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300 HARRISON STREET PROJECT  
FINAL ENVIRONMENTAL IMPACT REPORT  
RESPONSE TO COMMENTS DOCUMENT

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## CHAPTER I

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### INTRODUCTION

#### A. CEQA PROCESS

On September 17, 2002, the City of Oakland (Lead Agency) released for public review a Draft Environmental Impact Report (Draft EIR) on the 300 Harrison Street project (ER00-039). The DEIR circulated for a 45-day period. The 45-day public review and comments period on the Draft EIR began on September 17, 2002 and closed on October 31, 2002. The Oakland Planning Commission held a public hearing on the Draft EIR on Wednesday, October 16, 2002.

The Draft EIR for the 300 Harrison Street project, together with this Final EIR Response to Comments document, constitutes the Final EIR (FEIR) for the proposed project. The FEIR is an informational document prepared by the Lead Agency that must be considered by the decision-makers (including the Oakland City Planning Commission) before approving or denying the proposed project (CEQA Guidelines Section 15090). The California Environmental Quality Act (CEQA) *Guidelines* (Section 15132) specify the following:

“The Final EIR shall consist of:

- a) The Draft EIR or a revision of the draft.
- b) Comments and recommendations received on the Draft EIR either verbatim or in a summary.
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR.
- d) The responses of the Lead Agency to the significant environmental points raised in the review and consultation process.
- e) Any other information added by the Lead Agency.”

This document has been prepared pursuant to the CEQA *Guidelines*. This Final EIR incorporates comments from public agencies and the general public, and contains appropriate responses by the Lead Agency to those comments.

## **B. METHOD OF ORGANIZATION**

This Final EIR for the proposed 300 Harrison Street project contains information in response to raised during the Draft EIR public comment period.

Following this introductory Chapter I, Chapter II of this document contains revisions to the text of the Draft EIR (initiated by the Oakland Community and Economic Development Agency staff and those resulting from comments on the Draft EIR) and errata to the Draft EIR.

Chapter III contains a list of all agencies, organizations, and persons that submitted written comments on the Draft EIR and testified at the public hearing held in Oakland on October 16, 2002.

Chapter IV contains a copy of each comment received during the comment period and the responses to each comment.

Chapter V contains a summary of the public comments received during the public hearing held in Oakland on October 16, 2002, and the responses to the comments received during the public hearing

Chapter VI contains a copy of the written comment letters, including any attachments.

Chapter VII contains revised and new figures and attachments to the Draft EIR.

## CHAPTER II

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### REVISIONS TO THE DRAFT EIR

The following corrections and changes are made to the Draft EIR and are incorporated as a part of the Final EIR. Revised or new language is underlined (except where all of the indicated text is new). Deleted language is indicated by ~~strikethrough~~ text.

Where a change is made as a part a response to a comment on the Draft EIR, the comment number is noted in brackets at the end of the text change. Where no comment number is given, the change has been initiated by the Planning Department staff.

Revise all discussions of the Reduced Density Alternative #1 – 50-foot building Alternative throughout the DEIR to include the following clarifying text:

A concrete version of the Reduced Density Alternative #1 - 50-foot building is considered a sub-variant of the 50-foot wood-frame building alternative. The environmental impacts of the 50-foot concrete building would be the same as for the wood-frame version. [J-1]

Page 13 Project Description, fifth paragraph is revised as follows:

The building exterior will be light-colored to increase the amount of light reflected back onto the adjacent buildings; ~~the project building will include other light-enhancing devices, like reflective window glazing;~~ and the interior of the residential units will be light colored, to increase the amount of indirect light reflected back onto the adjacent buildings. [C-7]

Page 33 Existing Roadway System, the following text is added to the end of the second to the last paragraph on the page:

Third (3<sup>rd</sup>) Street is the City-approved heavy weight container route to the Port of Oakland. [D-3]

Page 35 Bicycle and Pedestrian Facilities, the fourth and fifth paragraphs on the page are revised for clarification as follows:

~~There is only one existing designated bicycle facility located within a three block radius of the project site. Embarcadero East (east/south of Oak Street) is a City of Oakland designated bike route and path.~~

~~In addition to the existing bicycle route and path on Embarcadero East, there are bicycle paths planned on 2<sup>nd</sup>- and 3<sup>rd</sup>-Streets, Embarcadero West east/south of Clay Street, on Clay Street between Embarcadero West and Water Street, and on Harrison Street from I 880 to the Posey Tube.~~

The San Francisco Bay Trail currently extends through the project area as a primarily Class II bike route on Embarcadero between Oak and Fruitvale and a Class III bike

path on 2<sup>nd</sup> Street between Broadway and Oak Street (Kathryn Hughes, Oakland Public Works Agency, November 14, 2002). According to the City's Bicycle Plan, there are planned bicycle routes/paths within three blocks of the site on Harrison Street from I-880 to the Posey Tube, and a one-way couplet on Oak/Madison Streets between the Bay Trail and Lake Merritt. [D-1]

Page 35 Bicycle and Pedestrian Facilities, the sixth paragraph on the page is revised for clarification as follows:

Sidewalks exist along nearly all of the surface streets in the project area. Under existing conditions, there is a paved sidewalk along the project frontage of Harrison Street and an unpaved path area behind the curb on 3<sup>rd</sup> Street. There is a paved sidewalk along Alice Street north of the project site. ~~including the project frontages on Harrison Street, 3<sup>rd</sup> Street and Alice Street.~~ Many of the sidewalks are wider than standard sidewalks. In some parts of the study area, however, vehicles park on the sidewalks illegally, forcing pedestrians to walk in the street. [D-2]

Page 60 Construction Period Impacts, the following text is added before the last paragraph on the page.

Project construction will predominantly use the site frontage sidewalk and one travel lane. A minimum of two 12-foot wide travel lanes will be maintained throughout project construction, except during the installation of utilities, which is estimated to last one week. If 3<sup>rd</sup> Street must be closed temporarily, an alternate route for heavy trucks will be provided. Adjacent property owners and public safety personnel will be notified when major deliveries, detours, and lane closures will occur.

Page 60 Mitigation Measure, B.12A is added before Mitigation Measure B.12, as follows:

Mitigation Measure B.12A: The project applicant and construction contractor shall prepare a Construction Period Impact Management Plan to address mitigation measures that will be implemented to avoid and reduce construction-related traffic, parking, air quality, noise, and other impacts. The Construction Period Impact Management Plan shall be submitted to the City Planning Division with the application for the building permit, and shall be reviewed and approved by the Planning Division and the Oakland Public Works Traffic Engineering and Parking Divisions prior to issuance of the building permit.

Prior to approval of the proposed Construction Period Impact Management Plan, the project applicant shall provide notice (10 business days) of and hold a pre-construction community meeting to present the proposed Construction Period Impact Management Plan and to discuss all construction-related issues (i.e., traffic, parking, noise, and air quality). The Construction Period Impact Management Plan will be made available for review and comment prior to the community meeting.

The Construction Period Impact Management Plan will include sub-sections outlining measures for overall construction management, construction traffic, parking, and staging impacts, air quality, and noise, as described below. **[Note: only new measures that are not already identified in the DEIR as mitigation for**

**construction traffic, air quality and/or noise impacts are underlined in the following text.]**

*Overall Construction Management*

- o A drawing showing location, size, and wording of at least two signs that will be posted at the site throughout construction that includes permitted construction days and hours, day and evening contact numbers for the job site, and day and evening contact numbers for the City in the event of problems.
- o A process and schedule for implementing debris control measures and periodic neighborhood cleanup activities, including installation of a temporary construction fence to contain debris and material and secure the site.
- o A process for responding to and tracking complaints pertaining to construction activity, including the following:
  - A procedure for notifying City Building Division staff and Oakland Police Department;
  - A list of telephone numbers (during regular construction hours and off-hours);
  - A plan for posting signs on-site pertaining to complaint procedures and who to notify in the event of a problem; and
  - Designation of a construction complaint manager for the project.

*Traffic, Parking, and Staging*

The project sponsor and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency (PWA), and other appropriate City agencies, to determine traffic management strategies to reduce traffic congestion and the effects of parking demand by construction workers of the project and other nearby projects that could simultaneously be under construction, to the maximum extent feasible. The project sponsor shall develop a plan which shall include at least the following measures and requirements for review and approval by the City:

- o A process for coordinating the construction management and staging with other nearby construction projects, including the 426 Alice Street project, and the Posey and Webster Tube Retrofit projects (if they are active when the project starts), so as to minimize construction period impacts on the neighborhood;
- o A temporary construction fence to contain debris and material and to secure the site;
- o A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane

closure procedures, signs, cones for drivers, and designated construction access and haul routes;

- Use of flagmen to minimize impacts (including noise and air pollution) of truck traffic during excavation and delivery of concrete and other significant materials during construction;
- A site plan showing the location of construction staging areas (options include, but are not limited to, on-site for portions of materials, and within the public right-of-way where it will not unreasonably block ingress, egress, or through traffic), and approximate dates they will be needed;
- Provisions for managing standing, loading, and unloading activities adjacent to the site for all construction-related vehicles;
- Notification procedures for adjacent businesses, residents, property owners and public safety personnel for all major deliveries, detours and lane and/or street closures that will affect traffic or parking in the vicinity of the project;
- Provisions for monitoring surface streets used for truck routes so that any damage and debris attributable to the trucks can be identified and corrected;
- Provision for parking management and spaces for all construction-related vehicles, such as provision of off-street parking for construction workers' vehicles that cannot be accommodated on-site by leasing spaces in a parking lot within 1,300 feet of the site, or by shuttling workers from a parking lot outside of the 1,300 foot limit, if necessary; and
- Provisions for accommodation of pedestrian flow.

### Air Quality

The project shall include the BAAQMD list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following basic control measures would be implemented during all phases of construction on the project site:

- Water all active construction areas at least twice daily.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily with water sweepers all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily with water sweepers if visible soil material is carried onto adjacent public streets.

- o Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

Noise

- o Standard construction activities shall be limited, as part of the standard conditional use permit conditions, to between 7:00 AM to 7:00 PM, Monday through Friday. No construction activities shall be allowed on Saturdays until after the building is enclosed and without prior authorization of the Building Services and Planning Division of the Community and Economic Development Agency, and then only within the interior of the building with the doors and windows closed. No construction activity shall take place on Sundays and legal holidays.
- o In order to reduce daytime noise impacts during construction, the City shall require construction contractors to implement the following measures:
  - Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the noise enforcement manager, and a day and evening contact number for the City in the event of problems.
  - An on-site complaint and enforcement manager shall be designated and posted to respond to and track complaints.
  - A pre-construction meeting shall be held with the job inspectors and the general contractor/on-site project manager, to confirm that noise mitigation measures and practices are completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.)
  - Equipment and trucks used for the project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds wherever feasible).
  - Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered, wherever possible, to avoid noise associated with compressed air exhaust from pneumatically-powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used such as drilling rather than impact equipment whenever feasible.
  - Stationary noise sources shall be located as far from adjacent uses as possible. If they must be located near adjacent uses, they should be

adequately muffled and enclosed within temporary sheds or insulation barriers or other measures shall be incorporated, to the extent feasible.

- The project shall specify quieter equipment/methods of construction, to the extent feasible, since some of the options for constructing the project will have an impact on noise levels. For example, the use of bolted-on exterior cladding would be significantly quieter than an exterior shell that would require powder-actuated tools to shoot pins into concrete.

Requirements and Conditions for Pile-Driving or Other Extremely Noisy Construction Activities (with potential noise levels greater than 90 dBA) (to be implemented only if required) are described below.

- o If pile-driving and/or other extreme noise generating activities greater than 90 dbA occur, they shall be limited to between 8:00 AM and 4:00 PM, Monday through Friday, with no extreme noise-generating activity permitted between 12:30 and 1:30 PM. To minimize disruptions to local businesses, the applicant will further limit the hours of pile driving (to the extent that it is necessary at all) to between 8:00 AM and 12:30 PM, Monday through Friday. No extreme noise-generating construction activities shall be allowed on Saturdays, Sundays, or legal holidays.
- o To further mitigate potential pile-driving and/or other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. This noise reduction plan shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation is achieved. A third-party peer review, paid for by the applicant, shall assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the applicant. If not already included in the community meeting referred to in the second paragraph of Mitigation Measure B.12A (Revisions to the Draft EIR, pg 5), a community meeting shall be held after the peer review, but prior to approval of a noise reduction plan by the City. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official and the deposit shall be submitted by the project sponsor concurrent with submittal of the noise reduction plan. These attenuation measures shall include as many of the following control strategies as feasible and shall be implemented prior to any required pile-driving and other extremely noisy activities:
  - Implement “quiet” pile-driving technology, where feasible, in consideration of geotechnical and structural requirements and conditions;
  - Erect temporary plywood noise barriers around the entire construction site;
  - Utilize noise control blankets on the building structure as it is erected to reduce noise emission from the site;

- Utilize noise control blankets on the adjacent buildings, with the property owners' permission;
  - Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and
  - Monitor the effectiveness of noise attenuation measures by taking noise measurements.
- o A process with the following components shall be established for responding to and tracking complaints pertaining to pile-driving or other extreme noise generating activity (over 90 dBA):
- A procedure for notifying City Building Division staff and Oakland Police Department;
  - A list of telephone numbers (during regular construction hours and off-hours);
  - A plan for posting signs on-site pertaining to complaint procedures and who to notify in the event of a problem;
  - Designation of a construction complaint manager for the project; and
  - Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of any pile-driving activities. [D-5]

Page 61 Mitigation Measure B.12, the second introductory paragraph and first, fourth, and fifth bullets are revised for clarification, and bullets 12, 13, and 14 are added, as follows:

The project sponsor ~~would~~ shall submit a construction management and staging plan to the Building Services Division with the application for the building permit for review and approval by the City. The plan shall include at least the following measures and requirements:

1. The project sponsor will coordinate the construction management and staging with the builder of the 426 Alice Street project, and the Posey and Webster Tube Retrofit projects (if they are active when the project starts), so as to minimize construction period impacts on the neighborhood.
4. A site plan showing ~~t~~The location of construction staging areas (options include, but are not limited to, on-site for portions of materials, and within the public right-of-way where it will not unreasonably block ingress, egress, or through traffic), and approximate dates they will be needed.
5. Notification procedures for adjacent businesses, residents, property owners and public safety personnel regarding when major deliveries, detours and lane and/or street closures that will affect traffic or parking in the vicinity of the project will occur.

12. A temporary construction fence to contain debris and material and to secure the site;
13. Use of flagmen to minimize impacts (including noise and air pollution) of truck traffic during excavation and delivery of concrete and other significant materials during construction;
14. Provisions for managing standing, loading, and unloading activities adjacent to the site for all construction-related vehicles. [D-5]

Page 71 Mitigation Measure C.1, the first sentence of the introductory paragraph and fourth and fifth bullets are revised for clarification as follows:

The project ~~shall~~ ~~would~~ include the BAAQMD list of feasible construction dust measures that can reduce construction impacts to a level that is less than significant.

- Sweep daily with water sweepers (~~preferably with water sweepers~~) all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily with water sweepers (~~preferably with water sweepers~~) if visible soil material is carried onto adjacent public streets. [F-3]

Page 85 Mitigation Measure D.1b, the first bullet is revised for clarification as follows:

Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the noise enforcement manager ~~job site~~, and a day and evening contact number for the City in the event of problems. [D-5]

Page 86 Mitigation Measure D.1c is revised for clarification as follows:

If pile driving and/or other extreme noise generating activities greater than 90 dBA occur, they shall be limited to between 8:00 AM and 4:00 PM, Monday through Friday, with no extreme noise-generating activity permitted between 12:30 PM and 1:30 PM. To minimize disruptions to local businesses, the applicant will further limit the hours of any pile driving to between 8:00 AM and 12:30 PM, Monday through Friday. No extreme noise-generating construction activity shall be allowed on Saturdays, Sundays, or legal holidays. [F-4]

Page 86 Mitigation Measure D.1d, the introductory paragraph is revised for clarification as follows:

To further mitigate potential pile-driving and/or other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. This noise reduction plan shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation is achieved. A third-party peer review, paid for by the applicant, shall assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the applicant. If not already included in the

community meeting referred to in the second paragraph of Mitigation Measure B.12A, a community meeting shall be held after the peer review, but prior to approval of a noise reduction plan by the City. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official and the deposit shall be submitted by the project sponsor concurrent with submittal of the noise reduction plan. These attenuation measures shall include as many of the following control strategies as feasible and shall be implemented prior to any required pile-driving and other extremely noisy activities: [D-5]

Page 87 Mitigation Measure D.1.e, the last bullet is revised for clarification as follows:

Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of any pile-driving activities. [D-5]

Page 90 Section II, E, 1., Historic Resources, Existing Setting, the fifth paragraph on the page is revised for clarification as follows:

The Western Pacific Depot opened for passenger service in 1910, and the project site, 300 Harrison Street, was the site of the Western Pacific Freight Depot. ~~Western Pacific's tracks ran along 3<sup>rd</sup> Street; while Southern Pacific tracks ran along Second Street.~~ The Western Pacific Railroad tracks traversed the Waterfront Warehouse district on 3<sup>rd</sup> Street until 1996. The Southern Pacific tracks ran along First Street (the Embarcadero). A mid-block spur track north of 3<sup>rd</sup> Street also extended about 700 feet from Jackson Street to Harrison Street (the project site), where Western Pacific's main Oakland freight depot stood until the late 1970's, when the freight depot was demolished. The Freight Depot site contained a railroad "end of line bumper" and two mid-block spur tracks. [C-2]

Page 108 Impact E.2, fourth paragraph is revised for clarification as follows:

The proposed project, in and of itself, will not materially alter the physical characteristics that convey the District's historic significance. For these reasons, the proposed project will not constitute an impact to the District or to any of the individual contributor buildings, in the professional opinion of Bridget Maley and Bruce Judd of Architectural Resources Group (ARG), the architectural historian ~~historie~~ conducting the evaluation. [C-6]

Page 136 Impact F.4, fifth paragraph is revised as follows:

In this case, the building exterior will be light-colored to increase the amount of light reflected back onto the adjacent buildings; ~~the project building will include other light enhancing devices, like reflective window glazing;~~ and the interior of the residential units will be light colored, to increase the amount of indirect light reflected back onto the adjacent buildings. [C-7]

Appendix A - Initial Study: XVI. Utilities and Service Systems, the following text is added before the last sentence of the first full paragraph

The City of Oakland Public Works Department has confirmed that there is available wastewater capacity within Subbasin 64-02 to serve the proposed project. [B-3]

## CHAPTER III

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### ORGANIZATIONS AND INDIVIDUALS COMMENTING ON THE DRAFT EIR

#### A. ORGANIZATIONS AND INDIVIDUALS COMMENTING IN WRITING

The following agencies, organizations and individuals submitted written comments on the Draft EIR during the Draft EIR review period (September 17, 2002, through October 31, 2002). Copies of these comments and any attachments are presented in Chapter VI of this document.

<u>Agency/Organization and Signatory</u>	<u>Date</u>
A. Alameda County Congestion Management Agency Beth Walakus, Senior Transportation Planner	October 30, 2002
B. East Bay Municipal Utility District William R. Kirkpatrick, Manager of Water Distribution Planning	October 28, 2002
C. City of Oakland Landmarks Preservation Advisory Board Una Gilmartin, Chair	October 21, 2002
D. South of the Nimitz Improvement Council (SoNiC) Gary Knecht, President	October 30, 2002
E. Jack London Neighborhood Association Wilda White	October 31, 2002
F. Dreisbach Marianne Dreisbach	October 25, 2002
G. e-agency Dave Dunn	October 28, 2002
H. Metrovation Mark Seiler	October 30, 2002
I. Thomas P. Christian	October 31, 2002
J. Wilda White	October 31, 2002

## **B. PERSONS COMMENTING AT THE PUBLIC HEARING**

The following persons provided public testimony at the Oakland City Planning Commission Public Hearing on the Draft EIR, held at City Hall on Wednesday, October 16, 2002.

Jane Lawhon, Jack London Neighborhood Association  
Sanjiv Honda  
Commissioner Jang  
Commissioner Lighty

A summary of the comments made at the public hearing is included in Chapter V of this document. A response is provided following the summary of each comment.

## CHAPTER IV

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### RESPONSES TO WRITTEN COMMENTS ON THE DRAFT EIR

This chapter includes copies of the comment letters that were received by the Lead Agency during the public review period of the Draft EIR and responses to those comments. Copies of the comment letters are reproduced in Chapter VI. Where responses have resulted in changes to the text of the Draft EIR, these changes appear in Chapter II of this Final EIR, Responses to Comments document.

#### MASTER RESPONSES

##### **Master Response 1 – CEQA Thresholds of Significance for Project Impacts vs. Cumulative Impacts to the Historic Waterfront Warehouse District and Evidence Used to Reach Conclusions of Significance**

A number of commentors raised questions and concerns regarding the CEQA threshold of significance with respect to maintaining the District's eligibility for the National Register, and requested further clarification of the perceived contradiction that the cumulative impacts are not significant, but that in the interest of being conservative, the DEIR treats the cumulative impact as significant and unavoidable. The commentors noted that the analysis appears to be subjective and not quantitative or based on evidence. The commentors requested clarification as to what point are the cumulative impacts to the WWD so significant that the City should stop approving new development.

This comment was raised by: City of Oakland Landmarks Preservation Advisory Board  
South of Nimitz Improvement Council (SoNIC)  
Jack London Neighborhood Association (JLNA)  
Planning Commissioner Lighty  
Planning Commissioner Jang

#### **Response:**

In this EIR, the City has chosen to find that this project, together with past, present and reasonably foreseeable projects, will create a significant cumulative impact on the District as a historic resource although though no loss of eligibility for the National Register will result. The basis for this finding is that the introduction of new buildings into the District will compromise the ability of the District to convey its historic significance but not to such an extent that the justification for its inclusion in the National Register would be destroyed. As stated on page 25 of ARG's Historical Resources Evaluation, "Under National Register criteria, an historic district may be considered eligible if the majority of components add to the District's character, even if they are individually undistinguished." In addition, the historic district must maintain its historic "integrity," as measured by seven factors (comprised of location, design, setting, materials, workmanship, feeling and association). (See DEIR pgs. 109 through 112 and Appendix F to the Draft EIR pgs. 19-26.) Thus, impacts must be evaluated using both quantitative and qualitative factors.

The Draft EIR analyzed the impact of cumulative development on the District quantitatively and qualitatively. A quantitative analysis appears at page 111 and concludes that 76% of the buildings in

the District would remain contributors—satisfying the numeric requirement for eligibility on the National Register. The DEIR also qualitatively analyzes impacts to the District’s historic integrity at pgs. 110-111 and concludes that integrity will be compromised but not destroyed. It bases this conclusion on an assessment of the effects of new development on the District’s location (no impact), design (some negative impact due to new large-scale buildings), setting (some negative impact due to new large-scale buildings); materials (some negative impact due to new wood frame buildings), workmanship (some negative impact due to new buildings of lower workmanship), feeling (some negative impact due to a group of large-scale, wood frame buildings) and association (some disruption due to new construction in general). In no case, however, are the impacts of new development considered to be so severe that the District’s integrity (as measured by its location, setting, design, materials, workmanship, feeling or association) is destroyed.

The comment correctly points out that the analysis of these qualitative factors contributing to “integrity” is subject to judgment. Impacts to a historic district’s “feeling,” “association” or workmanship” are not readily susceptible to quantification. Reasonable people can also differ about whether new development, even if it fails to cause the number of contributors to drop below 50%, justifies exclusion of a historic district from the National Register. In this case, the City’s independent consultant concluded that these impacts were “significant” but not so severe so as to justify exclusion from the National Register. It based this conclusion, among other things, on the relatively limited amount of cumulative development affecting the district, and the compatibility of the proposed new development with the district in terms of design, architecture, materials and workmanship.

In reaching its conclusion, the DEIR historic resources consultant, Architectural Resources Group (ARG), consulted with members of the State Historic Preservation Office (SHPO) staff on several occasions in late 2001 and early 2002 to discuss the 426 Alice Street project and cumulative impacts to the WWD. City staff participated in one conference call on January 3, 2002 that included Bridget Maley of Architectural Resources Group (ARG), and at least the following State Historic Preservation Office (SHPO) staff members: Dr. Knox Mellon, Stephen Mikesell, Cindy Woodward, Gene Itogawa, Tim Brandt, Cindy Howse, and Marilyn Lortie. In this call, the SHPO staff expressed concern regarding any new development proposed in the Waterfront Warehouse District. The consultation with SHPO was only one of the many factors ARG used to form an independent, expert opinion that the project would contribute to a cumulatively significant impact on the historic District. The other factors included review of the National Register nomination form and related materials (including an assessment of Criteria A and C as bases for eligibility), materials from the OCHS, review of the Estuary Policy Plan and General Plan Land Use and Transportation Element, review of the project description and plans for 426 Alice and 300 Harrison Street, review of the project shade and shadow study, consideration of the relative number, size, scale and location of new components that do not contribute to the District’s significance, discussion with City officials, field observations of the district and surrounding area, reviewing National Register Bulletin Number 15 and other historic resource materials, discussion with other ARG staff, and their professional expertise as architectural historians. Although SHPO was notified of the availability of the DEIR, the SHPO did not comment on the Draft EIR during the 45-day circulation period.

As explained at footnote 39 on page 108 of the Draft EIR, CEQA’s threshold for significance is higher than the threshold the City’s expert used to determine significance. CEQA’s threshold (as provided in CEQA Guidelines section 15064.5) requires that the impairment to the District be so great as to demolish or materially affect in an adverse manner the physical characteristics “that convey its historic significance **and** that justify its inclusion in, or eligibility for, inclusion in the California Register of Historic Places [which uses the same criteria as the National Register.]” In

this case, the City's independent consultant determined that the impacts would compromise the District's ability to convey its historic significance, but not so severely so as to preclude its eligibility for inclusion in the National Register. The DEIR's determination of "significant and unavoidable" impacts is not, therefore, based on a determination of eligibility but rather on a qualitative assessment of the impacts of new development on the District's historic integrity, as measured by the seven factors listed above. As such, the DEIR conservatively adopts a lower threshold for determining significance than set forth in the CEQA Guidelines.

A comment requests the DEIR to state when new development would "really start to be a cumulative impact." As explained above, the answer depends on the standard selected for determining "significance." If loss of eligibility is the standard of significance, the DEIR explains that no cumulative impacts will occur. In the opinion of the City's historic architectural consultant, however, loss of eligibility should not be the standard but rather the standard of significance should be some lesser degree of impairment of the District's historical integrity, short of loss of eligibility. Accepting this premise, the DEIR considers the impairment caused by cumulative new development to be significant and unavoidable to the extent that any new development in the District causes further impairment, although perhaps not loss of eligibility. Using a traffic analogy, the DEIR considers cumulative development in the District to warrant a yellow flashing light but not a red light. When and if the number of contributors within the District drops below 50%, it can be objectively stated that eligibility would be destroyed. Until that point is reached, however, the evaluation of impacts remains qualitative and subject to informed opinion based on an assessment of the factors contributing to the "integrity" of a resource.

### **Master Response 2 – Noise Impacts to Businesses and Mitigation**

A number of commentors raised questions and concerns related to the impacts of construction noise on nearby businesses. The commentors raised concerns about the adequacy of construction noise mitigation measures to reduce impacts to businesses and requested a process for the neighboring businesses to comment on the proposed noise mitigation measures. The commentors requested clarification as to what assurances would the City have that the proposed noise mitigation measures would be implemented? Lastly, some of the commentors requested that the developer be required to relocate or compensate nearby businesses for lost productivity due to noisy construction.

This comment was raised by: South of Nimitz Improvement Council (SoNIC)  
Dreisbach  
e-agency  
Metrovation

### **Response:**

It is acknowledged that construction noise will affect both residential and commercial neighbors of the project site and that the DEIR analyzed the impacts of such. The proposed Construction Period Impact Management Plan includes a Noise Reduction Plan sub-element (described in Response D5). The currently proposed construction noise mitigation measures have been adopted by the City Council as sufficient to reduce construction noise to a less than significant level and enforcement measures are included. The currently adopted construction noise mitigation measures are more rigorous than previous required measures (such as those required for the Allegro Project) and include special measures for pile driving and other extreme noise-generating activities, as well as a complaint tracking and response process. In order to minimize disruptions to local businesses, the applicant will further limit the hours of any pile driving to between 8:00 AM and 12:30 PM, Monday through

Friday. The text of the EIR (Mitigation Measure D.1c, pg. 86) has been revised to clarify this proposed mitigation measure. The revised text is presented in Chapter II., Revisions to the Text of the Draft EIR, of this document. As described in the DEIR (pg. 87) neighbors within 300 feet of the project construction area will be notified at least 30 days in advance of pile driving or other extreme noise generating activities (over 90 dBA). The DEIR (Mitigation Measures D.1d, pg. 86) also includes the use of noise control blankets on the building structure as it is erected to reduce noise emission from the site.

The table below compares the current noise mitigation measures, required for the proposed project, with the noise mitigation measures required for the Allegro Project.

<b>Comparison of Noise Mitigation Measures 300 Harrison Street Project &amp; Allegro Project (ER98-16)</b>		
<b>Mitigation Measure</b>	<b>300 Harrison Street Project</b>	<b>Allegro Project</b>
<b>Hours of Construction (non-pile driving)</b>	<ul style="list-style-type: none"> <li>• 7am-7pm Monday-Friday;</li> <li>• After fully enclosed, allowed on Sat. and Sunday, 7am-7pm</li> </ul>	Mitigation measure with the same intent included in the Allegro project (or as subsequently modified)
<b>Noise Reduction Requirements during Construction</b>	<ul style="list-style-type: none"> <li>• The following measures shall be implemented throughout construction as feasible:               <ul style="list-style-type: none"> <li>- Utilize the best available noise control techniques, i.e. improved mufflers, equipment redesign, intake silencers, ducts, engine enclosures and noise attenuating shields or shrouds on all equipment and trucks.</li> <li>- Impact tools shall be hydraulically or electrically powered. Use exhaust mufflers on compressed air exhaust. Use external jackets on tools. Use drills instead of impact equipment and other quieter procedures.</li> <li>- Place stationary const. equipment as far from sensitive receptors as possible.</li> <li>- Use acoustical shielding on stationary equipment when feasible.</li> </ul> </li> </ul> <p>(See mitigation for pile driving and noise over 90dBA below)</p>	<ul style="list-style-type: none"> <li>• Mitigation measure with the same intent included in the Allegro project.</li> </ul> <p>Same</p> <p>Same</p> <p>Same</p> <p>Same</p> <ul style="list-style-type: none"> <li>- Use noise barriers around the entire construction site, such as plywood barriers.</li> <li>- Use noise control blankets on the proposed building itself to reduce noise emissions from site.</li> </ul> <p>Evaluate installing noise control at the receiver's site to improve noise reduction at adjacent buildings.</p>

**Comparison of Noise Mitigation Measures  
300 Harrison Street Project & Allegro Project (ER98-16)**

<b>Mitigation Measure</b>	<b>300 Harrison Street Project</b>	<b>Allegro Project</b>
<b>Noise Reduction Requirements if pile-driving is used or noise over 90 dBA occurs</b>	<ul style="list-style-type: none"> <li>• The applicant shall submit and implement a noise reduction plan containing site-specific noise attenuation measures to ensure maximum feasible noise attenuation (feasible shall be as defined by CEQA). Noise reduction plan shall be approved by City. The Applicant shall provide notice of and hold a community meeting to discuss the proposed Construction Period Impact Management Plan, which includes mitigation measures for construction noise impacts. Applicant shall fund a third party peer review of said plan and place a special inspection deposit with the City to ensure compliance. Noise reduction plan may include, but not be limited to, the following:               <ul style="list-style-type: none"> <li>- Use noise barriers around the entire construction site, such as plywood barriers.</li> <li>- Use “quiet” pile driving technology based on soils and structural requirements, as feasible.</li> <li>- Use noise control blankets on the proposed building itself to reduce noise emissions from site.</li> <li>- Evaluate installing noise control at the receiver’s site to improve noise reduction at adjacent and nearby buildings.</li> </ul> </li> <li>• Limit hours to 8am-4pm. Exclude 12:30pm-1:30 pm or other mid-day hour as estab. and posted. Pile driving will be limited to the hours of 8:00 am to 12:30 pm Monday through Friday. Saturday only with City approval based on neighbor and business input, prohibited on Sundays and legal holidays. Noise reduction measures shall be implemented under the supervision of an acoustical consultant.</li> <li>• The effectiveness of noise attenuation shall be evaluated by taking noise measurements during construction.</li> <li>• Provide surrounding residents and businesses (min. 300’ radius) at least 30 days written notice of start date and duration of pile driving and noise over 90dBA.</li> </ul>	Not required for the Allegro project
<b>Noise Complaints</b>	<ul style="list-style-type: none"> <li>• Designate City contract to respond to noise complaints and ensure implementation of noise reduction measures.</li> </ul>	<ul style="list-style-type: none"> <li>• Mitigation measure with the same intent included in the Allegro project.</li> </ul>

<b>Comparison of Noise Mitigation Measures 300 Harrison Street Project &amp; Allegro Project (ER98-16)</b>		
<b>Mitigation Measure</b>	<b>300 Harrison Street Project</b>	<b>Allegro Project</b>
	<ul style="list-style-type: none"> <li>• Post signs at const. site with allowed hrs. of construction and phone # of complaint contact person.</li> <li>• City to have inspector avail. to respond to complaints on off-hours and weekends.</li> <li>• On-site complaint and enforcement manager shall respond to and track noise complaints.</li> </ul>	<p>Not required with Allegro project</p> <ul style="list-style-type: none"> <li>• Mitigation measure with the same intent included in the Allegro project.</li> </ul> <p>Not required with Allegro project</p>
<b>Pre-Construction Requirements</b>	Hold pre-construction meeting with general contractor, city inspectors and on-site const. manager to confirm that noise mitigation measures and practices are completed prior to issuance of building permit and adhered to throughout construction.	Not required with Allegro project
<b>Noise levels inside residential units of the proposed building</b>	<ul style="list-style-type: none"> <li>• Comply with requirements of California Building Code.</li> </ul>	Mitigation measure with same intent included in the Allegro project.

Prior to approval of the proposed Construction Period Impact Management Plan, the project applicant shall provide notice (10 business days) and hold a pre-construction community meeting to present the proposed Construction Period Impact Management Plan and to discuss all construction-related issues, including noise. Prior to the community meeting, the Construction Period Impact Management Plan will be made available for review.

If pile driving or other extreme noise generating construction is proposed, a third-party peer review, paid for by the applicant, shall assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the applicant. If not already included in the community meeting referred to above, a separate community meeting shall be held to present the noise reduction plan for pile driving and other extreme noise generating construction activities. This community meeting shall be held after the peer review, but prior to the approval of the noise reduction plan by the City.

The Construction Period Impact Management Plan shall include a process for responding to and tracking complaints pertaining to construction activity, including the identification of an on-site complaint manager and a posting of a list of phone numbers for complaints. Mitigation Measure D.1.d and D.1.e (DEIR pgs. 86 and 87) describe provisions for monitoring the effectiveness of noise attenuation measures, and a process for responding to and tracking complaints regarding pile driving and other extreme noise generating activity. Mitigation Measure D.1.d (DEIR pg. 86) describes that a special inspection deposit that will be required to ensure compliance with the noise reduction plan. The ultimate enforcement mechanism is the City's ability to shut down construction, in the event the applicant is not following the required mitigation measures.

The City will ensure that all feasible mitigation measures will be required to reduce construction-related impacts on surrounding businesses, but it is not the City's policy or practice to require any type of monetary compensation or temporary relocation for businesses or residents during private construction activities on adjacent properties.

## **LETTER A - ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY**

### Comment A1

Thank you the opportunity to comment on the 300 Harrison Street project. The project would construct 91 residential units. This is a reduction in land use as described in the NOP. Because of this, the ACCMA has no comment because the project does not appear to meet the Tier I requirements of generating 100 or more p.m. peak hour trips over existing conditions. Therefore it is exempt from the Land Use Analysis Program of the CMP.

### Response A1

No response is required, as this comment does not raise any questions regarding the accuracy of the EIR.

## **LETTER B - EAST BAY MUNICIPAL UTILITY DISTRICT**

### COMMENT B1

East Bay Municipal Utility District (District) appreciates this opportunity to comment on the Draft Environmental Impact Report (EIR) for the 300 Harrison Street Project. The Draft EIR does not address the District's comments regarding water service, water recycling, wastewater, or water conservation issues. The District's comments in the August 6, 2001 letter (enclosed) responding to the Notice of Preparation for the Draft EIR are still valid and should be addressed. The District has additional comments regarding Water Conservation, Wastewater and Regulatory Compliance.

### RESPONSE B1

The issues raised in the District's August 6, 2001 response to the EIR Notice of Preparation pertain to water service, water conservation and recycling, wastewater service, and potential soil contamination. The response to comments regarding water conservation are discussed in the following Response B2. Wastewater service is discussed in Response B3, and soil contamination is discussed in Response B4. Additional information about the project's impacts on utilities and service systems was addressed in the Initial Study prepared for the project, which was included as Appendix A of the Draft EIR. The remainder of the comment in the August 6, 2001 response to the EIR Notice of Preparation are related to project design are do not raise questions about the adequacy of the DEIR.

## COMMENT B2

### WATER CONSERVATION

In addition to the District's comments in the August 6, 2001 letter, the following are specific recommendations for the 300 Harrison Street Project:

The EIR should address water demand reduction measures under the Utilities and Service Systems section. Specifically, the EIR should provide a detailed description of practices designed to achieve water use efficiency consistent with Oakland ordinances, Oakland Sustainability Program State law, and District service regulations. The redevelopment project must conform to the Oakland Water Efficient Landscape Requirements, Article 10, Chapter 7 of the Municipal Code, and if not enforced by the City, the project would fall under the jurisdiction of Assembly Bill 325 (1993) Statewide Model Water Efficient Landscape Ordinance.

The description of landscape improvements and design concepts should include specific comments on low-water-use plants and on irrigation systems designed to water plants efficiently and minimize over spray and runoff. A statement should be included on how the project will meet a landscape water budget not exceeding 80 percent of reference evapo-transpiration (ET). It is recognized that reference ET varies from year to year. For the purpose of estimating water use, the District uses 36 inches as the average reference ET for Oakland. For example, 80 percent of 36 inches is 28.8 inches, which represents an upper-limit, not-to-exceed amount of annual irrigation. The project sponsor is encouraged to design redevelopment in such a way that requires even less demand than this upper-limit amount for landscape irrigation.

The District also recommends the use of drought resistant plants, use of inert materials, and minimal use of turf areas and encourages sub-metering of landscape.

A statement that new projects will be subject to the District's Water Service Regulations at time of application for service.

In addition to state and federally mandated water-efficient plumbing standards, the District encourages the use of water-efficient appliances (e.g. horizontal-axis clothes washers) and other devices in and around the home to further water conservation practices.

The District offers landscape plan review for new applicants for water service.

## RESPONSE B2

The proposed 91-unit project will incorporate water conservation measures for both internal and external uses of the project, such as low-flow faucets and showers, water-conserving toilets, and low water demand irrigation. The proposed project is an urban infill development that includes no turf and little landscaping. Landscape trees will be provided along the project frontages and container plants will be provided on the roof deck. Landscaping provided by the project will include drought-tolerant plants. Landscape irrigation will be designed to water plants efficiently and minimize over spray and runoff. Irrigation levels will be sub-metered and applied in zones according to the water requirements of the plants. The project will be subject to the District's Water Service Regulations at the time of application for service. The remainder of the comments are project design-related and do not raise issues as to the adequacy of the Draft EIR; therefore no response is required.

### COMMENT B3

#### WASTEWATER SERVICE

Regarding the availability of wastewater capacity for the proposed project, recent environmental documentation for similar projects from the City of Oakland as lead agency cite the document "Community Services Analysis Prepared for the Land Use and Transportation Element of the General Plan." A sentence from this document reads "that future in-fill development through the General Plan horizon year of 2015 would not be likely to impose a burden on existing public services"; the resulting City of Oakland's conclusion from this reference is that there is sufficient wastewater capacity for the project. As stated in past comments regarding new developments, the District does not view this reference as conclusive that there is wastewater flow allocation within the subbasin to which this project would be tributary. The developer for this project should confirm with the City of Oakland Public Works Department that there is available flow allocation capacity within the subbasin that has not been allocated to other developments. The projected peak wet weather wastewater flows from this project need to be determined to assess the available capacity within the subbasin and confirmation included in the EIR. Suggested language to include in the EIR is as follows: "The City of Oakland Public Works Department has confirmed that there is available wastewater capacity within Subbasin that is reserved for this project."

### RESPONSE B3

The City of Oakland Public Works Department has confirmed that there is available wastewater capacity within Subbasin 64-02 to serve the proposed project. The text of the Initial Study (pg. 25), Appendix A of the DEIR, has been revised to clarify this information. The revised text is presented in Chapter II of this document.

### COMMENT B4

#### REGULATORY COMPLIANCE

A Standard Site Assessment Report indicates the potential for soil contamination. The District will not install pipeline in contaminated soil that must be handled as a hazardous waste, or that may be hazardous to the health and safety of construction or maintenance personnel wearing Level D personal protective equipment. The District will require a legally sufficient, complete and specific written remedial plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of all identified soil and/or water contaminants. The District will not design the installation of pipelines until such time as remediation plans are received and reviewed and will not install pipelines until remediation has been carried out.

### RESPONSE B4

As described in the Initial Study prepared for the project (Appendix A of the Draft EIR), any necessary soil remediation will occur prior to commencement of construction, including installation of any pipelines. Therefore, there will be no contaminated soil that must be handled as a hazardous waste, or that may be hazardous to the health and safety of construction and maintenance personnel.

## LETTER C - CITY OF OAKLAND LANDMARKS PRESERVATION ADVISORY BOARD

### DEIR Comments

#### COMMENT C1

Adjust or confirm neighboring building heights and subsequently revise drawings and model where differences have been found.

*(Discussion: The Board noted potential inconsistencies between heights of buildings listed in the DEIR and heights of buildings noted on the project drawings. The Applicant explained that one set was provided by the Historic Resource consultant and another by the Surveyor. The set provided by the Surveyor may be parapet heights rather than rooftop. The Board thought it important for consistency's sake that this issue be resolved. If the drawings show parapet heights that should be noted on the plans.)*

#### RESPONSE C1

The building heights described in Table 18 of the EIR (pg 123) are based upon information included in the National Register Nomination forms submitted to the SHPO for the WWD and Sanborn Maps for the area. The Sanborn Map heights are roof heights, which do not include the parapet.

A survey of building heights of the buildings surrounding the project site was conducted in October 1999 as a part of the previous *City Lofts* project. A copy of this survey is presented as Figure 38 in Chapter II of this document. The surveyed building heights are to the top of the parapet, which is the height that a person would see from the street level. Figure 11 of the EIR (pg. 12) has been revised to present the surveyed building heights. It should be noted that the building shown on Figure 11 on the left side of the Alice Street elevation was misidentified as 318 Harrison. This building is actually 255 3<sup>rd</sup> Street (Tower Lofts). Figure 11 has been revised to clarify the building identification and to note that the building heights shown are parapet heights.<sup>1</sup>

#### COMMENT C2

Revise Project Area History. Second Street was not the route of the Southern Pacific. State the year that the 3rd Street tracks were removed. Provide a more exhaustive explanation of the history of the site, including when the Western Pacific Freight Depot was demolished and add historical photographs of the site and depot.

#### RESPONSE C2

According to the National Register Nomination Forms for the Waterfront Warehouse District, the Western Pacific Railroad tracks traversed the Waterfront Warehouse district on 3<sup>rd</sup> Street until 1996. The Southern Pacific tracks ran along First Street (the Embarcadero). A mid-block spur track north of 3<sup>rd</sup> Street also extended about 700 feet from Jackson Street to Harrison Street (the project site), where Western Pacific's main Oakland freight depot stood until the late 1970's, when the freight depot was demolished. The Freight Depot site contained a railroad "end of line bumper" and two

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<sup>1</sup> It should be noted that the surveyed parapet heights have a margin of error of 1-2 feet to account for changes in sidewalk elevation over the length of the building. For example, the Alice Street sidewalk (top of curb) elevation along the side of the Greeno building ranges from just over 11' to 12' 6". This differential, in addition to the measurement to the parapet, appears to account for the difference in building height between Figure 11 and Table 18 in the DEIR, with respect to the Greeno building.

mid-block spur tracks. A photograph of the freight depot building was not included in the National Register nomination forms; nor is one available in the OCHS files, and one has not been located.

#### COMMENT C3

Elaborate on the concern expressed by representatives from the State Historic Preservation Office regarding any new construction in the Waterfront Warehouse National Register Historic District (District) (Page 112 of the DEIR).

#### RESPONSE C3

Architectural Resources Group (ARG) consulted with members of the State Historic Preservation Office (SHPO) staff on several occasions in late 2001 and early 2002 to discuss the 426 Alice Street project and cumulative impacts to the WWD. City staff participated in one conference call on January 3, 2002 that included Bridget Maley of Architectural Resources Group (ARG), and at least the following State Historic Preservation Office (SHPO) staff members: Dr. Knox Mellon, Stephen Mikesell, Cindy Woodward, Gene Itogawa, Tim Brandt, Cindy Howse, and Marilyn Lortie. In this call, the SHPO staff expressed concern regarding the impacts of any new development proposed in the Waterfront Warehouse District. The consultation with SHPO was only one of the many factors ARG used to form an independent, expert opinion that the project would contribute to a cumulatively significant impact on the historic District. The other factors included review of the National Register nomination form and related materials (including an assessment of Criteria A and C as bases for eligibility), materials from the OCHS, review of the Estuary Policy Plan and General Plan Land Use and Transportation Element, review of the project description and plans for 426 Alice and 300 Harrison Street, review of the project shade and shadow study, consideration of the relative number, size, scale and location of new components that do not contribute to the District's significance, discussion with City officials, field observations of the district and surrounding area, reviewing National Register Bulletin Number 15 and other historic resource materials, discussion with other ARG staff, and their professional expertise as architectural historians. Although SHPO was notified of the availability of the DEIR, the SHPO did not comment on the Draft EIR during the 45-day circulation period.

#### COMMENT C4

Provide evidence that the District will maintain its eligibility with the addition of this project.

#### RESPONSE C4

Refer to Master Response 1.

#### COMMENT C5

Clarify the CEQA threshold of significance with respect to maintaining the District's eligibility for the National Register. The analysis presented is subjective and needs to be more quantitative in order to determine at what point the District would lose its integrity related to the numbers of contributors, as well as building size, scale, design, and character. Provide analysis to better understand the contradiction that the cumulative impacts are not significant, but that in the interest of being conservative, the DEIR will treat the cumulative impact as significant and unavoidable.

*(Discussion: This neighborhood will continually develop. Therefore, the public should know when it would really start to become a cumulative impact. It's difficult to respond to the DEIR, which states*

*that there is not a cumulative impact under the CEQA threshold of significance, yet in the interest of being conservative treats the cumulative impact as significant and unavoidable. This needs to be better analyzed and discussed in the DEIR in order to determine to what degree the LPAB advocates future development and provides direction that can affect policy. )*

#### RESPONSE C5

Refer to Master Response 1.

#### COMMENT C6

Include the name of the architectural historian conducting the evaluation within the text on page 108, 4th paragraph.

*(Discussion: This is an important opinion within the document and the name should be stated within the text).*

#### RESPONSE C6

Bridget Maley and Bruce Judd of Architectural Resources Group are the architectural historians conducting the evaluation summarized in the text on page 108 of the EIR. Ms. Maley and Mr. Judd's evaluation is presented in its entirety in Appendix F of the Draft EIR. The text of the Draft EIR (pg. 108) has been revised to include Ms. Maley and Mr. Judd's names. The revised text is presented in Chapter II, Revisions to the Text of the Draft EIR, of this document. A signed cover letter documenting that Ms. Maley and Mr. Judd are the authors of the Historic Resources Evaluation presented in Appendix F of the DEIR is included in Chapter VII of this document.

#### COMMENT C7

Recommend against incorporating reflective glass, as mentioned in the Shade and Shadow Analysis. (See Reflective Glass discussion under Design Comments.)

#### RESPONSE C7

The comment is acknowledged. The suggested recommendation against incorporating reflective glass has been made in Chapter II, Revisions to the Text of the Draft EIR (pgs. 13 and 136).

Design Comments

#### COMMENT C8

Height, Mass and Scale: The LPAB expressed strong concern regarding the size of the building and found this design aspect to be the greatest challenge of this proposal.

*(Discussion: While the size is not inconsistent with other new construction in the area, whether or not the size is appropriate, in light of the low-rise nature of the historic District, brings forth mixed feelings. The Board also noted that the other taller buildings in the District are not as massive as the proposal, and questioned how the size was compatible. The National Register District designation to preserve this two-to three-story District is being lost by the addition of the large new construction in the District. The Posey Tube Portal building, a local landmark, is a major focal point of the District that will be dwarfed by this proposal. The site is maxed-out in terms of the size of the building*

*proposal. The Board acknowledged that size may be due to the financial feasibility, and expressed sensitivity to this important point.)*

#### RESPONSE C8

As documented in the DEIR, the proposed project at 70-feet nine inches (plus a 30-inch parapet) is on the high side in comparison with the existing building heights in the District. It is not the tallest building, however, and it is reasonable to conclude that the height is generally compatible with the overall District. The City staff agree with this conclusion. A variety of heights exist within the District, with the contributors ranging from one-story to six stories. Within one block of the project there are existing buildings with heights of 82 feet (New Market Lofts/Safeway building) and 60 feet (4<sup>th</sup> Street Lofts), and the recently approved 426 Alice Street project is an 85-foot tall building. The appearance of overall height of the project along 3<sup>rd</sup> Street is diminished by the 15-foot setback at the fifth story. The height as seen from the ground immediately surrounding the site will be 64 feet 6 inches (62 feet plus 30-inch parapet). The most comparably scaled buildings in the District are located on the south side of 4<sup>th</sup> Street and on the south side of 3<sup>rd</sup> Street. The Posey Tube Portal, one of the more prominent features of the District, is 55 feet in height. Although the proposed building is taller than adjacent buildings, it is within the range of existing building heights and is, overall, compatible with the District.

#### COMMENT C9

Character of Proposed Design: The overall design, other than size, does a fairly good job of maintaining the industrial character of the District. The design alludes to architectural details and features of District contributors without copying them. In this respect the building complies with the Secretary of the Interior Standards and is a good neighbor.

#### RESPONSE C9

The comment is noted. No further response or analysis is required, as this comment does not raise any questions regarding the accuracy of the EIR. These design comments will be considered during the project design review.

#### COMMENT C10

Elevations/Building Mass along 3rd Street: The Estuary Policy Plan, with respect to infill development's incorporation of measures to reinforce the District's character, scale, and historic flavor, states, "Building components should be designed such that building mass or elevations are distinguished into different components of approximately one-quarter block or less." The LPAB felt that while this was not addressed to the letter because the elements are greater than one-quarter block, the intent was there.

*(Discussion: The Applicant stated that the building was broken into three facade components along the 3rd Street elevation. Several of the LPAB members felt that the building still reads as one building despite the three facade components, with the remainder of the building facade setback 18 ". One LPAB member felt that breaking it up into three buildings would be forced. See Building Materials and Color for further discussion of the 3rd Street elevation building facade break-up.)*

## RESPONSE C10

“One-quarter blocks” are interpreted by City staff as one full City block, divided into four parts, not the linear façade of a building along one city block broken into four parts. Since the project site covers one-half block, the building façade should, therefore, be divided into at least two distinct building masses to meet the intent of the Estuary Plan. The proposed project, as shown on Figure 19 and described on page 106 of the Draft EIR, will have three distinct facades. An alternative design with the façade divided into two parts has also been considered. This alternative façade design is shown on Figure 19A, which is presented in Chapter II., Revisions to the Text of the Draft EIR, of this document. The alternative façade design would not result in any environmental impacts (other than design) different from those already evaluated in the Draft EIR. The comment is related to the project design, rather than CEQA issues. The comment will be considered during project design review, which will occur as a part of the permit process. No further response or analysis is required, as this comment does not raise any questions regarding the accuracy of the EIR.

## COMMENT C11

Setbacks and Separations Between Buildings: The Estuary Policy Plan, with respect to infill development's incorporation of measures to reinforce the District's character, scale, and historic flavor, states, "New development should provide adequate setbacks and separations between adjacent buildings. "The LPAB expressed concern that the area to the rear of the building where two to four foot setbacks were proposed could create a space where trash would be trapped between two buildings and suggested that the design incorporate a solution that would prevent this.

## RESPONSE C11

The issue of trash getting trapped between adjacent building can be resolved through regular maintenance.

## COMMENT C12

Building Materials: The LPAB supported the concrete frame structure and the use of industrial windows. They suggested that the areas of the building where stucco was proposed be studied because the stucco portion of the building would suggest wood frame construction and this is not consistent with the District.

*(Discussion: The Board recommended that false historicism be avoided in the selection of the material. While brick might tend toward false historicism, tile, a material similar to brick in that it is small in scale and a more solid material than stucco, could work. The Board suggested that any new material be used in a way that would allow the concrete structural frame to stand out with the other material used as an infill within the concrete structural frame)*

## RESPONSE C12

The project sponsor has now eliminated any concrete plaster (stucco) from the exterior of the building.

### COMMENT C13

Reflective Glass: The LPAB recommended against reflective glass, and suggested that the applicants meet with neighbors to discuss both glass and building color.

*(Discussion: The LPAB inquired as to whether the applicant was considering reflective glass since it was mentioned in the Shade and Shadow analysis of the DEIR, in order to reduce the shadow effects of the building on adjacent buildings. The Applicant indicated that this was being considered in the setback areas abutting adjacent buildings in order to reflect light.)*

### RESPONSE C13

The suggested recommendation against incorporating reflective glass has been made in Chapter II., Revisions to the Text of the Draft EIR, of this document. The remainder of the comment is related to the project's design, rather than CEQA issues. The comment will be considered during project design review, which will occur as a part of the permit process. No further response or analysis is required, as this comment does not raise any questions regarding the accuracy of the EIR.

### COMMENT C14

Percentage of Windows: The percentage of windows proposed is greater than 50%. The LPAB felt that this large percentage helped to make the building appear lighter. The large percentage of windows was also consistent with the percentage of windows on a number of contributors in the District.

### RESPONSE C14

The comment does not raise any issue regarding the adequacy or accuracy of the EIR.

### COMMENT C15

Color: The LPAB suggested that the color of the concrete and the stucco, currently proposed with a subtle change of greens, be studied. A stronger contrast between the proposed colors could make the concrete foreground pop out and the stucco area recede, giving the appearance of a building recess greater than the actual 18". A stronger color contrast between the concrete and the stucco area would also break up the monolithic appearance of the 3rd Street facade more clearly into three facade components.

### RESPONSE C15

The previously proposed stucco is being eliminated from the design. Contrasting paint colors are now being considered as the means to break up the monolithic appearance of the 3<sup>rd</sup> Street facade.

### COMMENT C16

Building Name: The LPAB suggested that the applicants name the building since other buildings in the District have historically been named. It could relate to the previous history of the site or it could relate to the how the building fits into the current history of the District.

## RESPONSE C16

The comment will be considered during project review. No further response or analysis is required, as this comment does not raise any questions regarding the accuracy of the EIR.

## LETTER D – SOUTH OF NIMITZ IMPROVEMENT COUNCIL (SoNiC)

### COMMENT D1

#### TRAFFIC, CIRCULATION, AND PARKING

Bicycle and Pedestrian Facilities (p. 35): The information about "location of bicycle facilities located within a three block radius of the projected site" appears to be incorrect. A class 3 bicycle path was installed on 2nd Street more than a year ago as part of the San Francisco Bay Trail (per phone call to Kathryn Hughes, Oakland PWA on 10/31/2002). There are no other bicycle facilities existing or planned within a three-block radius of the project site.

### RESPONSE D1

The San Francisco Bay Trail currently extends through the project area as a primarily Class II bike route on Embarcadero between Oak and Fruitvale and a Class III bike path on 2<sup>nd</sup> Street between Broadway and Oak Street (Kathryn Hughes, Oakland Public Works Agency, November 14, 2002). According to the City's Bicycle Plan, there are planned bicycle routes/paths within three blocks of the site on Harrison Street from I-880 to the Posey Tube, and a one-way couplet on Oak/Madison Streets between the Bay Trail and Lake Merritt. The text of the Draft EIR (pg. 35) has been revised to clarify this information. The revised text is presented in Chapter II, Revisions to the Text of the Draft EIR, of this document.

### COMMENT D2

The statement that "sidewalks exist along nearly all of the surface streets in the project area, including the project frontages on Harrison Street, 3rd Street, and Alice Street is both misleading and incorrect. The DEIR should acknowledge that pedestrian 'facilities' between the proposed project and the Lake Merritt BART Station are poorly lit, unsigned, and, depending on route chosen, include portions that lack paved sidewalk and/or curb cuts for wheelchair accessibility. The same conditions may apply to pedestrian routes to the ferry terminal at the foot of Clay Street and to various AC Transit bus stops in the vicinity. Where these conditions exist, they should be identified and mitigated.

The author of the above sentence apparently did not visit the site or read page 29 of Hexagon Transportation Consultants' report: "There are currently no sidewalks along the project frontages on Third Street and Alice Street; however, the project proposes to add sidewalks along these areas."

### RESPONSE D2

Under existing conditions, there is a paved sidewalk along the project frontage of Harrison Street and an unpaved path area behind the curb on 3<sup>rd</sup> Street. There is a paved sidewalk along Alice Street north of the project site. The proposed project includes paved sidewalks on all site street frontages. The text of the Draft EIR (pg. 35) has been revised to clarify this information. The revised text is

presented in Chapter II, Revisions to the Text of the Draft EIR, of this document. While the project will provide sidewalks along the project frontages, the applicant is not responsible for improving sidewalks blocks from the site.

#### COMMENT D3

Existing Parking Conditions (pp. 38-40): The discussion of "On-Site Parking" states that "up to 50 cars could be parked over the entire site." SoNiC can confirm that between 30 and 50 cars were parked on a portion of the site (presumably by employees of Design Within Reach) each weekday right up until the lot was closed (July 21, 2001 according to the DEIR). The analysis of "On-Street Parking" is based on surveys conducted in September 2000 and November 1999, prior to the closure of the parking lot at 300 Harrison Street. Closure of the lot probably increased demand for on-street parking by as many as 50 cars per day. Both parking surveys cited in the DEIR were also conducted before completion of the 300-unit Allegro project. Conclusions about availability of on-street parking based on these outdated studies are of no value in this DEIR. They should be deleted.

#### RESPONSE D3

The parking surveys referenced in the DEIR indicated that parking occupancy of standard on-site parking spaces was above capacity during weekday midday periods. The DEIR acknowledges that the project will result in a loss of on-site (illegal) parking (DEIR pg. 57). The Allegro project is self-parked and no parking was occurring on that site. Therefore, the Allegro project would not substantially change the availability of on-street parking. For these reasons, the DEIR discussion of on-street parking availability, based on the 2000 and 1999 parking surveys, does provide value in the DEIR and no change to the text of the DEIR is required.

#### COMMENT D4

Construction Period Impacts (pp. 60-62). Impact B-1 2 fails to address problems that closures will create for businesses in the area as well as trucks transporting heavy weight containers to the Port. The duration of street closures should be discussed and, where appropriate, mitigated. While "construction-related effects are temporary in nature" their overall effect during 19 months of construction could be devastating to small businesses. This should be acknowledged in the DEIR and mitigated to the extent possible.

#### RESPONSE D4

The applicant states that project construction will predominantly use the site frontage sidewalk and one travel lane. A minimum of two 12-foot wide travel lanes will be maintained throughout project construction, except during the installation of utilities, which is estimated to last one week. If 3<sup>rd</sup> Street must be closed temporarily, an alternate route for heavy trucks will be provided. An alternate route plan can be instituted on a temporary basis, upon review and approval by the Public Works Department. The selected alternate heavy truck route will be evaluated based upon an assessment of the street's weight limits. There are other streets in the project area that are anticipated to be able to handle the weight load (Amit Kothari, Oakland Department of Public Works, Traffic Engineering, November 2002). As noted in the EIR (pg. 62) adjacent property owners and public safety personnel will be notified when major deliveries, detours, and lane closures will occur. The text of the Draft EIR (pg. 60) has been revised to clarify this information. The revised text is presented in Chapter II, Revisions to the Text of the Draft EIR, of this document.

## COMMENT D5

The “traffic management plan” promised on page 60 should be required as a standard conditional use permit condition of approval in Mitigation Measure B-12, which currently requires only a meeting with Traffic Engineering and Parking Division "to determine traffic management strategies". Issuance of a building permit should NOT constitute approval of the “traffic management plan”. The approving agency, department, or other body should be identified in the DEIR. Consultation with both Traffic Engineering and Oakland Police Department should be required. Meetings between City staff responsible for approving the plan and adjacent businesses, residents, and property owners to review and comment on the proposed plans should be required prior to approval. Provisions should be identified to allow changes with public input as construction schedules are revised. Enforcement measures should be identified. The “traffic management plan” should include the following:

- 1) A process for coordinating all construction activities with other nearby construction project, including Posey and Webster Street Tube Retrofit projects and 426 Alice Street project, so as to minimize construction period impacts on the neighborhood;
- 2) A process for receiving input and comment from affected businesses, residents, and property owners prior to approval of any complete street closure that will last more than six hours or any partial street closure that will last more than three days;
- 3) Provision of parking spaces for construction workers and procedures to ensure they do not park cars and trucks on streets in the Jack London District;
- 4) Provisions for managing standing, loading, and unloading activities adjacent to the site for all construction-related vehicles;
- 5) Identification of comprehensive traffic control measures, including flagmen, that will be used to minimize impacts (including noise and air pollution) of truck traffic during excavation and delivery of concrete and other significant materials during construction;
- 6) Notification procedures for adjacent businesses, residents, property owners, and public safety personnel for all lane and/or street closures and for major activities that will affect traffic or parking in the vicinity of the project;
- 7) Provisions for monitoring surface streets used by trucks hauling material to and from the project site so that any damage and/or debris attributable to the trucks can be identified and corrected;
- 8) A site plan showing locations of staging areas and approximate dates they will be needed;
- 9) Provisions for accommodation of pedestrian flow; and
- 10) Identification of an on-site complaint manager and process for tracking and responding to complaints.

A separate “construction period impact management plan” should replace the “construction management and staging plan” suggested (but not required) in Mitigation Measure B-12. It might include the “traffic management plan” discussed above and it should be required as a standard conditional use permit condition of approval. Because it is intended as a mitigation for ALL construction period impacts - not just traffic, circulation, and parking - it should be called out separately (Mitigation Measure B-12b or B-13 or C-1b or D1b) rather than packaged with the “traffic management plan” mitigation measure.

## RESPONSE D5

The project applicant and construction contractor shall prepare a Construction Period Impact Management Plan to address mitigation measures that will be implemented to avoid and reduce construction-related traffic, parking, air quality, noise, and other impacts. The Construction Period Impact Management Plan shall be submitted to the City Planning Division with the application for the building permit, and shall be reviewed and approved by the Planning and Building Services Divisions, and the Oakland Public Works Traffic Engineering and Parking Divisions prior to issuance of the building permit.

Prior to submittal of the proposed Construction Period Impact Management Plan, the project applicant shall provide notice (10 business days) of and hold a pre-construction community meeting to present the proposed Construction Period Impact Management Plan and to discuss all construction-related issues (i.e., traffic, parking, noise, and air quality). The Construction Period Impact Management Plan will be made available for review and comment prior to the community meeting. Additionally, the Construction Period Impact Management Plan will include a process for responding to and tracking complaints pertaining to construction activity, including the identification of an on-site complaint manager and a posting of a list of phone numbers for complaints. While the Traffic, Air Quality, and Noise Sections of the DEIR already include nearly all of the mitigation measures included in the Construction Period Impact Management Plan, the text of the DEIR has been revised in this document to provide for this overall construction management plan and clarify the proposed details of the Construction Period Impact Management Plan. The revised text is presented in Chapter II, Revisions to the Text of the Draft EIR, of this document.

## COMMENT D6

As with the "traffic management plan" the issuance of a building permit should NOT constitute approval of the "construction period impact management plan." The approving agency, department, or other body should be identified in the DEIR. Consultation with appropriate City departments should be required. Meetings between City staff responsible for approving the plan and adjacent businesses, residents, and property owners to review and comment on the proposed plans should be prior to approval. Provisions should be identified to allow changes with public input as construction schedules and methods are revised. Enforcement measures should be identified. The "construction period impact management plan" should include the following:

- 1) A process for coordinating all construction activities with other nearby construction projects, including Posey and Webster Street Tube Retrofit projects and 426 Alice St. project, so as to minimize construction period impacts on the neighborhood;
- 2) A process for receiving input and comment from affected businesses, residents, and property owners prior to approval of any "extreme noise generating activities" as described in Mitigation Measure D-1d (p. 86);
- 3) A drawing showing location, size, and wording of at least two signs that will be posted at the site throughout construction that includes permitted construction days and hours, day and evening contact numbers for the job site (see #7 below), and day and evening contact numbers for the City in the event of problems.
- 4) A process and schedule for implementing debris control measures and periodic neighborhood cleanup activities, including installation of a temporary construction fence to contain debris and material and secure the site.

- 5) A process and schedule for implementing dust control measures identified in Mitigation Measure C-1 (p. 71), including a monitoring process if needed.
- 6) A process and schedule for Implementing noise control measures identified in Mitigation Measures D-1a, D-1b, D-1c, D-1d, and D-1e, including a monitoring process when needed.
- 7) Identification of an on-site complaint manager and process for tracking and responding to all complaints (traffic, parking, circulation, debris, dust, noise, etc.). The process might include scheduling regular meetings with affected parties if complaints are numerous or if contractor has difficulty or needs help in resolving complaints.

#### RESPONSE D6

Refer to the previous Response D5 regarding the proposed Construction Period Impact Management Plan.

#### COMMENT D7

##### AIR QUALITY AND WIND

Construction Impacts (pp. 70-72). Impact C-1 fails to address the impact that dust can have on computer (and other electronic) equipment that is probably the life blood of every small business in the vicinity. With offices in older buildings, most lack air conditioning and filtration, thus exposing them to dust emissions whenever windows are opened during warm weather. These potential impacts should be investigated and, if appropriate, mitigated.

#### RESPONSE D7

The DEIR (pgs. 70-71) describes the impacts of construction dust and identifies mitigation measures that will be imposed on the project to reduce construction dust impacts. The mitigation measures are the Bay Area Air Quality Management District's (BAAQMD) list of feasible particulate (PM<sub>10</sub>) control measures for construction activity. According to the BAAQMD CEQA Guidelines, if all of the control measures indicated (as appropriate, depending on the size of the project area) will be implemented, then air pollutant emissions from construction activities would be considered a less than significant impact (BAAQMD CEQA Guidelines, Revised December 1999). Additionally, the project proposes to use water sweepers daily on all unpaved access roads, parking areas, and staging areas and streets if visible soil material is carried onto adjacent public streets. The text of the DEIR (pg. 71) has been revised to clarify this proposed measure. The revised text is presented in Chapter II, Revisions to the Text of the Draft EIR, of this document.

#### COMMENT D8

Mitigation Measure C-1 fails to include any enforcement measures at all should the contractor fail, for example, to "Water all active construction areas at least twice daily." Furthermore, no provisions are made for monitoring air quality during construction, which leaves every local business subject to adverse impacts of dust in their computers (and in their employees' lungs). And it fails to provide ANY public input from those of us who will be most immediately affected by these problems. Requiring a "construction period impact mitigation plan" as described above will address many of these concerns.

## RESPONSE D8

Refer to the previous Response D5 regarding the proposed Construction Period Impact Management Plan.

## COMMENT D9

### NOISE

Construction Noise Impacts (pp. 83-87). Impact D-1 fails to address the impact that noise can have on businesses in the vicinity. With offices in older buildings, most lack air conditioning and therefore open windows and doors during warm weather, This could expose them to noise levels far in excess of those assumed in the DEIR and it could make telephone conversations, conferences, and client meetings difficult, if not impossible. In addition to noise levels that can be measured (as in Table 17) and quantified, SoNiC is concerned about the effect of intermittent noises, especially the warning noises made by trucks backing up, which, while short in duration, can be extremely annoying and occasionally painful. These potential impacts should be investigated and, if appropriate, mitigated. It is likely businesses will relocate to quieter areas if construction noise prevents them from doing business, causing substantial economic hardships to property owners.

## RESPONSE D9

Refer to the previous Response D5 regarding the proposed Construction Period Impact Management Plan, which includes a Noise Reduction Plan sub-element.

## COMMENT D10

Mitigation Measures D-1 a and D-1b fail to include any enforcement measures at all should the contractor fail, for example, to close windows and doors on a hot Saturday. Furthermore, no provisions are made for monitoring noise levels during construction, which makes it somewhat difficult to determine when "extreme noise-construction impacts" may be occurring. And it fails to provide ANY public input from those of us who will be most immediately affected by these problems. Requiring a "construction period impact mitigation plan" as described above will address many of these concerns.

## RESPONSE D10

Refer to the previous Response D5 regarding the proposed Construction Period Impact Management Plan, which includes provisions for complaint tracking and enforcement, as well as public review and comment on the Plan prior to the applicant submitting it to the City for approval.

## COMMENT D11

Mitigation Measure D-1c proposes pile driving and other extreme noise-generating construction activities occur between 8:00 AM and 4:00 PM. While this may protect residential neighbors, it does NOTHING for businesses in the area. SoNiC asks that extreme noise-generating construction activity be defined as anything with potential or actual noise levels greater than 90dBA and that these activities be limited - in consultation with affected businesses, residents, and property owners - to 1/2 day (7:00 AM to 1 1,00 AM, or 3:00 PM to 7:00 PM, or some other 4-hour time period that reduces impacts on business and "shares" the burden with residents).

## RESPONSE D11

Refer to Master Response 2.

## COMMENT D12

Mitigation Measure D-1e appears to be quite similar to parts of Mitigation Measure D1a (except for the notification requirement). Requiring a "construction period impact mitigation plan" as described above could address most, if not all, of these items, and allow the project sponsor, the contractor, the City, and the affected parties an opportunity to address problems before or as they arise, rather than having to anticipate every one as part of the environmental review project. The neighborhood knows something is going to be built on this site someday. It has suffered through ongoing construction projects for more than four years and has found that the City has difficulty in responding to complaints not clearly spelled out ahead of time (and sometimes has problems dealing with those as well). By establishing a process for reviewing and discussing potential problems as a condition of approval, the City may be able get the affected parties together at a much earlier stage in the process to work out satisfactory solutions to potential problems that can be identified at this point (see above) as well as to deal with unanticipated problems.

## RESPONSE D12

Refer to Master Response 2.

## COMMENT D13

### HISTORIC RESOURCES

This entire section is based on a report that on page 90 is said to have been produced by Architectural Resources Group (ARG), but in Appendix F seems to have been co-authored by David Powers, because it has David Powers' name at the top of each page. During a telephone conversation with Judy Shanley, Project Manager at David J, Powers & Associates on 10/31/02, she assured SoNiC's president that ARG is, in fact, the author of the report in Appendix F.

Perhaps a cover letter signed by someone at ARG could be added to Appendix F clarifying the purpose of their report (what questions were they asked to address and who asked them), confirming their authorship, correcting factual errors in the historical overview, and summarizing their findings.

## RESPONSE D13

A cover letter from Architectural Resources Group, signed by Bridget Maley, and verifying that she and Bruce Judd were the authors of the Historical Resources Evaluation, dated September 4, 2002, and reproduced in Appendix F of the Draft EIR (dated September 2002) is presented in Chapter VII of this document. Responses to the other comments on the historical resources evaluation are provided below.

## COMMENT D14

Was ARG asked, for example, if the Oakland Waterfront Warehouse Districts significance would be materially impaired by construction of the proposed project. If so, where is ARG's conclusion and

where is the supporting evidence? The draft EIR makes it sound like ARG's report contains the evidence; it isn't there.

ARG stated in its letter concerning 426 Alice Street and repeated in its report in Appendix F that 'the effect of this project in combination with effects of the other... alterations to the District would be cumulatively considerable, but the District would nevertheless still maintain its eligibility for the National Register.' However, ARG offers no evidence to support the claim that the District would maintain its eligibility. In fact, ARG notes, "the SHPO expressed concern regarding the size and scale of any new projects in the Waterfront Warehouse District." SoNiC shares this concern and requests that ARG provide its "professional opinion" as to whether the district will maintain its listing on the National Register after completion of the proposed project and after completion of proposed projects at 300 Harrison Street and 426 Alice Street and other reasonably foreseeable projects. SoNiC further asks that ARG clearly put in the record substantial evidence to support its "professional opinion", including a discussion of integrity which does not rely on information in the 1999 National Register nomination or in conditions of approval for recent projects (Safeway, Allied Paper, Allegro), but reflects current conditions based on field observations, expertise, and professional judgments by ARG and/or SHPO and/or other recognized experts in the field. In addition to discussing integrity, ARG should address the two Criteria of Evaluation (A and C) under which the District was listed on the National Register and offer its professional opinion along with credible and substantial evidence as to whether either or both will be materially impaired by construction of the proposed project. Without substantial, credible evidence in the record, it will be impossible for decision-makers to independently evaluate the potential impacts (and cumulative impacts) of the proposed project.

#### RESPONSE D14

Refer to Master Response 1.

#### COMMENT D15

Project Area History (pp. 90-91). The Southern Pacific tracks never ran along 2nd Street. The Western Pacific [passenger] Depot is not in the project area and the Western Pacific tracks were not removed in 1970 as implied in the text. The corporate headquarters of Safeway was located in the Waterfront Warehouse District from its founding until recently. The area in the vicinity of the project recently lost (not gained) this corporate headquarters. These factual errors and implications should be removed from the text.

#### RESPONSE D15

The text of the DEIR (page 90) has been revised to correct the error regarding the location of the Southern Pacific tracks. The revised text is presented in Chapter II, Revisions to the Text of the Draft EIR, of this document. It is acknowledged that the passenger depot is not in the immediate project area, but it provides an overall description of the area history. The DEIR text uses the term "corporate headquarters" in general terms; it is not specifically related to the Safeway headquarters.

#### COMMENT D16

Historic Preservation Element of the General Plan (p. 100). Consistency with this Element is not discussed in Section II(A) "Land Use and Consistency with Plans and Policies" (pp. 1 7-30) where it rightfully belongs. Nor is any analysis presented either by ARG or in this section as to the

consistency of the proposed project with policies in the Historic Preservation Element. The deficiencies should be corrected in order to comply with CEQA.

#### RESPONSE D16

Consistent with standard City practices, relevant policies from the Historic Preservation Element as well as from other elements of the General Plan are discussed in the Historical Resources section of the EIR (Section II, E, *Historic Resources*, pgs. 90-112). It is also noted that in the introductory discussion of the General Plan on page 19 and again on page 22 of Section II, A, *Land Use and Consistency with Plans and Policies*, the reader is referred to the Historical Resources section of the DEIR for a discussion of the project's conformance with the Historic Preservation Element. Due to the importance of the historic resource issues, a separate Section E was included in the EIR and dedicated to such issues to provide more detailed analysis and discussion regarding the project's potential impacts. As stated on DEIR page 19, "The General Plan is composed of issue-oriented elements, including: Land Use and Transportation, Noise, Historic Preservation, Environmental Hazards, Housing and Open Space, Conservation and Recreation, and sub-elements including the Bicycle Master Plan and the Estuary Policy Plan." The DEIR thoroughly discusses and analyzes all relevant policies of the General Plan in Section II, *Environmental Setting, Impacts, and Mitigation Measures*.

#### COMMENT D17

Impact E-1 (p. 103). The proposed project involves excavation of over 200,000 cubic feet of soil to an estimated depth of at least 10 to 12 feet. Policy 4.1 of the Historic Preservation Element says 'to protect significant archeological resources, the City will take special measures for discretionary projects involving ground disturbances located in archeologically sensitive areas,' Where is the evidence that the project site "contains no historic resources"? Shouldn't a qualified archeologist be consulted to determine whether this could be an archeologically sensitive area? Shouldn't some sort of mitigation measure be included to deal with discoveries made during the course of excavation?

#### RESPONSE D17

The discussion of potential archaeological resources and the mitigation measures included in the project to reduce potential impacts to archaeological resources to a less than significant level is included in the project Initial Study that is included as Appendix A to the Draft EIR.

#### COMMENT D18

Impact E-2 (pp. 103-108). Even if the design of the proposed project conflicted with the character defining elements of the District, SoNiC wonders why this impact is discussed here instead of in the new section (Visual Quality). It seems to us that the effects of the proposed project discussed here and in the next section (Impact E-3) concern the impact of the proposed project on the significance of the Oakland Waterfront Warehouse District.

As wondered above, was Architectural Resources Group ever asked if the Oakland Waterfront Warehouse Districts significance would be materially impaired by construction of the proposed project? It seems obvious that this question needs to be considered in two ways: first on its own by ignoring unbuilt projects such as 426 Alice Street and then, cumulatively, assuming 426 Alice will be built. As we asked above, where are ARG's conclusions and where is the supporting evidence?

## RESPONSE D18

DEIR Section II, F, *Visual Quality, Shadows and Light and Glare* (pgs. 113-136) describes the impacts of the proposed project on the existing visual character of the site and area. The project design is also an important element in evaluating whether or not the project is compatible with the character-defining elements of the WWD. ARG was asked, and did state that the WWD would not be materially impaired by construction of the proposed project. Their rationale for coming to this conclusion is documented in Appendix F of the DEIR, and in the DEIR at pgs. 103-108, where ARG describes how the project is compatible and evaluates the project's effects on the seven aspects of integrity. ARG's independent, expert opinion is based on substantial evidence. Refer to Master Response 1.

## COMMENT D19

Impact E-3 (pp. 108-112). See comments above under headings "E. HISTORIC RESOURCES" and "Impact E-2". On page 109 the DEIR notes that "the District continues to evolve as it faces increasing development pressures." In considering the integrity of the District as well as its significance under Criteria A and C, the evolution of the district since its listing on the National Register (April 2000) must be taken into account. The DEIR implies that the Safeway Building was rehabilitated according to "The Secretary of the Interior's Standards" and remains a District contributor. The DEIR says the Allied Paper Co. warehouse is being rehabilitated to "The Secretary of the Interior's Standards" and will remain a contributor. There is no evidence in the record to support these claims. Neither project was a tax act project and neither has been reviewed by a qualified Professional since completion. Such reviews should be conducted and included in the final EIR.

## RESPONSE D19

According to the National Register Nomination forms for the WWD (Section 7, Page 14), an historic preservation review of the plans for the Safeway building (201 4<sup>th</sup> Street) remodel by the San Francisco firm, *Carey & Company, Inc.*, concluded, "... the proposed project alterations would not disqualify the property from Landmark or Preservation District eligibility or have substantial adverse impacts on the property's character-defining elements... The proposed project alterations would not affect the rating of either the building itself or the Waterfront Warehouse District. The existing status would be preserved and eligibility for listing on the National Register would not be affected." It is acknowledged that the Safeway building remodel was not a tax act project and, therefore, the plans were not reviewed by the State. However, there is no evidence that the remodel was implemented in such a way as to preclude its on-going status as a contributor. The intent was that the Allied Paper Co. warehouse would be rehabilitated per the Secretary of the Interior standards. As above, there is no evidence that it does not remain a contributor. If these two buildings were determined not to be rehabilitated in accordance with the standards, then they would also contribute to the cumulative impact. If these two buildings were no longer contributors, then 23 out of the 33 resources in the District would be contributors. This would reduce the percentage of District contributors to 69 percent, which would not reduce the number of contributors to less than a simple majority, as required by the National Register, and would not reduce the number of contributors to a less than two-thirds majority, as required for API status by the OCHS. Nevertheless, the DEIR concludes that the project and other recent and pending development result in a significant unavoidable cumulative impact to the integrity of the WWD. There is no need for the project DEIR to further analyze these two other projects that are unrelated to the proposed project. Refer also to Master Response 1.

## LETTER E – JACK LONDON NEIGHBORHOOD ASSOCIATION (JLNA)

### COMMENT E1

JLNA has concluded that the Draft Environmental Impact Report (DEIR) fails in numerous respects to comply with requirements of the California Environmental Quality Act (CEQA). In particular, the DEIR woefully fails to comply with the requirement that an EIR contain facts and analysis, not just bare conclusions. An adequate DEIR must contain the basis for an opinion so as to enable decision-makers to make an independent reasoned judgment. In addition, an EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the project.

A finding that a project will have an insignificant environmental effect must be supported with rigorous analysis and concrete substantial evidence,

Architectural Resources Group purports to analyze the 300 Harrison Project's impact on the historic integrity of the Waterfront Warehouse District. Nearly the entire analysis is based on bare conclusions rather than facts and analysis. The following are the bare conclusions unsupported by neither facts nor analysis.

“,... the design is generally compatible with important character-defining elements of the historic district.” (12,page 2).

"This project in and of itself will not materially alter the physical characteristics that convey the District's historic significance."

The proposed project in and of itself will not have a negative impact on the setting of the district as it is generally compatible in height, scale, massing, materials and features with the other design components in the district. (p. 16)

The project in and of itself will not alter the feeling and aesthetic sense of the district as the scale, height, materials and massing of the building is generally compatible with the other design components of the district. (p. 17)

The association of the Waterfront Warehouse District contributors to each other will be somewhat impacted by new construction in the district. However, this project alone will not alter the relative associative qualities of the buildings to the extent that it impairs the overall integrity of the district. (p. 17)

"... the building is compatible in its overall height, scale, massing, materials, design, and use..."  
(paragraph 2,page 2).

The foregoing statements do not define "generally" or "somewhat" and provide no factual support for this conclusion.

Each paragraph merely jumps to conclusions without any facts to support the statements. No where in the foregoing paragraphs does ARG explain its reasoning.

In all, only two of the six items ARG states determine compatibility (height, scale, massing, materials, design and use) are discussed at all - use and perhaps design.

### RESPONSE E1

ARG supports its conclusion of the project's compatibility with the District through a qualitative evaluation of its effects on each of the seven aspects of the District's integrity (DEIR pgs. 104-106): location, design, setting, materials, workmanship, feeling, and association. The project is considered compatible with the District in terms of building design, use, setback (build-to property lines), fenestration, materials, height and massing. ARG staff have compared the design of the proposed building with the other buildings in the District and found it to be compatible. ARG's independent, expert opinion is based on substantial evidence. Refer also to Master Response 1.

### COMMENT E2

The ARG report neglects any analysis of the project's scale and height to adjacent buildings, but states in conclusory fashion the proposed project is "generally compatible with the building heights within the district." This statement that a 70-foot building would be compatible with building height in the District contradicts itself in light of the report's statement at page 10 that the "overall character of the District can be defined as low to medium-rise ..."

Not only is there no factual support for the statement that the proposed project is "generally compatible with the building heights within the District," the statement is based on erroneous facts. The average height of buildings in the district is 33 feet. In addition, the heights of adjacent buildings range in height from 18 to 44 feet. It should also be noted that ARG also did not analyze the proposed project's effect on the architectural integrity of immediately adjacent buildings.

### RESPONSE E2

As documented in the DEIR, the proposed project at 70-feet nine inches (plus a 30-inch parapet) is on the high side in comparison with the existing building heights in the District. It is not the tallest building, however, and it is reasonable to conclude that the height is generally compatible with the overall District. The City staff agree with this conclusion. A variety of heights exist within the District, with the contributors ranging from one-story to six stories. Within one block of the project there are existing buildings with heights of 82 feet (New Market Lofts/Safeway building) and 60 feet (4<sup>th</sup> Street Lofts), and the recently approved 426 Alice Street project is an 85-foot tall building. The appearance of overall height of the project along 3<sup>rd</sup> Street is diminished by the 15-foot setback at the fifth story. The height as seen from the ground immediately surrounding the site will be 64 feet 6 inches (62 feet plus 30-inch parapet). The most comparably scaled buildings in the District are located on the south side of 4<sup>th</sup> Street and on the south side of 3<sup>rd</sup> Street. The Posey Tube Portal, one of the more prominent features of the District, is 55 feet in height. Although the proposed building is taller than adjacent buildings, it is within the range of existing building heights and is, overall, compatible with the District. With a range in building heights from 16 to 82 feet, it is not meaningful to compare the project with the average building height.

The DEIR and ARG (Appendix F) did evaluate the proposed project's effect on the architectural integrity of immediately adjacent buildings. The proposed project would not have any direct impact on the adjacent buildings, because there would be no physical change to the adjacent buildings. The DEIR (pg. 122) acknowledges that the proposed building will block views of the architectural elements of the buildings to the north; any construction on-site would do that. The proposed project

respects the architectural context of the facades along Harrison and Alice Street, because the proposed design is compatible and appreciative of the adjacent buildings.

#### COMMENT E3

The cumulative impacts discussion is also inadequate. To be adequate, the discussion must include the following elements (1) a list of past present, and reasonably anticipated future projects that have produced, or are likely to produce, related or cumulative impacts (2) a summary of such individual projects' environmental effects; and (3) a reasonable analysis of all of the relevant projects' cumulative impacts, with an examination of reasonable options for mitigating or avoiding such effects.

The DEIR's cultural resources assessment does not list past projects or reasonably foreseeable future projects. The DEIR concludes without any explanation why reducing the scale and height of the proposed project would not lessen to some degree the cumulative impacts on the District.

#### RESPONSE E3

The discussion of cumulative impacts to the WWD does describe past, present, and currently proposed (reasonably foreseeable) projects that result in changes to the Historic District (DEIR pg. 109 and Appendix F). The ARG description of cumulative impacts (DEIR pg. 109) describes in detail all of the changes that have occurred within the District since it was nominated for listing on the National Register. The discussion includes recent projects and pending projects. There are no other known applications or reasonably foreseeable projects within the District.

The DEIR considers a lower building height as an alternative to the project (DEIR pgs. 141-147). ARG evaluated the lower building height and its contribution to a cumulative impact (DEIR pgs. 111-112). ARG concluded that no reduction in scale or height of the 300 Harrison Street project would reduce the cumulative impact to a less than significant impact, as long as the 426 Alice Street project was at full size.

Refer to Master Response 1 regarding the significance of the project's cumulative impact to the WWD and evidence used to reach the conclusion of significance.

#### COMMENT E4

The DEIR also relies on a rumor about SHPO regarding the size and scale of future buildings in the District. In fact, SHPO indicated that it saw no reason why a high-density building could not be designed in a manner consistent with the preservation of the district.

If the DEIR intends to rely on purported comments from SHPO, it must actually discuss the proposed project and cumulative impacts with SHPO. Neither hearsay statements nor mere uncorroborated opinion or rumor constitutes substantial evidence. According to ARG, its opinion that the proposed project's cumulative impacts cannot be mitigated to lessen the cumulative effects is based on an alleged statement from SHPO which has not been substantiated nor is it referenced in the list of references in the DEIR.

## RESPONSE E4

The SHPO letter (dated March 8, 1999) attached to the JLNA letter (Comment E) is outdated; it is addressed to a different project; and it is not relevant to the existing discussion of cumulative impacts. It is outdated, because since the time the letter was written there have been many changes in the WWD: the Allegro project buildings have been constructed, the Safeway building has been modified, and the 426 Alice Street project has been proposed and approved. The 1999 SHPO letter represented the opinion of the SHPO staff with respect to the compatibility of a different project (the City Lofts project) with the District. The letter refers to design alternatives to make a single building (not the proposed project) more consistent with the District. The letter does not address the issue of cumulative impacts. For these reasons, the March 1999 SHPO letter is not relevant to the current discussion of cumulative impacts. ARG has already concluded that the proposed project is consistent with the District. The issue is whether the cumulative impact of new but otherwise generally compatible development on the District will be significant and unavoidable. The opinion of ARG is that the impact will be significant and that the redesign of this project will not eliminate this cumulative impact.

Refer to Master Response 1 regarding the significance of the project's cumulative impact to the WWD and the evidence used to reach the conclusion of significance.

## LETTER F – DREISBACH

### COMMENT F1

#### Impact B-12: Traffic and Parking

As the owner of a distribution warehouse and intermodal container business it is of great concern that there has been no acknowledgement of 3rd Street as the city-approved Heavy Weight Container Route to the Port of Oakland. All ancillary support services, primarily located in East Oakland, use the heavy weight route for hauling to and from the Port. Any detours would have to address the heavy weights and a variance onto another street would need approval of the Oakland Police Department. Notification should be required to any and all haulers of containers so that dispatchers could give adequate notice to drivers. Additionally, undue delays of containers to and from the Port should be avoided at all costs. It would be our recommendation that the city specifically preclude detours or delays on 3rd Street for the above reasons.

### RESPONSE F1

The text of the EIR (pg. 33) has been revised to clarify the fact that 3<sup>rd</sup> Street is the City-approved heavy weight container route to the Port of Oakland. The revised text is presented in Chapter II of the responses to comment document. The applicant states that project construction will predominantly use the site frontage sidewalk and one travel lane. A minimum of two 12-foot wide travel lanes will be maintained throughout project construction, except during the installation of utilities, which is estimated to last one week. If 3<sup>rd</sup> Street must be closed temporarily, an alternate route for heavy trucks will be provided. (An alternate route plan can be instituted on a temporary basis, upon review and approval by the Public Works Department. The selected alternate heavy truck route will be evaluated based upon an assessment of the street's weight limits. There are other streets in the project area that are anticipated to be able to handle the weight load (Amit Kothari, Oakland Department of Public Works, Traffic Engineering, November 2002). As noted in the EIR

(pg. 62) adjacent property owners and public safety personnel will be notified when major deliveries, detours, and lane closures will occur.

#### COMMENT F2

As a landlord in the area directly impacted by the project we are concerned that there appears to be no redress for those businesses that may critically suffer from the impacts of the loss of parking. The city should recognize that this has been an area of extreme development pressures in the last few years and the impacts of the loss of parking, blocked streets, detours, and disrupted traffic patterns has been ever-present. At the same time there has been very little proactive participation on the part of the city to encourage an ongoing dialogue with the neighborhood over these critical disruptions. We would suggest that the applicant set up a regular periodic outreach to the commercial/business community to receive and address difficulties that may be adversely affecting the adjacent businesses.

#### RESPONSE F2

The EIR acknowledges that the project results in the loss of on-site (illegal) parking, that there will be a displacement of parking during construction, and that the project may contribute to a cumulative increase in parking demand in the area (DEIR pgs.57, and 60-61). The project applicant will hold a pre-construction meeting to discuss the proposed construction management plan and all construction-related issues (i.e., traffic, parking, noise, and air quality). The construction management plan will also be available for review. This will be the outreach to the commercial and residential community for input regarding the construction management plan. Additionally, the construction management plan will include a process for responding to and tracking complaints pertaining to construction activity, including the identification of an on-site complaint manager and a posting of a list of phone numbers for complaints. The construction management plan is described in detail in Response D-5.

Lastly, the City recognizes that there is a cumulative parking impact in the WWD and is working on possible solutions, as a part of the implementation of improvements identified in the Jack London District Transportation Improvement Study (JLD-TIS). The JLD-TIS final report was completed in August 2002 and staff is in the process of reviewing improvement options identified in the report. The improvement options will be presented in the coming months to both the City Planning Commission and the City Council to determine which options to move forward to implementation. Based on two recent community meetings in the district dealing with parking and transportation issues, the primary concerns of the community in the short term are parking supply and parking management. A community committee is being formed to work on issues from the various community interests, including residents, property owners, and businesses. City staff will assist to the extent possible in bringing forward issues from the Committee that can improve the parking and transportation infrastructure. The follow-up work to the study will include the formulation of a priority improvement list and a work program to implement changes.

#### COMMENT F3

##### Impact C-1: Air Quality

The analysis of the air quality impacts during construction is insufficient in that it does not reflect the fact that the project is surrounded on all sides by historic buildings with the consequent marginal insulation from outside air contaminants. Indeed, most of the inhabitants of these buildings open their windows as the only means of air conditioning throughout the spring and summer months.

With that consideration the mitigation measures need to be clear and reinforced. All sweeping should be done with water sweepers (required rather than preferable). Again, to reinforce our previous proposal, there should be a regular pre-set outreach to the public for input on the ongoing effects of mitigation measures throughout the construction period. This outreach should be initiated and enforced by the city.

### RESPONSE F3

The mitigation measures described in the EIR for construction-related air pollutant emissions (Mitigation Measure C.1, EIR pg. 71) are the list of feasible construction dust control measures considered by the Bay Area Air Quality Management District (BAAQMD) adequate to reduce construction dust impacts to a less than significant level (include footnote reference to BAAQMD). The project will use water sweepers. The text of the EIR (pg. 71) has been revised to clarify this proposed mitigation measure. The revised text is presented in Chapter II., Revisions to the Text of the Draft EIR, of this document. Refer to the previous Response F2 regarding the provision of a pre-construction community outreach meeting.

### COMMENT F4

#### Impact D-1: Noise

The analysis of noise impacts during construction appears inadequate, as it does not directly address the commercial or business activities that surround the proposed project. In fact, the hours of extreme noise generating activities (potential pile-driving) appear to be residentially driven. Although we reside in the area we wish to remind the city that this is not a residentially zoned area. Many of the surrounding buildings are offices. As such we would recommend that if extreme noise generating activities need to occur that a significant period of time during the middle of the day be set aside when a moratorium of activity could be in place. (This should not include the lunch hour when normal business cannot take place.) In that way, businesses could schedule meetings, conference calls or other important activities that cannot be conducted under noise emissions of up to 100 to 110 dbA. Additionally, the placement of sound blankets held in place by some type of temporary structure should be required in the event of pile driving.

### RESPONSE F4

Refer to Master Response 2.

#### LETTER G – e-agency

### COMMENT G1

In reference to the "draft" EIR for the 300 Harrison Street Project listed below are my concerns for your consideration. I own two web development and management businesses (MCAnet and e-agency) employing 25 people located at 291 and 299 Third Street. We are located right across the street from the proposed construction. Our hours are 8 a.m. to 10 p.m. Monday through Friday and some staff works from 10 am. to 6 p.m. on Saturday and Sunday.

Noise is the biggest potential problem we anticipate from this project based on our experience with recent construction in the neighborhood. We suffered some lost productivity in the recent past during high noise periods with the projects down the street.

Based on that experience there might be a 50/50 probability that if the noise on this project is not controlled to the legal limit we would have to relocate during the noisiest periods to stay in business. During hot days our windows are open because we don't have air conditioning.

If we can't talk on the phone, meet with clients, and our designers and software engineers can't work in an environment where great concentration is required, we are out of business.

Solution(s):

We are not against growth. We want to help create a win-win situation.

Can the City insert into the EIR some safeguards and penalties to control the noise to a reasonable level. With the last two projects in our neighborhood the legal noise limits were violated and the contractors got away with it because the city was slow to respond. We would hope to avoid that type of situation with this project because it's so close.

#### RESPONSE G1

Refer to Master Response 2.

#### COMMENT G2

If excessive noise is required can you insert a demand that the developers have a relocation plan in place for us that does not close us down for anymore than 4 hours. Because of the equipment required to conduct our business a place with T-1 or T-3 access would be required (we host 250 clients Oakland Airport, Safeway, City of Alameda, etc.) who rely on us to be operating with no down-time 24/7. In addition, our staff requires extensive network wiring to be able to work on projects as a team. This is not really that complicated but it probably would require 2 - 4 weeks planning time to set it up.

If we are forced to move can you please insert a clause that all costs of this move and any lost billing revenue would be paid -for by the developer. We estimate the move cost at \$20 - \$35K and the rent at \$12,000/month, and lost revenue at \$ 10,000/day. And, the cost to move us back would be about the same.

Because the cost to move, set-up and move back and pay rent at two locations could exceed \$75,000 we request that you insert a clause that the developer must post a bond to cover this amount.

We would also request that if the developer sells this project before or during construction that these safeguards be placed on the new buyer. As you know the project down the street was sold and then the rules were changed.

Scott, thanks for your help on this. We probably missed a lot of other solutions which we would welcome. We just don't want to risk going out of business because adequate safeguards and control mechanisms were not put in place for businesses that are going to be very heavily impacted by the noise, the dust and lack of parking.

## RESPONSE G2

Refer to Master Response 2.

## LETTER H - METROVATION

### COMMENT H1

I am the managing partner of three buildings in the immediate vicinity of the site. We own several other buildings in the area. The buildings we own near 300 Harrison are 230 Madison, 220 Fourth Street and 318 Harrison Street, which is adjacent to the site.

Generally I am very supportive of this project. I believe we are fortunate to have a committed developer and a very talented architect.

Although I feel the mass of the building is a bit overpowering, I strongly support the density of the project. I am also very supportive of the use. Market rate housing will benefit the neighborhood.

The tenants in our buildings are all commercial tenants that generally occupy the space during standard working hours. I am concerned that the mitigation efforts described in the DEIR are primarily geared towards the concerns of residents, and not those of businesses.

Although it appears from the DEIR that the developers are trying to act responsibly to minimize disruption to the community, we are concerned that the noise and disruption from construction, particularly from the pile driving, will have a negative impact on the businesses in the area. I am concerned that if our tenants have complaints about the noise or dirt we will have no recourse. We run the risk of having to compensate our tenants for the negative business impact. If we incur costs or liability or if we lose tenants because of the construction, we should be compensated by the developer.

### RESPONSE H1

Refer to Master Response 2.

The remainder of the comment is noted. No further response is required, as these comments do not raise questions as to the accuracy of the EIR.

### COMMENT H2

We do not see measures in the DEIR to monitor the impact of construction, to respond to complaints, or to provide public input from the businesses that will most immediately be affected. Additionally, we are unclear as to the enforcement measures. We recommend that the City encourage and support the necessary communication between the developers and the businesses affected.

We have some concerns about the impact of the construction period on our tenants but generally are very supportive of the project.

## RESPONSE H2

Refer to Master Response 2.

## LETTER I – THOMAS CHRISTIAN

### COMMENT I1

The proposed two foot setback to the rear of our building is inadequate. Accessible working room is required at the back of our building to maintain the mortar of the 75 year old masonry wall. There are also two roof down spouts and rainwater leaders located at the back of the building. The original drawings of the building show these to be part of the original construction. We require accessible working room to maintain the rainwater leaders. There is a prescriptive easement for drainage at the back of our building. Any development of the 300 Harrison parcel must provide enough setback to maintain the current drainage path away from the foundations of our building and/or provide a new conduit to the storm drain in the street,

### RESPONSE I1

The proposed two-foot setback is at the ground floor only and should be adequate to maintain the existing drainage and to repair mortar if necessary. Neither the proposed building nor the grading required to construct the building will adversely affect the current drainage for the Christian building.

### COMMENT I2

There are two rail dock door openings at the rear of our building that were filled years ago at a time when the rail spur existed but service to this building was not required. We would like the option of restoring the building to its original historical appearance by replacing the brick in the original arched openings with windows.

### RESPONSE I2

The proposed project will not remove the option of replacing the brick in the original arched openings with windows, however, it is acknowledged that the proposed setback would offer these windows a very limited view.

### COMMENT I3

The shadow study of the report shows that the proposed height of the project will cast a shadow on our skylights at the rear of the building. These skylights provide the only natural light to the second floor office suites and to the atrium of our building.

Please consider for approval the reduced density alternatives that provide additional setback and appear to reduce the shadow to our skylights.

### RESPONSE I3

As described in the EIR (pg. 125-129), the proposed project will cast a shadow over the rear of the Christian building all day in winter (December 21), and in the late afternoon in March/September.

The project's shadow impacts will not fundamentally conflict with policies and regulations of the General Plan, Planning Code, and Uniform Building Code addressing the provision of adequate light related to appropriate uses. The Christian building skylight will continue to be open to the sky and will receive indirect light, even when the proposed building casts a shadow over it. As illustrated in the EIR (Figures 27-30), the Reduced Density Alternative (50-foot building) would not substantially reduce the shadow impacts on the Christian building.

## LETTER J - WILDA WHITE

### COMMENT J1

Notwithstanding other reasons, the DEIR is also inadequate for dismissing the parking garage alternative on the ground that its design would be incompatible without any evidence of what that design would be and for also failing to discuss the concrete, 50-foot building which the DEIR does not indicate is unfeasible.

### RESPONSE J1

The DEIR does not dismiss the parking garage alternative solely on the ground that its design would be incompatible. The DEIR (pg. 138) states that a parking garage would result in increased traffic accessing the site, when compared to the proposed project, with a proportionate increase in vehicular air pollutants and noise. The DEIR states that the design of a parking garage *could* be incompatible with the design of contributor buildings in the district. Most important, a parking garage alternative does not meet any of the project alternatives of the proposed project, as identified in the DEIR (pg.15). Additionally, due to the narrow width of the site, it could not accommodate an efficient parking structure. To maximize efficiency, the minimum parking garage width should be 125 feet including both the ramps and structure, to provide for one row of parking on each side of the ramps. The project site is only 100 feet wide, which would allow a maximum 85-foot wide parking structure (with the proposed 15-foot setback from the northern property line). The site could accommodate a structure with one 60-foot wide drive aisle/parking and a corkscrew ramp at one end, but this type of parking structure is not efficient.<sup>2</sup>

The DEIR does not fail to discuss the concrete 50-foot building alternative. A concrete version of the Reduced Density Alternative #1 - 50-foot building is noted in Footnote #46 on page 143 of the DEIR. The concrete version is considered a sub-variant of the 50-foot building alternative and the environmental impacts of the concrete version are the same as the wood-frame version. The DEIR has been revised to clarify this point. As stated in Footnote #46, "To be more compatible with the character of the historic district, the Reduced Density Alternative #1 building could be constructed of concrete, but it would add a premium to the cost. A wood-frame building would be approximately six percent cheaper than a poured-in-place concrete building. The primary difference between the wood-frame and concrete buildings would be that the concrete building would allow the wide expanses of multi-paned industrial windows which are characteristic of the WWD; all other impacts would be the same. As described in the DEIR (pg. 147), the Reduced Density Alternative #1 - 50-foot building would not fully meet the objectives of the project, regardless of whether it is wood frame or concrete. Moreover, the DEIR does not have to assess feasibility of alternatives that have been brought forward for analysis. The determination of feasibility ultimately rests with the decisionmakers, and must be supported by substantial evidence in the administrative record.

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<sup>2</sup> Katy Taylor, LEVY Design Partners, verbal communications, November 2002.

## CHAPTER V

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### RESPONSES TO COMMENTS PRESENTED AT THE PUBLIC HEARING ON THE DRAFT EIR

The City of Oakland Planning Commission conducted a public hearing at the Oakland City Hall on October 16, 2002, to provide the public an opportunity to comment on the Draft EIR. The following comments were received from members of the public and Planning Commission.

***Comment***

JANE LAWHON [Jack London Neighborhood Association (JLNA)]. Stated that JLNA would submit written comments.

***Response***

Comment noted.

***Comment***

SANJIV HONDA. Stated a concern that existing traffic conditions not represented accurately, because traffic counts don't count public vehicles (police, fire, ambulances, etc.). Stated that parking standards are too low, because people have 2-3 vehicles each. Stated that Oakland is "developer friendly", which has cause public infrastructure problems.

***Response***

The traffic counts conducted for the project include all vehicles, both private and public vehicles. The parking impacts described in the EIR (pgs. 52-54) were evaluated based upon three different parking demand rates: 1) parking demand based on the City Planning Code parking ratios; 2) parking demand based on auto ownership data for residential buildings in the area collected by the Jack London Neighborhood Association; and 3) parking demand based on similar condominium projects published by the Institute of Traffic Engineers (ITE). The proposed project will provide adequate on-site parking to meet all of these demand rates. As described in the Initial Study prepared for the project, the relatively small (91-unit) infill development is not anticipated to result in significant impacts to public infrastructure. The project applicant will be required to provide any necessary upgrades to serve the site and the Community Services Analysis prepared for the Land Use and Transportation Element of the General Plan found that infill development through the City's General Plan horizon year of 2015 is not likely to impose a burden on existing public services and utilities.

***Comment***

PLANNING COMMISSIONER LIGHTY. Questioned at what point are the cumulative impacts to the WWD so significant that the City should start denying new development.

***Response***

Refer to the Master Response 1.

***Comment***

PLANNING COMMISSIONER JANG. Questioned how the project could be considered generally compatible individually, in terms of height, scale and massing, but then considered incompatible in looking at the impacts of cumulative development.

***Response***

Refer to Master Response 1.

## **CHAPTER VI**

### **COPIES OF WRITTEN COMMENTS ON THE DRAFT EIR**

## **CHAPTER VII**

### **FIGURES AND ATTACHMENTS**

Revised Figure 11 - Alice and Harrison Street Elevations

Figure 19A - Alternative 3<sup>rd</sup> and Alice Street Facades

Figure 38 - Surveyed Building Heights

Letter from Architectural Resources Group (ARG)