

RESPONSE TO COMMENTS
FINDING OF NO SIGNIFICANT IMPACTS AND NOTICE OF INTENT TO REQUEST
RELEASE OF FUNDS
ENVIRONMENTAL ASSESSMENT FOR HUD FUNDED PROPOSALS
MIXED USE DEVELOPMENT
55 LAGUNA STREET
SAN FRANCISCO
SAN FRANCISCO MAYOR'S OFFICE OF HOUSING
November 6, 2012

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A. INTRODUCTION

1. Purpose of the Comments and Responses Document

This document contains public comments received on the *Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds* (FONSI/NOIRROF) published, posted and mailed by the Mayor's Office of Housing (MOH) on September 21, 2012, and the responses to those comments for the Mixed Use Development at 55 Laguna Street ("the Project"). This document serves as evidence of MOH's consideration of the comments received and of MOH's responses to those comments. It will be distributed prior to MOH's certification of the EA and before the submission of the Request for Release of Funds (RROF).

Although the Council on Environmental Quality ("CEQ") regulations do not require response to comments on a Draft Environmental Assessment HUD regulations (24 CFR § 58.43(c)) require responsible entities to consider the comments of the public and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF.

The Mayor's Office of Housing received three comments on the FONSI/NOIRROF. The comments are attached to this response at Appendix 1. This document responds to all substantive comments on the FONSI and the environmental assessment on which the FONSI is based. Substantive comments are those that question with reasonable basis, the accuracy of information in the environmental review record, the adequacy of environmental analysis, present reasonable alternatives other than those presented in the EIS or cause changes or revisions in the proposal.

2. Environmental Review Process

The project site was originally proposed for development by Openhouse and AF Evans Inc. in 2004. As originally proposed, the 55 Laguna Street Mixed Use Project, did not include the use of federal funds and no federal environmental review was completed at that time.

An Environmental Impact Report (FEIR) for this earlier proposed development was prepared under the California Environmental Quality Act (CEQA) and was certified by the San Francisco Planning Commission on January 17, 2008. The project evaluated in the FEIR included approximately 430,800 square feet (sq. ft.) of residential space, up to 5,000 occupied sq. ft. of retail space, approximately 10,000 sq. ft. of community facility space, and approximately 127,360 sq. ft. of parking (310 off-street parking spaces) in three rehabilitated buildings, seven new buildings and two underground garages on the project site on the former University of California, Berkeley Extension campus. The project included up to 450 residential units constructed in seven new buildings and three rehabilitated buildings (Woods Hall, Woods Hall Annex, and Richardson Hall). Ground floor retail was proposed to be located at the corner of Laguna and Hermann streets in the renovated Richardson Hall, and community space was

proposed in the existing Woods Hall Annex. Six of the proposed seven buildings were proposed to be 40-50 feet in height, and a seventh building (the Openhouse building) would be approximately 85 feet in height. The University of California would retain ownership of the land (to be ground leased to the project sponsors), and the existing U.C. San Francisco Dental Clinic at the corner of Hermann and Buchanan Streets would remain in operation and was not part of the approved or proposed project. The project would demolish two buildings: Middle Hall and the Administrative Wing of Richardson Hall, as well as the retaining wall along Laguna Street.

The San Francisco Planning Commission (Planning Commission) adopted a conditional use authorization for a planned unit development (PUD) on the site on January 17, 2008 (Planning Commission Motion 17537). At the time the project included 440 total residential units, including up to 110 units of senior housing. The San Francisco Board of Supervisors (BOS) approved a General Plan amendment, rezoning and enactment of the Laguna, Haight, Buchanan and Hermann Streets Special Use District on April 15, 2008. The overall number of units approved was reduced from the number analyzed in the FEIR from 450 units to 418-440 total residential units, including up to 110 senior units (BOS Ordinances 66-08, 67-08, and 68-08).

The certification of the FEIR was upheld by the San Francisco Board of Supervisors on March 4, 2008. The Board's approval of the Project, including its certification of the EIR was challenged in court in a Petition for Writ of Mandate. However, the Petition was denied by the trial and appellate courts. *Save the Laguna Street Campus v. City and County of San Francisco*, California Superior Court for the County of San Francisco (Case No. 508277); California Court of Appeal (Case No. A124531).

Alta Laguna LLC purchased AF Evans Inc.'s, the previous project sponsor, interest in the project. The new developers—Mercy Housing, Openhouse and Alta Laguna LLC—propose a modified project using federal funds. This modified project is described in **Section 2.3 of the EA**.

On May 8, 2012, the San Francisco Planning Department finalized an Addendum to the previously prepared FEIR, which concluded that the analyses conducted and the conclusions reached in the FEIR certified on January 17, 2008, remain valid under the modified project.

40 CFR §1501.3(a) directs agencies to prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by an individual agency to supplement Council on Environmental Quality (CEQ) regulations. The Mayor's Office of Housing, as the responsible entity for programs subject to 24 CFR Part 58, prepared an EA for the Mixed Use Development at 55 Laguna Street using the HUD recommended format. The EA was prepared in accordance with HUD guidelines and in compliance with the standards articulated in 24 CFR §§58.40(a) through (f) as well as CEQ Regulations.

24 CFR §58.40 requires the responsible entity to ensure the following elements are considered when preparing the EA:

- (a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.
- (b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
- (c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in §58.5 and §58.6.
- (d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
- (e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.
- (f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§58.5 and 58.6.

After preparing the EA in accordance with the Section 40 and CEQ standards, the MOH, in accordance with 24 CFR §58.43(g), made a finding that the project was not an action that would result in a significant impact on the quality of the human environment and proceeded as required by Part 58 to dissemination of the finding as required by 24 CFR §58.43. As permitted by 24 CFR §58.43, MOH disseminated the Finding of No Significant Impact (FONSI) at the same time it disseminated the Notice of Intent to Request Release of Funds as required by 24 CFR §58.70. The combined notice was published on September 21, 2012 in the San Francisco Examiner; it was also posted on the eastern façade of the Laguna Street retaining wall in two places and mailed to more than the 400 addresses of residences and businesses in the neighborhood.

The comment period for the FONSI and Notice of Intent to Request Release of Funds (NOIRROF) ended on October 21, 2012. The Director of the Mayor's Office of Housing as Certifying Officer held the public comment period open for 30 days.

During the 30 day comment period, the Mayor's Office of Housing received timely comments from the Law Offices of Mary Miles on behalf of the Coalition for Adequate Review (CAR) on October 3 and on October 21, 2012. MOH received a comment from Helene Whitson of Save the Laguna Street Campus on October 21, 2012. No other comments were timely submitted.

The Environmental Assessment has been modified as a result of the consideration of the comment received for the FONSI/NOIRROF. However, the original findings are still valid.

3. Document Organization

Following this introduction, Section B contains a list of all persons and organizations who submitted written comments on the FONSI/NOIRROF. The comments received are reproduced in **Appendix 1**.

Section C contains a summary of the comments received on the EA and responds to those comments.

Section D addresses the comments on the Draft EIR, which were incorporated by reference in the October 21, 2012 comment on the FONSI submitted by CAR. As the Planning Department has previously responded to those comments, the Department's Comment and Response document is attached and hereby incorporated by reference into this Comment and Response document insofar as they relate to the EA for which a FONSI/NOIRROF was issued by MOH. An EA prepared under 24 Part 58 is to be executed in compliance with the standards identified by HUD and the CEQ as well as those of NEPA and not in accordance with the multitude of laws of the various states, including those of California.

As is discussed in subsequent sections of this volume, this Comments and Responses document does not provide significant new information and a reevaluation of the FONSI/NOI is not required per 24 CFR §58.47.

4. Distribution

This Comments and Responses document will be distributed to the San Francisco Planning Department and agencies and persons who commented directly on the Combined Notice. This document is also posted on MOH's website at <http://sf-moh.org/index.aspx?page=155> and will be available for copying and reading at the reception desk of the Mayor's Office of Housing at 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103 from 9:30 am to 4:30 pm Monday through Friday beginning November 2, 2012.

B. LIST OF COMMENTERS

1. Comments on the Finding of No Significant Impact/Notice of Intent to Request Release of Funds Related to Environmental Assessment

Person/Agency and Signatory	Date	Via
Mary Miles/CAR	10/01/2012	Email
Mary Miles/CAR	10/03/2012	Email
Helene Whitson	10/21/2012	Email
Mary Miles/CAR	10/21/2012	Email

2. Comments Incorporated By Reference and Directed to the CEQA EIR or to the CEQA challenge

Person/Agency and Signatory	Document Type	Date	Via
Mary Miles for Coalition for Adequate Review	Public Comment Appeal of Planning Commission's Certification of EIR	March 4, 2008	Attachment to Email
Mary Miles for Coalition for Adequate Review	Public Comment on Appeal of Certificate of Appropriateness	July 30, 2012	Email
Mary Miles for Coalition for Adequate Review	Public Comment on Conditional Use Permit	August 16, 2012	Email

C. SUMMARY OF COMMENTS AND RESPONSES

Comment 1. The EA review time is inadequate.

The review time for the EA is inadequate. The October 22, 2012 date for RROF does not allow for MOH to consider comments received during the review period. The EA should have included the RROF to allow for the public to comment on it.

Response 1.

The Notice of Intent to Request for Release of Funds and Finding of No Significant Impact ("Combined Notice" or "FONSI/NOIRROF") states, "On or about October 22, 2012 the Mayor's Office of Housing of the City and County of San Francisco (MOH) will submit a request to the United States Department of Housing and Urban Development's...". The language used in the notice is standard language required by the United States Department of Housing and Urban Development (HUD).

The use of the phrase "on or about" does not mean that the RROF will be submitted to HUD prior to the consideration of and response to the comments made by the public in response to the Combined Notice. It means that the RROF will not be submitted to HUD prior to October 22, 2012. 24 CFR §58.43(c) requires MOH, as a responsible entity, to consider comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. The Combined Notice states "All comments received by 5:00 pm October 21, 2012, will be considered by the MOH prior to authorizing submission of a request for release of funds." Accordingly, the RROF will not be submitted until compliance with 24 CFR 58.43(c) is complete.

HUD regulations implementing NEPA require a public comment period of 15 days for a Combined Notice under 24 CFR 58.45 and 30 days for those projects meeting one of the thresholds identified at 24 CFR §58.46. MOH has provided a 30-day comment period under 24 CFR 58.46(a) due to the considerable interest in the project.

The 30-day comment period is consistent with all appropriate regulations and was not extended past October 21, 2012.

The Combined Notice advised the public that the Environmental Review Record was available in electronic format at <http://sf-moh.org/index.aspx?page=155>. The webpage advised the public that comments could be submitted to MOH electronically by email. All comments received by MOH were successfully transmitted prior to the close of the comment period by email.

The RROF was not included in the FONSI/NOIRROF because a RROF is not prepared until such time as the responsible entity has considered the comments of the public. 24 CFR §58.43(c).

Comment 2. HUD may not grant funds to a project that demolishes a historic district.

HUD may not lawfully grant funds for the project and must reject the proposed RROF because the project involves demolition and destruction of a National Historic District (24 CFR 50.33(c)).

Response 2.

HUD's grant requirements are beyond the scope of this EA. As discussed in the EA on pages 3-5 and 3-6, the Proposed Action would include demolition of one contributor (Middle Hall) to the National Register district, a portion of another (administration wing of Richardson Hall) and the partial removal of the retaining wall along Laguna Street. It would also include the adaptive reuse of three existing City Landmark buildings on the project site would remain and be renovated. Regardless, the demolition activities would contribute to the adverse effect of the undertaking, which would be reduced to an acceptable level through implementation of the stipulations identified in the 55 Laguna Street Memorandum of Agreement, which is included in **Appendix A** of the EA. Under 24 CFR 50.33, HUD may lawfully grant funds under these circumstances.

The Memorandum of Agreement Between the City and County of San Francisco and the California State Historic Preservation Officer Regarding the Mixed Use Development, 55 Laguna Street, San Francisco (MOA) includes stipulations to address the adverse effects of the project on cultural resources. With implementation of these stipulations, the adverse effects to cultural resources would be reduced to an acceptable level.

Commenters' discussions of the history of the project site as a public institutional use and tax obligations are noted. One commenter's discussion of the graffiti on the site and the appearance of "blight" are also noted. These comments do not address the adequacy of the EA. The existing conditions of the project site are described in **Section 2.3** of the EA, beginning on page 2-8. As discussed on page 2-12, in the absence of the project, the site can be expected to continue to deteriorate due to burglary, vandalism, graffiti, and delayed maintenance. A "No Action Alternative" is described in **Section 2.4.1**.

Comment 3. The project would not result in public space.

Although the 5.8-acre site is the largest public space in the greater area, the project would dedicate only a sidewalk/staircase that it disingenuously calls "Waller Park" to public use, closing off the rest from public access. The community garden would not be publicly accessible.

Response 3.

This comment does not address the adequacy of the EA. Waller Park, a 0.64-acre (28,000-square-foot) park would be comparable in size and slope to some neighborhood parks in the city. Regarding other public open spaces, the project would include a new pedestrian mews on the north-south axis (publicly accessible at all times), a 10,600-square-foot community garden (publicly accessible during daytime hours), and a 12,000-square-foot community center for the neighborhood in Woods Hall Annex.

The site is owned by the University of California and will continue to be so owned with implementation of the proposed action. Thus, public ownership would not change. In terms of use, as stated in EA Section 2-3, Existing Conditions and Trends, beginning on page 2-8 of the EA, the buildings on the site are currently vacant and do not meet current seismic or accessibility standards. The remainder of the site provides surface parking, primarily for students and faculty of the University of California, San Francisco. Accordingly, the site does not provide “public access” in the sense that this term is commonly used, nor does it provide amenities such as publicly accessible open space.

Comment 4. The use of federal money for the project would be discriminatory.

The proposed \$10,400,000 federal grants to the “Openhouse” corporation for housing for “LGBT” (“lesbian-gay-bisexual-transgender”) seniors is discriminatory.

Response 4.

As stated in the EA on page 2-6, the units would be “targeted toward very-low-income residents, *regardless of sexual orientation*” (emphasis added). All income-qualified seniors, regardless of sexual orientation, gender, gender orientation, or gender identity would be eligible to live at the 55 Laguna Senior Housing Development. Applicants would be processed according to a random drawing, just as they are now for all other low-income housing facilities in San Francisco. The 55 Laguna Senior Housing would be designed and operated to be welcoming to LGBT seniors and provide a culturally competent and supportive housing environment for all seniors who move in and/or use the senior activity center that would be on the site.

Comment 5. Plans for the area are not applicable due to lawsuits.

The Market-Octavia Project, which also has been challenged in litigation that remains pending, upzones the entire area for gentrification and contains no requirement of on-site affordable housing. Similarly City’s General Plan Housing Element contains has for decades contained no legally adequate General Plan that includes specific sites for affordable housing, even though it is required by the California Government Code. The City’s continuing abnegation of its duty under the California Government Code to zone for affordable housing in the City are facts that have led to state disapproval of its General Plan Housing Element, which was invalidated in 2007 and remains in litigation in the Superior Court.

Response 5.

Comments regarding the California Government Code, San Francisco General Plan Housing Element, the Market-Octavia Project, funding of the project, and the “recent dot.com surge and influx of affluent renters and homebuyers,” are noted. These comments do not address adequacy or accuracy of the analysis presented in the EA. In any event, the lease of 55 Laguna Street for private residential development is exempt from the requirements of Government Code Section 14671.2. The California Constitution vests the Regents of the University of

California with “unrestricted power to take and hold real and personal property for the benefit of the university” subject only to very limited exceptions, none of which apply here.

The Market & Octavia Area Plan has been in effect since May 31, 2008, after several years of analysis and community process and approval by the Board of Supervisors and the Mayor. The Area Plan was challenged in court on CEQA and other grounds. However, the City prevailed in the trial court, the decision was upheld by the Court of Appeal for the First District, so the EIR and the Plan are presumed valid until a court rules otherwise.

Furthermore, the State of California Department of Housing and Community Development found San Francisco’s Housing Element in full compliance with state law on July 29, 2011, as illustrated by the letter included in Appendix 2.

Comment 6. The environmental review is not adequate.

The Project has not received legally adequate environmental review, which must include both an EIS, and a Supplemental EIR under CEQA.

Response 6.

The commenter states that the project must receive a Supplemental Environmental Impact Report (SEIR) under CEQA and an Environmental Impact Statement (EIS) under NEPA.

The CEQA requirements for the project are beyond the scope of the NEPA lead agency.

The Final EIR for the 2008 project was certified by the San Francisco Planning Commission on January 17, 2008. The certification of the EIR was upheld by the San Francisco Board of Supervisors on March 4, 2008.

The Board’s approval of the certification of the 2008 EIR was appealed to the California Superior Court Appeal under petition for a Writ of Mandate alleging violations of CEQA. The petition was denied by both the Superior Court and the California Court of Appeal.

An addendum to the 2008 EIR was published by the San Francisco Planning Department (the CEQA lead agency) on May 8, 2012. The addendum found:

...The analysis conducted and conclusions reached in the FEIR [Final EIR] certified on January 17, 2008, remain valid, and that no supplemental environmental review is required for the proposed project modifications.

Comment 7. The EA can’t rely on local planning documents published before the site was listed on the National Register of Historic Places.

The Environmental Assessment (“EA”) improperly relies on previous local and state-level documents, such as the 2006 EIR and a 2004 document generated by the San Francisco Planning Department *A Policy Guide for Considering Reuse of the University of California Berkeley Extension Laguna Street Campus*.

Response 7.

The FEIR was certified in 2008, not 2006, subsequent to the listing of the project site on the National Register in 2007. The EA is an independent analysis that references previously prepared analyses and planning documents. For example, when discussing planning policy, it is appropriate to reference the San Francisco Planning Department's *General Plan*, zoning, and policy guides. That some of these documents were prepared prior to the project site's listing on the National Register of Historic Resources does not obviate their applicability or relevance. Moreover, the EA provides a complete analysis of the project's effects on cultural resources and references the 2007 National Register listing and the 2012 Historic Property Survey Report (HPSR), which was prepared by VerPlanck Historic Preservation Consulting and approved by the San Francisco Planning Department. (The HSPR is included in **Appendix A** of the EA).

The Council on Environmental Quality directs Federal Departments and Agencies, including responsible entities, to integrate federal environmental reviews with impact analyses and related surveys and studies required by law. Reliance on local and state level documents is not only proper but required. See 40 CFR §1502.25. See also Memorandum for Heads of Federal Departments and Agencies March 6, 2012, Council on Environmental Quality.

Comment 8. The EA doesn't recognize the public historic use.

While admitting that it would destroy the National Historic District, the EA and other documents fail to recognize its historic significance and history of public use, and conclude that proposed mitigation justifies a Finding of No Significant Impacts ("FONSI"). The proposed mitigation measures do not mitigate the project's impacts, which include physically destroying a National Historic District.

Response 8.

A brief history of the site is included on page 3-2 of the EA, and a more thorough history is provided in the HPSR, which is referenced in the EA at page 3-3.

The EA concluded that, with mitigations, the proposed undertaking would not have a significant impact on the environment, as adverse effects to historic resources would be resolved. This impact finding was made based on environmental analysis conducted in accordance with the HUD NEPA regulations, 24 Code of Federal Regulations (CFR) Part 58. This finding that the project would not have a significant adverse effect on cultural resources under federal law was made in accordance with federal standards, and the analysis followed the required procedures identified in both the applicable programmatic agreement and the Advisory Council on Historic Preservation's (ACHP) regulations, 36 CFR Part 800.

NEPA and the National Historic Preservation Act (NHPA) allow certified local government agencies to enter into programmatic agreements with federal agencies and the state historic preservation officer (SHPO) to address the potential effects on historic resources that may result from a particular program or series of undertakings. A programmatic agreement is a contract that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations where historic

resources may be adversely affected in accordance with federal environmental requirements. (See 36 CFR §§800.14(b) and 800.16(t).) Agreement upon the terms of a programmatic agreement is evidence of an agency's compliance with the National Historic Preservation Act.

The ACHP's regulations allow agency officials (here, MOH Certifying Officer) to negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings. (36 CFR 800.14(b).) These programmatic agreements may be used when nonfederal parties are delegated major decision making responsibilities as is the case here, where HUD has delegated the major decision making responsibilities in regards to HOME and CDBG funded activities to MOH. The Finding of No Significant Impact based upon the programmatic agreement was proper in this case under NEPA and NHPA.

In 2007, the City of San Francisco entered into a programmatic agreement to address the potential adverse effects to historic or cultural resources that could result from MOH's implementation of certain federal programs. (Programmatic Agreement by and among the City and County of San Francisco, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Historic Properties Affected by Use of Revenue from the Department of Housing and Urban Development Part 58 Programs (2007 PA).) The 2007 PA sets forth certain procedures for consultation and mitigation when proposed projects, such as the one here, may adversely affect historic or cultural resources.

For this project, when consulted by MOH under the terms of the 2007 PA, the Advisory Council on Historic Preservation (ACHP) advised MOH that—in accordance with Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of its regulations--“Protection of Historic Properties” did not apply to this undertaking (36 CFR Part 800.) As stated in ACHP's letter dated July 18, 2012, “we do not believe that our participation in the consultation to resolve adverse effects is needed.” Subsequently ACHP confirmed the completion of the Section 106 consultation process upon receipt of the signed MOA from the MOH in September of 2012.

Here, the effects resulting from the proposed activities are adequately addressed through the City's compliance with the requirements of the 2007 PA and compliance with the stipulations of the memorandum of agreement. Because the ACHP determined its involvement was not necessary to mitigate this proposed project's effects to cultural resources, the City entered into a project-specific memorandum of agreement (MOA) with the SHPO on September 14, 2012. The MOA sets out detailed mitigation and resolution measures, including documentation and recordation of the historic building according to the Historic American Buildings Survey (HABS) standards which reduce the proposed undertaking's adverse effects in accordance with 36 CFR PART 800 - Protection of Historic Properties. Hence, a FONSI is appropriate for this undertaking.

The signed MOA (dated September 14, 2012) is included in **Appendix A** of the EA. On October 19, 2012, the Advisory Council on Historic Preservation (ACHP) acknowledged its receipt of the MOA for the project and stated that the requirements of Section 106 of the

National Historic Preservation Act and ACHP regulations have been completed. This document is included as **Appendix 2** of this response to comments document.

Comment 9. The MOA doesn't mitigate project impacts or satisfy review requirements.

The MOA does not mitigate the project's impacts and does not satisfy NEPA and CEQA. The September 10, 2012, MOA, falls far short of mitigation and does not support issuance of the FONSI, because the significant impacts would remain with the MOA. If there would be an impact, the agency must demonstrate that mitigations would reduce impacts to a level of insignificance before issuing a FONSI. That clearly is not the case here, since the MOA's mitigations do not mitigate the significant impacts on the National Historic District.

Even if it could be seriously claimed that execution of the MOA satisfied the NHPA, it does not relieve the agency of its duty to comply with NEPA and other statutory and regulatory requirements, including those governing HUD, which are not satisfied by the MOA.

Since it does not mitigate the project's impacts on the National Historic District, the MOA merely papers over the MOH's and City's failure to comply with legal requirements to conduct legally adequate environmental review of the proposed Project and to mitigate its impacts, and in any event does not satisfy NEPA, CEQA, or the statutes governing HUD.

Response 9.

The commenter presents a listing of how the "MOA claims it has satisfied Section 106 of the NHPA [National Historic Preservation Act]." The comment is noted. As indicated by the MOA (included in **Appendix A** of the EA), execution and implementation of the MOA evidences that the City has satisfied its responsibilities under Section 106 of the NHPA. The MOA was executed on September 14, 2012, and its provisions are required to be implemented pursuant to **Mitigation Measure 1.2.1**, listed on page 1-1 of the EA. Furthermore, the Advisory Council on Historic Preservation (ACHP) acknowledged its receipt of the MOA for the project and stated that the requirements of Section 106 of the NHPA and ACHP regulations have been completed. This document is included in **Appendix 2** of this response to comments document. Compliance with NEPA and related authorities is discussed above.

Other comments outside the scope of the environmental analysis, such as the claim that the MOA improperly expropriates possession of publicly owned artifacts to a private entity, are noted.

Comment 10. Statements of Law

NEPA requires Federal agencies to make detailed reports on major Federal actions significantly affecting the quality of the human environment. Federal funding through HUD constitutes a "major federal action" particularly where, as here, the fundamental nature of the project would be destroyed by the action to be funded. The project is also a major federal project because it proposes to destroy a National Historic District of great significance and architectural merit. If an agency determines not to file an EIS, the reviewing court will consider whether the agency

has reasonably concluded that the project would have no significant adverse environmental consequences. An agency “should consider ‘proximity to historic or cultural resources’ and possible adverse effects on sites listed in or eligible for listing in the National Register of Historic Places’ or on ‘significant...cultural or historical resources.” A finding of no significant impact must be documented.

An EA is a “concise public document” meant to “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” An EA must take a “hard look” at the impacts of a Project to seriously weigh the potential environmental consequences of a proposed action. *Bair v. California State DOT*, 2012 U.S. Dist. LEXIS 47861. An EIR is arbitrary and capricious if it fails to consider an important aspect of the problem, offers an explanation that is counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or agency expertise.

Response 10.

The commenter’s statements of the law are noted but are not substantive comments on the EA. No further response is required.

Comment 11. The EA does not take a hard look or perform adequate analysis.

The EA is fatally flawed because it fails to take a “hard look” by conducting a “searching and careful inquiry,” to substantiate its conclusions, and to seriously weigh the environmental consequences of the proposed Project.

Response 11.

Please see responses above regarding the content and adequacy of the EA. Additionally, please note that the EA was prepared over the course of several months. It references multiple background studies applicable to the project site, previously proposed developments on the project site similar to the project under analysis, and the geographic area surrounding the project site. The EA incorporates specific analyses from several documents prepared specifically for the 2012 project. These include, but are not limited to, the following analyses:

- Historic Property Survey Report: 55 Laguna Street, VerPlanck Historic Preservation Consulting
- Pro Forma Assumptions and Methodology Review for the 55 Laguna Street Project and Alternatives, prepared by Seifel Consulting Inc.
- Preliminary Geotechnical Consultation: 55 Laguna Street, Treadwell & Rollo
- Richardson & Woods Halls Seismic Review – Report Follow Up, Holmes Culley
- EDR Radius Map Report with Geocheck: 55 Laguna Street, EDR Inc.
- Addendum to the 2008 EIR, San Francisco Planning Department

- Certificate of Appropriateness and Staff Report, San Francisco Historic Preservation Commission
- These reports are provided in the EA appendices. Other background studies or plans are available in the appendices or online.

Comment 12. There is no cumulative analysis.

The EA completely lacks cumulative impacts analysis, and other necessary impacts analyses.

Response 12.

The EA has been modified to clarify the Cumulative Impacts Analysis, included as **Section F** of this document. The conclusion of the EA stands as a Finding of No Significant Impact.

Comment 13. EA is specifically flawed.

Specific pages in the EA are flawed.

Response 13.

Below is a page-by-page response to each page referenced by the commenter.

EA p. 2-1: This comment states that the EA falsely implies that the City has been diligent in meeting its affordable housing goals. **Response:** Page 2-1 describes existing General Plan Housing Element and Market-Octavia Plan objectives and policies. The EA does not present an analysis of how “diligent” the City of San Francisco has been in following these policies.

EA p. 2-2: The comment states that the EA falsely claims that the Market-Octavia Plan “approved” the project. **Response:** This is incorrect. Page 2-2 identifies objectives and policies of the Market-Octavia Plan. The EA does not indicate that the Market-Octavia Plan “approved” the project, and the EA does not claim that the Market-Octavia Plan includes environmental review of the proposed project.

Approvals required for the proposed 55 Laguna project are listed on page 1-4 in **Section 1.2.8, Agency Approvals.**

EA p. 2-2: The commenter states that the project sponsor objectives do not conform to the Cranston-Gonzalez Act and express the sponsor’s discriminatory intent to provide low-cost housing to LGBT seniors. **Response:** Regarding the Cranston-Gonzalez Act, the sponsor does not indicate how the project sponsor’s objectives do not conform to the Cranston-Gonzalez Act. The Cranston-Gonzalez Act has identified various purposes including support of State and local strategies for achieving more affordable housing, to increase homeownership. The senior housing component of the Undertaking is consistent with these purposes.

Regarding discriminatory housing in the proposed project, the senior units would be available to very-low-income residents, regardless of sexual orientation.

EA p. 2-5 to 2-6: The commenter states that the project description improperly segments the project into two components—the Alta Laguna LLC Development and the Senior Development. **Response:** A description of the entire proposed project is included on pages 2-4 and 2-4 of the EA. The more specific breakdown of project components between the two developers is provided thereafter. As stated on page 2-7, the Alta Laguna LLC Development portion would be constructed first, and the Senior Development would follow due to financing requirements. Regardless of how the information is presented, the entirety of the project is analyzed in the EA. Segmentation is defined as the division of a project, program or decision into component parts or temporal "phases." No segmentation has occurred here as the entire development was reviewed in a single EA.

EA p. 2-6: The commenter also states that the EA describes the "improper use of Openhouse" to aid in applications for residency in affordable units. **Response:** This comment does not relate to the adequacy or accuracy of the EA and no further response is required.

EA p. 2-6: The commenter states that rehabilitation of the buildings to remain—a portion of Richardson Hall, as well as all of Woods Hall—should be described as "gutting and conversion." **Response:** The comment is noted.

EA p. 2-6: The commenter states that the open space of the project would not be provided to the public. **Response:** As stated in Response 3, Waller Park would be a 0.64-acre (28,000-square-foot) park. The project would include a new pedestrian mews on the north-south axis (publicly accessible at all times), a 10,600-square-foot community garden (publicly accessible during daytime hours), and a 12,000-square-foot community center open to the public in Woods Hall Annex.

EA p. 2-8: The commenter also disagrees with the description of the site as "owned" by the Regents of the University of California. The commenter indicates that the land is technically held in a public trust for the public.

Response: The University of California's ground lease of 55 Laguna Street for private residential development does not violate the public trust doctrine, which, generally, requires the state to hold navigable and tidal waters and the lands beneath them for the benefit of all the people.

EA p. 2-9: The commenter states that the University has not provided adequate security at the site, and that the City and University have failed to protect the site from vandalism. **Response:** The comment is noted.

EA p. 2-9: The commenter also states that it is false for the EA to state that the condition of the site can be expected to deteriorate without the proposed action or alternatives. **Response:** The commenter provides no indication of what would be an

appropriate assumption for the site in the absence of the proposed project. The comment is noted.

EA p. 2-12: The commenter's objections to the redevelopment of the site through a ground-lease from the University of California are noted. **Response:** These comments do not address the adequacy or accuracy of the EA.

EA p. 2-13: The commenter states that the project site should not be described as a former UC Extension, but instead as a National Historic District. **Response:** The comment is noted. These comments do not address the adequacy or accuracy of the EA. The historic status of the project site is documented in **Section 3.1.1, Historic Preservation.**

EA p. 3-1 to 3-2: The commenter states that the EA claims that compliance with the 2007 Programmatic Agreement removes the requirement to satisfy NEPA and other statutory requirements. **Response:** The EA does not make this claim. The purpose of preparation of the EA is to satisfy NEPA requirements. The purpose of the Section 106 consultation with the State Historic Preservation Office and Advisory Council on Historic Preservation was to satisfy NHPA requirements.

EA p. 3-3: The commenter claims that buildings proposed for rehabilitation would not be adaptively reused, but gutted and their historic significance destroyed. **Response:** The comment is noted. In approving Certificates of Appropriateness for the rehabilitation of Richardson Hall, Woods Hall and Woods Hall Annex, the San Francisco Historic Preservation Commission determined the work would conform to the Secretary of the Interior's Standards for Rehabilitation. The San Francisco Board of Supervisors upheld the determination. As indicated in the EA on page 3-6, the project as a whole would not comply with Secretary of the Interior's Rehabilitation Standards 1, 2, 9, and 10.

EA p. 3-3: The commenter also states that the EA improperly limits the Area of Potential Effect (APE) to the project site itself. **Response:** This is incorrect. As stated on page 3-3, the "MOH [San Francisco Mayor's Office of Housing] determined the APE for the proposed undertaking to encompass the two-block project site itself, inclusive of the UCSF Dental Clinic (primary APE), as well as 51 individual properties that immediately surround the project site (secondary APE). Therefore, the EA lists the properties determined to be eligible for inclusion in the National Register that are within the APE (p. 3-4). Cumulative effects on the larger APE in the surrounding neighborhood are addressed.

EA p. 3-3: The commenter also states that the APE should include the region, state, and national level, given the project site's "largely intact surviving example of California's public higher education system that has been recognized as a National Historic District." **Response:** The EA, on page 3-2, indicates that the project site is within the APE because it is listed on the National Register. The following text is taken from the EA on page 3-3:

36 CFR §800.16(d) states that an APE means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

The commenter does not provide reasons why the proposed project would directly or indirectly cause alterations in the character or use of buildings at a regional, statewide, or national scale. The APE for the proposed project was determined by the Director of MOH as the Agency Official, and it was vetted by the San Francisco Planning Department, and the San Francisco Historic Preservation Commission.

The commenter's statement that the description of Stipulation VII of the 2007 Programmatic Agreement on EA page 3-3 implies that the project is not already a "National Historic District." The description of the Stipulation VII included on page 3-3 does not include any mention of the project site. The project site's listing on the National Register of Historic Places is documented in the final paragraph of page 3-2.

EA p. 3-6: The commenter states that the EA falsely claims that the project would comply with Secretary of the Interior's Standards for Rehabilitation (5) Preserve distinctive materials, finishes, and construction techniques or examples of craftsmanship that characterize the properties, and (6) Repair rather than replace historic features.

Response: Given that the project would preserve Woods Hall, Woods Hall Annex, and the primary portion of Richardson Hall, it was determined that it would preserve the characteristics described above. The commenter's disagreement is noted.

Comment 14. The scope of analysis is too narrow

The EA constrains the scope of the analysis to the funding of the project instead of the physical effects of the entire project.

Response 14.

The comment is incorrect. EA Chapter 2 describes the entirety of the proposed project—including demolition, rehabilitation, construction, and operation. Chapters 3 and 4 include environmental analysis of the entirety of the proposed project.

Comment 15. The City approvals are not valid.

The City approved the "Certificate of Appropriateness" with no NEPA or NHPA review, instead referring to a May 16, 2012 action of City's Planning Commission that in turn referred to a May 8, 2012 "Addendum" to the 2007 EIR on the previous proposal noted above. Neither the EIR nor the Addendum to it can be used for any purpose in this analysis, because neither have been reviewed under NEPA and do not even comply with CEQA. The same is true of the "Conditional Use Permit" approved by the Planning Commission on July 31, 2012.

Each of these documents is a nullity, because they received no environmental review under NEPA and they fail to comply with CEQA. This commenter's Public Comment on each of those approvals before the Planning Commission, the HPC, and the Board of Supervisors are incorporated hereto by reference.

Response 15.

As a responsible entity for HUD for CDBG, HOME and other programs, MOH's and the City's actions are governed by 24 CFR Part 58. 24 CFR §58.22 sets forth the limitations on activities pending completion of the environmental review. Recipients and any other entity involved in the development process are prohibited from committing funds until such time as HUD has approved the Request for Release of Funds from the responsible entity.

Part 58 places no prohibition on approval processes, planning activities or identification of mitigation measures which become part of the project description.

Neither NEPA nor the National Historic Preservation Act (NHPA) prohibits agency officials from conducting or authorizing nondestructive project planning activities before completing compliance with Section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties.

A certificate of appropriateness is not a major federal action significantly affecting the human environment. It is an entitlement issued by the San Francisco Historic Preservation Commission that would allow a property owner to apply for a permit from the San Francisco Department of Building Inspection for improvements approved by the Historic Preservation Commission.

Both NHPA and NEPA encourage coordinated review. Obtaining a Certificate of Appropriateness is part of the Section 106 review which is required by the Mayor's Office's Programmatic Agreement with SHPO prior to completing NEPA review:

36 CFR§ 800.8 Coordination with the National Environmental Policy Act.

(a) General principles. (1) Early coordination. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

Comment 16. HUD cannot approve the project.

The EA's admission of significant impacts precludes approval of grants by HUD. The EA, p. 3-6 admits that the Project would not comply with the standards of the Secretary of the Interior as required, "because of the permanent and irreversible effects to historic fabric and existing spatial and visual characteristics of the former campus," and would therefore "have an adverse effect on National Register-listed properties," noting that "Upon completion of the project, the former San Francisco State Teachers' College campus at 55 Laguna Street would no longer remain eligible for listing in the National Register." These admissions preclude approval by HUD. 24 CFR 50.33(c). They also violate NEPA and CEQA.

Response 16.

The comment is a conclusory statement of law and not a substantive comment on the adequacy or accuracy of the EA. HUD's grant requirements are beyond the scope of this EA, as is CEQA. Regarding NEPA, as stated above, the MOA—which has been signed by SHPO, the City, and the project sponsors—would resolve these adverse effects.

Comment 17. Historic mosaics may be destroyed.

A historic mosaic by Maxine Albro may be present above the entrance to Woods Hall, and that the project sponsor should be required to conduct infrared photographic testing to determine whether the mosaic still exists.

Response 17.

The presence of both visible and potentially hidden mosaics is addressed in signed Memorandum of Agreement (MOA) between the project sponsors, the City and County of San Francisco (City), and the State Historic Preservation Office. This MOA is included in **Appendix A** of the EA. MOA Stipulation 1(C) is repeated in its entirety below. **EA Mitigation Measure 1.2.1**, on pages 1-1 and 1-2, requires that the project sponsor implement the stipulations of the MOA between the City and State Historic Preservation Officer.

Prior to any renovation activities, the Project Sponsors shall retain a preservation architect to design a plan to address protection of significant interior finishes, including murals, during construction. A conditions assessment and protection plan shall be prepared by a qualified architectural finishes conservator and submitted with the project proposal to ensure the safety of the contributing elements of the historic resources during the construction phase. Prior to any renovation activities, the Preservation Architect shall prepare a plan to identify, retain, and preserve all WPA-era murals and/or mosaics at the project site, including Reuben Kadish's mural: "A Dissertation on Alchemy" located in Woods Hall Annex, the "Angel" mural in Richardson Hall (by artist Bebe Daum), and others which may potentially exist beneath paint and/or plaster, such as a possible interior mural by John Emmett Gerrity in the lobby of Woods Hall or an exterior mosaic by Maxine Albro (near the northwest entrance to Woods Hall).

Accordingly, a plan for preservation of the Albro mosaic, should it be extant, and other art works would be required under the MOA.

D. COMMENTS INCORPORATED BY REFERENCE AND DIRECTED TO THE CEQA EIR

Incorporated Comments on the EIR

It is not the purpose of the Environmental Review Record as certified by the Responsible Entity for NEPA to address the adequacy of either the Draft or Final EIR prepared under CEQA unless the EIR has been incorporated by reference. The CEQA documents prepared for the Mixed Use Development at 55 Laguna Street were not incorporated by reference. However, as CAR has incorporated by reference comments made by CAR on the EIR, attached are the Comments and Response Section of the FEIR prepared by the San Francisco Planning Department to this Response to Comments Document (**Appendix 3**) as those responses directly address most of the comments incorporated by reference by CAR.

CAR's comment letter, in **Appendix 2**, is coded with alphanumeric symbols on both the left and right sides.

The numbers on the left side of the page indicate the location of response provided by the San Francisco Planning Department in its 2007 Response to Comments document and incorporated into the 2008 Final EIR. The numbers on the right side of the page indicate the general category of the comment, as follows this paragraph. Several of these topic categories are similar to those covered under NEPA in the EA.

1. Violation of CEQA
2. Project Description and Existing conditions and trends
3. Violation of Government Code and other provisions of law
4. Public Review
5. Historic Preservation
6. Comments addressing LGBT Components
7. Comments Addressing Land use, Plans, and Policies
8. Non-Substantive
9. Parking, Traffic and Transportation
10. Open Space and Recreation
11. Noise
12. Environmental Design
13. General Comment

14. Community Facilities and Services

15. Air Quality

16. Alternatives

Incorporated Comments on the Certificate of Appropriateness

CAR also submitted comments to the San Francisco Board of Supervisors on July 30, 2012, during its review of the Appeal of the San Francisco Historic Preservation Commission's Decision Granting Certificate of Appropriateness for the project. These comments are included in **Appendix 2**. The Board of Supervisors affirmed approval of the Certificates of Appropriateness on July 31, 2012.

At that time, the Mayor's Office of Housing prepared a response to the comments included in the letter. These comments are repeated in their entirety here:

As a responsible entity for HUD for CDBG, HOME and other programs, MOH's and the City's actions are governed by 24 CFR Part 58. 24 CFR §58.22 sets forth the limitations on activities pending completion of the environmental review. Recipients and any other entity involved in the development process are prohibited from committing funds until such time as HUD has approved the Request for Release of Funds from the responsible entity.

Part 58 places no prohibition on approval processes, planning activities or identification of mitigation measures which become part of the project description.

Neither NEPA nor the National Historic Preservation Act (NHPA) prohibits agency officials from conducting or authorizing nondestructive project planning activities before completing compliance with §106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties.

A certificate of appropriateness (C of A) is not a major federal action significantly affecting the human environment. It is an entitlement issued by the San Francisco Historic Preservation Commission that would allow a property owner to apply for a permit from the San Francisco Department of Building Inspection for improvements approved by the Historic Preservation Commission.

Both NHPA and NEPA encourage coordinated review. Obtaining a C of A is part of the 106 review, which is required by our Programmatic Agreement (PA) with the State Historic Preservation Office (SHPO) prior to completing NEPA review, as follows:

36 CFR§ 800.8 Coordination With the National Environmental Policy Act.

(a) General principles. (1) Early coordination. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

Incorporated Comments on the Conditional Use Permit

CAR submitted a comment letter to the San Francisco Planning Commission on August 16, 2012, during its review of the proposed Conditional Use Permit for the project. The Planning Commission approved the Conditional Use Permit on that date. This letter is included in **Appendix 2**.

The Mayor's Office response is as follows:

As a responsible entity for HUD for CDBG, HOME and other programs, MOH's and the City's actions are governed by 24 CFR Part 58. 24 CFR §58.22 sets forth the limitations on activities pending completion of the environmental review. Recipients and any other entity involved in the development process are prohibited from committing funds until such time as HUD has approved the Request for Release of Funds from the responsible entity.

Part 58 places no prohibition on approval processes, planning activities or identification of mitigation measures which become part of the project description.

NEPA does not prohibit agency officials from conducting or authorizing nondestructive project planning activities before completing compliance with its requirements provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties.

The San Francisco Planning Department prepared an Executive Summary of the Conditional Use Permit. It is available at the San Francisco Planning Department, 1650 Mission Street, in Project File 2004.0773E and online, here at the following URL: <http://commissions.sfplanning.org/cpcpackets/2012.0033ACEFU.pdf>.

E. GENERAL RESPONSE TO CEQA DOCUMENTS

CAR comments allege various violations of the California Environmental Quality Act, California Public Resources Code §§21000 *et seq.* (CEQA).

The San Francisco Board of Supervisors' approval of the certification of the EIR was appealed to the California Superior Court under petition for a Writ of Mandate alleging violations of CEQA. The petition was denied by the Superior Court. That judgment was appealed to the California Court of Appeals. The Court of Appeal affirmed the Superior Court judgment denying the petition and held that the FEIR was adequate and the City's findings were supported by substantial evidence

The Court of Appeals Decision addresses many issues raised in CAR's comments to the Board of Supervisors regarding the EIR and is incorporated by reference to these responses, included in **Appendix 3**.

F. CUMULATIVE ANALYSIS

The following section has been added to the EA as a new Chapter 5.

5.1 Introduction

An analysis of cumulative effects in the Draft Environmental Assessment (Draft EA) were not explicitly discussed. This section clarifies the cumulative analysis. No new analysis or technical reports were prepared in preparation of this summary, and the conclusions are unchanged: the project would not result in cumulative adverse effects.

The cumulative effects analysis referenced the cumulative effects analysis included in the 2008 Environmental Impact Report (EIR) and associated Initial Study for the previously proposed project at the site. The analysis considered the existing built-out nature of the project site and the site's location within an urban area with existing public service and utility infrastructure and without protected natural resources. Cumulative effects were determined not to be adverse.

Cumulative effects are defined as the effects "...on the environment which result from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time" (40 CFR § 1508.7). The purpose of cumulative effects analysis, as stated by the Council on Environmental Quality (CEQ), "is to ensure that federal decisions consider the full range of consequences" (1997).

The cumulative analysis begins with defining the geographic boundary and time frame of the analysis. Secondly, the cumulative environment is described in the context of past, present and future actions that may affect the status of the resources, ecosystems, and human communities within the defined time frame and geographic boundary.

The analyses below conclude that the Proposed Action would not combine with past, present, and reasonably foreseeable future development to result in adverse cumulative effects.

5.1.1 Time Frame

The time frame of the cumulative effects analysis extends to 2025. This year was selected as the future analysis year because the San Francisco County Transportation Authority travel demand model used in background traffic analyses that were studied for the Environmental Assessment—including the traffic analysis presented in the 2008 EIR—forecasted for cumulative development and growth through 2025. Moreover, by 2025, the project would have been built out for a period of almost 10 years, and it would be expected to be tenanted and fully operational.

5.1.2 Geographic Boundary

The geographic area for the cumulative analysis varies depending upon the environmental issue and the geographic extent of the potential effect. For example, the geographic area associated with construction noise effects would be limited to areas close to the construction activity and

directly affected by construction noise, whereas the geographic area that could be affected by energy demand would be the energy generation, transmission, and distribution grid of the entire Northern California energy market.

In most cases, the geographic extent of the project's contribution to cumulative effects would be limited to a small area around the 55 Laguna project site, including the adjacent streets and properties on blocks facing the site. For each section below, the geographic extent of the cumulative analysis is briefly described.

5.1.3 Cumulative Projects

The scope of past, present and future projects included in the cumulative analysis was determined by consultation of the San Francisco Planning Department's Pipeline Report (most recently updated in September 2012), as well as Association of Bay Area Government growth projections. The Pipeline report includes development projects that would add residential or commercial space, applications for which have been formally submitted to the Planning Department or the Department of Building Inspection. The report indicates that the Market-Octavia area has 2,530 net residential units in the pipeline, as well as a net loss of 418,440 square feet of commercial space.¹ Other neighborhoods nearby are also projected to increase total residential unit count, although to a lesser extent than the Market-Octavia area.

5.2 Cumulative Analysis

The following cumulative analysis determines whether the Proposed Action—when considered with past, present and future projects—could result in cumulatively significant and adverse effects. As described in the Draft EA, the Preservation Alternative would result in reduced intensity of development as compared to the Proposed Action. Therefore, contribution of the Preservation Alternative to cumulative effects would be less than under the Proposed Action, and the Preservation Alternative is only discussed in the Historic Properties cumulative analysis.

The analysis considers the contribution of the Proposed Action to cumulative effects, the feasible mitigation measures that would be implemented to reduce or avoid the contribution to a less than considerable level, and the overall character of the cumulative effect—adverse, beneficial, or otherwise. Effects are presented in the order that they appear in the Draft EA.

5.2.1 Statutory Checklist

5.2.1.1 Historic Preservation

The geographic boundary for cultural and historic resources is based on the Area of Potential Effects (APE), as delineated in preparation of the Environmental Assessment. As stated in the Draft EA, the APE means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

¹ San Francisco Planning Department, *San Francisco Pipeline Report: Quarter 2, 2012*, September 2012.

Proposed Action

Excavation, demolition and construction activities have the potential to damage or destroy unidentified archaeological resources. As described in the Draft EA, the Northwest Information Center (NWIC) did not identify any recorded archaeological resources in or near the project site. NWIC recommended halting construction in the event that cultural materials are discovered until the find can be evaluated by a qualified archaeologist, and that the Archaeological Research Design and Treatment Plan (ARDTP) prepared for a previous development proposal at this project site, be implemented. Adhering to these recommendations as required under the previous EIR, cumulative effects to archaeological resources would not be adverse.

Regarding historic architectural resources, as described in the Draft EA, the Proposed Action would introduce a significant new feature to the neighborhood, but it would not result in an adverse effect to the National Register-eligible Hayes Valley Residential Historic District, or any other individual National Register-listed or eligible properties within the secondary APE. The construction of the new residential buildings at the center of the former UC Berkeley Laguna Extension campus would be generally compatible with most of the surrounding properties in terms of scale, proportion, and massing. There are no proposed cumulative projects that would adversely affect any individual or contributory properties in the secondary APE.

Moreover, the 2007 Programmatic Agreement (PA) between the City and County of San Francisco, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation regarding HUD Part 58 Programs applies to past, present and future projects receiving funding from HUD within San Francisco. The City and County of San Francisco would continue to comply with the stipulations of the 2007 PA, which would reduce cumulative effects to historic properties.

Although the Proposed Action would adversely affect the historic properties at the project level, requiring the mitigation measure, it would not result in cumulative effects to the surrounding neighborhood. Implementation of **Mitigation Measure 1.2.1, Memorandum of Agreement**, would ensure that the Proposed Action would be consistent with the 2007 PA. Cumulative effects would not be adverse.

Preservation Alternative

As described in the Draft EA, this alternative would generally avoid the adverse effects to historic properties because it would retain Middle Hall and the Richardson Hall Administration Wing. Effects on historic architectural properties would be less than under the Proposed Action, and the cumulative effect would not be adverse.

5.2.1.2 Air Quality

Due to the diffuse nature of pollutant emissions, air quality effects are analyzed at a regional level. The maximum daily operational thresholds analyzed in the Draft EA represent the levels at which a project's individual emissions would result in a cumulatively considerable contribution to the regional air basin's air quality conditions. As described in the Draft EA, all project-related

operational emissions of non-attainment pollutants and carbon monoxide would be substantially less than their respective *de minimis* threshold (16 percent or lower than these thresholds) and consequently would conform to the California State Implementation Plan implemented pursuant to the federal Clean Air Act. There would be no adverse cumulative effect on air quality.

Regarding construction, the City's Dust Control Ordinance and associated best management practices (BMPs) would be applicable to the Proposed Action, as well as to cumulative projects within the project site vicinity. These types of BMPs have been required for many years. Thus, many past projects as well as all present and reasonably foreseeable future projects have or would be required to implement BMPs for fugitive dust emissions from construction. Compliance with established dust control measures would ensure that cumulative effects from construction dust emissions would not be adverse.

5.2.1.3 Environmental Justice

The geographic extent of cumulative environmental justice effects is the surrounding neighborhood, in which communities of similar demographic profiles may congregate. As described in the Draft EA, the Proposed Action would improve the quality of life of the low-income and minority populations and would have beneficial long-term economical effects on these populations. Although the Proposed Action would result in minor construction-related adverse effects on the residents in nearby Census Tracts, given the mixed racial and socioeconomic profile of the neighborhood, the Proposed Action and other past, present, and reasonably foreseeable future development would not disproportionately affect minority residents living there. Cumulative environmental justice effects would not be adverse.

5.2.1.4 Other HUD Statutory Checklist Requirements

The project site is located in a built-out urban area more than one mile from the San Francisco Bay and 80 feet above sea level. The site is not within or adjacent to the 100- or 500-year floodplain, wetlands, or coastal zone. It is not served by a sole source aquifer and is not located adjacent or within a wild or scenic river or farmland. No federally listed endangered species or critical habitats are document within the project site or vicinity. Therefore, the Proposed Action would not combine with cumulative development to result in adverse cumulative effects to these resources.

5.2.2 HUD Environmental Standards

5.2.2.1 Noise

The geographic extent of cumulative noise analysis includes the nearby streets and uses that could generate noise that would affect, or be affected by, the project site. U.S. Department of Housing and Urban Development (HUD) regulations require an assessment of the future noise environment at least 10 years beyond the date of the project. To provide a conservative projection, the noise assessment presented in the Draft EA assumed a 1 percent annual growth in traffic volumes, plus project increment trip distribution, on streets surrounding the project site, to 2026. Therefore, the noise analysis met the 10-year requirement and considered

cumulative effects of nearby development. The projection of the future noise level in 2026 would be a 2 dBA increase over the existing monitored value of 66 dBA, or 68 dBA. As described in **Mitigation Measure 1.2.4, Noise Reduction**, Title 24 of the California Code of Regulations establishes uniform noise insulation standards for residential projects. Residences of the Proposed Action—as well as residences of cumulative present and future development—must be designed to limit intruding noise to an interior CNEL (or DNL) of at least 45 dB. Additionally, these regulations have been in place for many years and have applied to past projects. Therefore, the cumulative noise effects would not be adverse.

5.2.2.2 *Toxics / Hazardous / Radioactive Materials, Contamination, Chemicals or Gases*

The geographic extent of cumulative hazardous materials effects includes adjacent or nearby project sites or operations where such materials may be handled. The project sponsor would follow the recommendations of the 2004 Phase I and Limited Phase II environmental site assessment prepared for the project site. A soil management plan (SMP) and a Health and Safety Plan (HSP) would be required prior to construction for use during site excavation to reduce worker and public exposure to hazardous chemicals. These requirements have been incorporated into **Mitigation Measure 1.2.3, Soil Management Plan and Health and Safety Plan**.

Moreover, pursuant to **Mitigation Measure 1.2.5, Asbestos & Lead-Based Paint Abatement**, the project sponsor would conduct an asbestos survey and would comply with Section 19827.5 of the California Health and Safety Code, adopted January 1, 1991, which requires that local agencies not issue demolition or alteration permits until an applicant has demonstrated compliance with notification requirements under applicable federal regulations regarding hazardous air pollutants, including asbestos. Also, San Francisco Building Code Section 3425, Work Practices for Lead-Based Paint on Pre-1979 Buildings and Steel Structures, would apply to project construction activities. The project sponsor would be required to conduct a lead-based paint survey and follow applicable safety regulations during renovation or demolition.

Past, present, and reasonably foreseeable future development would be subject to a range of federal, state, and local statutes and regulations, designed to protect health and safety, and enforced by state and local agencies, potential cumulative impacts resulting from the use, storage, transport, and disposal of hazardous materials would be prevented to the maximum extent practicable and would not be significant. At the state level, the Department of Toxic Substances Control administers laws and regulations related to hazardous waste and hazardous substances pursuant to Division 20, Chapters 6.5 and 6.8 of the California Health and Safety Code and Title 22 of the California Code of Regulations, which are the state equivalents of Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation, and Liability Act, respectively. The Regional Water Quality Control Board (RWQCB) enforces laws and regulations governing releases of hazardous substances and petroleum pursuant to Division 20, Chapters 6.7, 6.75, and 6.8 of the California Health and

Safety Code, and the Porter Cologne Water Quality Control Act (Division 7, Section 13100 et seq. of the California Water Code) and Title 23 of the California Code of Regulations. The RWQCB focuses on petroleum releases and those hazardous substances that may impact groundwater or surface water. At the local level, the San Francisco Department of Public Health (SFDPH) administers the California Accidental Release Prevention (“CalARP”) Program under Chapters 6.11 and 6.95 of the Health and Safety Code and San Francisco Health Code Article 21A, which is intended to prevent the catastrophic release of hazardous substances that could cause immediate harm to the public and environment, and which applies to any business in possession of more than a threshold quantity of regulated hazardous materials

All present and reasonably foreseeable future projects would be required to comply with these regulations as applicable. Additionally, these regulations have been in place for many years and have applied to past projects. The cumulative effect would not be adverse.

5.2.2.3 Siting of HUD-Assisted Projects near Hazardous Operations

HUD regulations require that federally assisted projects be located at an Acceptable Separation Distance (ASD) from hazardous operations. As discussed in the Draft EA, the Proposed Action would occur at a site that is outside the ASD for nearby tanks. Cumulative development projects assisted by HUD would also be required to be located outside applicable ASDs. Therefore, cumulative effects of siting of HUD-assisted projects near hazardous operations would not be adverse.

5.2.2.4 Airport & Accident Potential Zones

The project site is 10 miles north and west of the San Francisco and Oakland International Airports, respectively, and well outside runway protection zones and other clear zones. There would be no adverse cumulative effects related to these zones.

5.2.3 HUD Environmental Checklist

5.2.3.1 Conformance with Comprehensive Plans and Zoning

The cumulative effects analysis includes the surrounding neighborhood where land use and policy controls would be affected by the project or cumulative development. As indicated in the Draft EA, due to the size, location, and nature of the Proposed Action, there would be no anticipated conflicts with regional plans. Regarding local plans and policies, the San Francisco Planning Commission determined that the Proposed Action is consistent with the Objectives and Policies of the San Francisco General Plan, including the Market & Octavia Area Plan. Regarding local zoning approvals, the San Francisco Planning Commission approved a Conditional Use authorization for the current Proposed Action on August 16, 2012. Therefore the Proposed Action, when combined with cumulative development, would not result in cumulative effects related to non-conformance with comprehensive plans and zoning.

5.2.3.2 Compatibility and Urban Impact

The geographic extent of cumulative compatibility effects is the surrounding neighborhood that would be affected by land use changes. The conversion of the project site from institutional uses to multi-family residential—including housing for seniors, convenience retail, and community facility uses—would be compatible with the multi- and single-family residential, convenience retail, community, institutional and mixed uses in the project area. It would also be consistent with the cumulative trend toward increased residential development indicated in the San Francisco Planning Department’s Pipeline report, described in Section 5.1.3. There would be no adverse cumulative effects.

5.2.3.3 Slope, Erosion, Soil Suitability, and Site Safety

The geographic extent of cumulative geologic and seismic effects includes adjacent and nearby parcels that could be affected by a ground or structural failure at the project site or adversely affect the project site. As indicated in the Draft EA, the Proposed Action would be required to implement **Mitigation Measure 1.2.6, Geotechnical Investigation**, which is repeated here:

A site-specific, design-level geotechnical investigation for the project shall be conducted. The investigation and final recommendations shall be reviewed and approval by the Department of Building Inspection (DBI), and monitored by a DBI Special Inspector (if required) in conformance with all applicable city ordinances and policies of the California Building Code and the *San Francisco Building Code*. The geotechnical report shall be prepared by a registered geotechnical engineer and approved by DBI, and all recommendations shall be included in the final design of the project.

These requirements would ensure that the Proposed Action would not result in adverse geologic- or seismic-related effects. Present and reasonably foreseeable future developments would be required to undertake appropriate design and geotechnical investigations to the extent required by DBI in the building permit application process. Additionally, these requirements have been in place for many years and have applied to past projects. Cumulative effects would not be adverse.

5.2.3.4 Energy Consumption

The geographic boundary of the cumulative energy analysis is the entire PG&E service area. The project site is served by existing utilities that are already installed, and it would not require a major expansion of power facilities. As described in the Draft EA, the multi-family residential buildings would consume less energy than the same number of units constructed in detached housing. Moreover, the project sponsors are seeking Leadership in Energy and Environmental Design-Neighborhood Design (LEED-ND) certification, which would reduce energy demand compared to traditional developments through building materials and fixtures selection, environmental systems design, and construction efficiency measures. Therefore, the Proposed Action—in combination with past, present, and reasonably foreseeable future development—would not result in cumulative adverse effects to energy.

5.2.3.5 Noise—Contribution to Community Noise Levels

As discussed above in Section 5.2.2.1, the geographic extent of cumulative noise analysis includes the nearby streets and uses that could generate noise that would affect, or be affected by, the project site. As discussed above, the Proposed Action and cumulative development would not result in adverse cumulative noise effects. HVAC units and other building equipment would be subject to San Francisco Noise Ordinance, Article 29, Section 2909, which limits noise from building operations. Present and reasonably foreseeable future development would also be subject to the Noise Ordinance. Additionally, these regulations have been in place for many years and have applied to past projects. Cumulative operational noise effects would not be adverse.

Regarding construction noise, pursuant to **Mitigation Measure 1.2.4, Noise Reduction**, construction activities of the Proposed Action would comply with San Francisco Noise Ordinance (Article 29 of the Police Code). Although the Proposed Action's construction schedule may overlap the construction schedule of cumulative projects in the vicinity, the cumulative projects would also be required to comply with the San Francisco Noise Ordinance. Cumulative construction noise effects would not be adverse.

5.2.3.6 Air Quality—Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels

Due to the diffuse nature of pollutant emissions, air quality effects are analyzed at a regional level. The maximum daily operational thresholds analyzed in the Draft EA represent the levels at which a project's individual emissions would result in a cumulatively considerable contribution to the regional air basin's air quality conditions. Because project-related emissions would be below these thresholds, the project would not result in an adverse cumulative effect on air quality.

The cumulative context of greenhouse gas emissions is the global scale. As indicated in the Draft EA Table 4-2, the Proposed Action's operational GHG emissions would be 2,107 metric tons of carbon dioxide equivalent (MT CO₂e) per year, and the Clean Air Act project Reporting Limit is 25,000 MT CO₂e. The project is located in a built out urban area with access to mass transit and other alternative modes of transportation, which would reduce GHG mobile-source emissions. As indicated above, the project would also consume less power than comparable detached residential development, thereby reducing point-source emissions from power plants. Therefore, the Proposed Action, in combination with cumulative development, would not result in cumulative adverse effects related to global climate change effects.

5.2.3.7 Environmental Design—Visual Quality, Coherence, Diversity, Compatible Use and Scale

The geographic extent of cumulative design analysis is the surrounding neighborhood that can be visually experienced in the same duration as the project site. As discussed in the Draft EA, the proposed new buildings would be designed to complement the architectural character of the remaining landmark buildings and the surrounding neighborhood. The taller buildings would be

constructed on the lower half of the project site, with the hill behind these buildings providing a visual backdrop when looking in a westerly direction and reducing their effective height in views from the north and west. The construction of Waller Park through the site would provide a continuation and visual connection to the street to the west. The overall variation of building heights is intended to relate to the size and scale of buildings across Buchanan and Laguna Streets while accounting for the site's topography.

Cumulative development would focus along Market Street, south the project site, and in the Market-Octavia Plan area, east of the project site. This development would increase overall height and bulk in the area, but the buildings would be designed to complement the built form of the neighborhood, pursuant to the Market-Octavia Plan. Moreover, the concentration of this development south and east of the project site would continue to reduce their effective height in views from the north and west. Therefore, cumulative development would not combine with the Proposed Action to result in adverse cumulative visual effects.

5.2.3.8 Socioeconomic

The geographic extent of cumulative socioeconomic effects is the City as a whole. As indicated in the Draft EA, the Proposed Action would not result in adverse effects related to demographic character changes, and it would help to satisfy a portion of the existing high demand for housing. Population effects would not be considered substantial in the context of the surrounding urban neighborhood or the city as a whole, and the project's density would fall within the range of densities of the surrounding blocks. The Proposed Action would not displace existing homes, businesses, or farms, and it would result in a slight increase in the employment and income patterns of the project site vicinity. Therefore, the Proposed Action would result in potentially beneficial cumulative socioeconomic effects.

5.2.3.9 Community Facilities and Social Services

The geographic extent of cumulative effects on community facilities and social services is the service area of these providers and amenities. The Proposed Action would not result in a substantial new student population, and additional students would not exceed the capacity of schools in the area. The project would be served by existing commercial and health care facilities, and the project site populations could be positively affected by proximity to these services. Therefore, the Proposed Action would result in potentially beneficial cumulative effects.

5.2.3.10 Solid Waste, Water, Wastewater, and Stormwater

The geographic extents of cumulative utilities analyses are the service areas of each provider. For example, the solid waste cumulative geographic context includes all areas served by the applicable landfill, and the geographic context of cumulative water effects includes the service area of the San Francisco Public Utilities Commission.

The Proposed Action would not substantially increase the demand for solid waste removal service beyond what is already provided for in the City as a whole, and it would not hinder the

City of San Francisco from meeting is per-resident target disposal rate of 6.6 pounds per day (PPD). Regarding water and, the Proposed Action would consume about 73,102 gallons per day, which would represent a less-than-considerable contribution [0.09 percent (0.09 of 1.0 percent)] to system-wide cumulative water demand. An equal amount of wastewater generated from the Proposed Action would represent a less-than-considerable contribution [0.006 percent (0.006 of 1 percent)] to system-wide cumulative average dry weather flow. Finally, regarding stormwater, the project site is already built out with impervious surfaces. Therefore, the Proposed Action would not increase stormwater flows.

Comprehensive regulatory requirements that have been in place for many years have been designed to ensure that adverse individual and cumulative effects from development activities would not occur on public utilities. Past projects have been required to comply with these regulations. For example, all proposed development in the City is required to conform to the Construction General Permit, Wastewater Discharge Permit Orders, Municipal NPDES permits, and potentially General Permit Orders for certain types of construction dewatering. To obtain coverage under these permits, cumulative development projects would be required to implement construction BMPs. Present and future projects must also meet these requirements.

Therefore, the Proposed Action, in combination with cumulative development, would not result in cumulative adverse effects on solid waste, water, wastewater, and stormwater utilities.

5.2.3.11 Public Safety (Police, Fire, and EMS)

The geographic extent of cumulative effects to fire and police protection is the service area of these providers. The project site is within a built out urban environment where police, fire, and emergency medical services (EMS) services are already provided. The Proposed Action—combined with past, present, and reasonably foreseeable future development—would be served by this existing infrastructure. Although these developments would result in an overall increase in demand, they would not be substantial in light of the existing demand for these services in the Market-Octavia and Hayes Valley area. Cumulative effects would not be adverse.

5.2.3.12 Open Space and Recreation

The cumulative context for open space and recreation analysis includes the neighborhood, citywide, and regional cultural spaces and parks. The Proposed Action would result in provision of a new public open space for the project site vicinity: Waller Park. It would also be served by existing public open spaces, recreational areas, and cultural facilities in the City of San Francisco. The Proposed Action's 440 units, in combination with cumulative development, would increase demand for these facilities, but the demand would be dispersed among the extensive catalog of these facilities in the Bay Area region. Therefore, cumulative effects would not be adverse.

5.2.3.13 Transportation

The geographic extent of cumulative traffic analysis includes nearby intersections and transportation infrastructure that would be traversed by project-related trips. The Proposed Action's cumulative effects on transportation are explicitly discussed in the Draft EA:

Regarding cumulative traffic impacts, the 2008 55 Laguna Mixed Use Project EIR states that while operations at three intersections (Market/Octavia Street, Market/Church/14th Streets, and Market/Laguna/Hermann/Guerrero Streets) would worsen to an unacceptable LOS condition under 2025 Cumulative conditions, project trips would not materially affect overall LOS performance to those intersections, would not represent a considerable contribution to 2025 Cumulative conditions, and would not have a significant cumulative traffic impact. As described above, the current project would generate fewer vehicle trips than the project analyzed in the 2008 EIR.

Although the Proposed Action would have different site access points than the 2008 project, the transportation analysis found that the Proposed Action's contribution to cumulative conditions at area intersections would be similar to the previous project and would not be considerable. Cumulative effects to parking, transit, and pedestrian and bicycle circulation were also found to not be adverse because the project would be served by existing infrastructure in a built-out urban area.

5.2.3.14 Natural Features

As discussed above, the Proposed Action would not combine with past, present, and reasonably foreseeable future project to result in an adverse effect on system-wide water demand. The project site is within a built out urban area and does not contain unique natural features or agricultural lands. Therefore, the Proposed Action would not combine with cumulative development to result in adverse effects on these resources. Finally, regarding vegetation and wildlife, the project would comply with **Mitigation Measure 1.2.2, Biological Resources**, which would ensure the protection of breeding birds. Given the project site's location in an urban area and the lack of endangered species at the project site—and the location of past, present, and reasonably foreseeable future development in the same built-out urban area—cumulative effects on vegetation and wildlife would not be adverse. Additionally, past, present and reasonably foreseeable future projects have been and would continue to be subject to landscaping and tree replacement and planting requirements thereby further reducing any potential for adverse cumulative effects.

5.2.4 Other Factors

As discussed above, the project site is not located in a 100-year or 500-year floodplain, and it is located well outside of airport and runway clear zones and safety zones. It is also outside all Coastal Barrier Resources System areas. Therefore, the Proposed Action would not combine with cumulative development to result in adverse effects related to these factors.