existing historic buildings than the proposed project building. See Exhibit "O" in the appendix E of this Final SEIR. Compensating features are incorporated into the design such that, when balancing all of these features, the District setting is respected and the EIR concludes the impact is less than significant.

See also the response to Comment C1-d regarding building height and impacts from the project design.

**COMMENT B1-e:** Finally, because the project will provide the economic viability necessary to rehabilitate the First Church of Christ Scientist, the rehabilitation work should be included in Phase I of the project.

**RESPONSE B1-e:** This comment may reflect a misunderstanding. The project in its entirety is designed and proposed to be economically viable. This means that the development and sale/rental of the proposed number of dwelling units, supported by the proposed number of parking spaces, and the development and lease/rental of the proposed amount of commercial space will together be sufficient to support the total cost of the project, including the rehabilitation work on the First Church of Christ Scientist. The EIR does not say that the first phase of the project will provide sufficient revenue to pay for the cost of rehabilitation, particularly if the project proponent has not identified a specific user or use for the building. (See also Response to Comment C1-f.)

**COMMENT B1-f:** IV. ALTERNATIVES TO THE PROPOSED PROJECT

Commissioners stated that in general the document should include consideration of a broader range of alternatives that identify a reduced density and less than three levels of parking in order to reduce the impact of the project to Letcher's Garage and the Historic District to less than significant.

Commissioners noted that the Preserve Letcher's Alternative B, which includes eight stories of residential units above ground floor retail space, does not reduce the impact to Letcher's Garage to a less than significant level because it overwhelms the scale of the historic building and the Historic District setting. The Commission recommends the document consider at a minimum two additional alternatives: 1) A Preserve Letcher's alternative with all new construction occurring outside of the Historic District boundaries, and 2) A Tower II alternative within the Historic District boundaries that strictly meets the 70-foot height Guideline.

**RESPONSE B1-f:** The DSEIR includes alternatives that would reduce the significant impacts to less than significant and, in the case of the below grade parking, avoidance measures are incorporated



into the project that preclude the significant impacts. There is no requirement in CEQA to include a variety of alternatives beyond alternatives that reduce the impacts to less than significant, especially alternatives that are less consistent with project objectives and/or less feasible than alternatives already included.

The Commission's opinion that Alternative B does not reduce the impact from the loss of Letcher's Garage to less than significant is acknowledged. On pages 22-24 and in the Historic Resources Study in Appendix B, the DSEIR identifies the existing condition of Letcher's, including its loss of context and integrity. All of the "auto row" that was the historic context during the building's period of significance is gone. The building has been substantially altered and is currently sitting next to a boarded up historic building (the church) and a large parking lot. It is not clear from this comment how the addition of a new building that preserves three of the façades and the basic massing of the Letcher's building would create a significant impact because it "overwhelms the scale of the historic building and the Historic District setting". No new information is provided in the comment that would change the conclusion in the DSEIR.

For clarification, the design of Alternative B is noted as a maximum of 45' in height, set back 11.5', within the footprint above Letcher's Garage. The rooftop addition could be articulated to be separated from the adjacent new development outside the Historic District. As such, this stepped back addition would not have an adverse impact on the significance of Letcher's. Section IV of this First Amendment to the DSEIR includes additional text incorporated into the EIR discussing the two additional alternatives requested in this comment.

**COMMENT B1-i:** Conclusion

The Commission concurs that the demolition of Letcher's Garage is a significant impact, and strongly recommends consideration of reduced density alternatives that reduce project impacts to the Historic District.

**RESPONSE B1-i:** Section IV of this First Amendment to the DSEIR includes a discussion of additional alternatives.

**COMMENT B1-j:** Thank you for the opportunity to comment on the Park View Towers Draft Environmental Impact Report. The Commission looks forward to forwarding its recommendations on the Historic Preservation Permit in the near future.

**RESPONSE B1-j:** This comment does not raise any question about the DEIR, and no response is required.