

# CITY OF PACIFIC GROVE

## **DRAFT** ARCHAEOLOGICAL RESOURCES REVIEW AND TRIBAL MONITORING PROTOCOL

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**AUGUST 2023**

The First Peoples of Pacific Grove have lived here for thousands of years, and there are many sacred sites within the city. This land and their relationship to it continues to be of great importance to the First Peoples of Pacific Grove. Additional history of the First Peoples of Pacific Grove can be found at [www.esselentribe.org](http://www.esselentribe.org), [www.ohlonecostanoanesselenation.org](http://www.ohlonecostanoanesselenation.org), and [www.costanoanrumsen.org](http://www.costanoanrumsen.org)

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## **DEFINITIONS**

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**Archaeological Resources** – Any artifact, object, site, or other remains of material culture that is at least 50 years old.

**Cultural Resources** – Archaeological, built environment, or Tribal Cultural Resources, which may include artifacts, objects, sites, features, places, landscapes, buildings, foundations, or other aspects of the environment altered by human interaction.

**High Sensitivity** – An area located within 500 feet of a previously recorded archaeological resource of Native American origin or an area developed early in the City’s history where postcontact refuse deposits or other features are most likely to occur.

**Locally Affiliated Tribe** – Federally and non-federally recognized California Tribes listed by the Native American Heritage Commission that identify as native to or affiliated with the Monterey Peninsula.

**Low Sensitivity** – An area with low likelihood for containing archaeological resources of Native American origin and/or dating to the postcontact period based on historical, environmental, or topographic factors

**Ministerial Project** – Ministerial projects require a public official to determine that the project conforms with applicable zoning and building code requirements and that applicable fees have been paid. These projects are not subject to full CEQA review. For example, building permits are ministerial as they require only conformance with the City’s building code.

**Moderate Sensitivity** – An area located within 1,000 Feet of previously recorded archaeological resources of Native American origin and/or dating to the postcontact period.

**Operation and Maintenance Activities** – All the processes and activities for general upkeep of City facilities and infrastructure, such as daily operations and normal repairs, and landscaping required for the facilities and infrastructure to continue to function as intended.

**Postcontact** – related to or associated with the Spanish, Mexican, or American periods which occurred after initial European contact with Native North America.

**Precontact** – related to or associated with Native North America prior to initial European contact.

**Project** – as used in this document, refers to operations and maintenance (O&M) activities conducted by the City, Public Works projects, discretionary projects, and ministerial actions

**Qualified Archaeologist** – An archaeologist that meets the Secretary of the Interior’s Professional Qualification Standards for archaeology and has demonstrated recent Monterey County experience.

**Sacred Places** – a geographic location consisting of a site, area, or landscape that is of cultural, religious, or spiritual significance to a Native American Tribe.

**Tribal Cultural Resources** – Any site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American Tribe and is listed in or eligible for listing in the CRHR or a local register or is determined by the City supported by substantial evidence to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1.

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**Tribal Monitor Rotation Schedule** – A schedule developed for the purpose of organizing daily Tribal monitoring activities to prevent burden on a Project applicant when multiple Tribes express interest in monitoring such that only one Native American monitor is present per activity/grading location on a given day.

**Unknown Sensitivity** – An area that lacks available information on the presence or absence of archaeological resources.

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# **1 INTRODUCTION**

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The City of Pacific Grove (the City) recognizes the importance and finite nature of cultural resources and seeks to protect and preserve these resources from damage or destruction. To that end, the City has developed this comprehensive Archaeological Resource Review and Tribal Monitoring Protocol to synthesize existing regulations and policies and establish a protocol for protecting those resources. This protocol is intended to bolster current policy grey areas and gaps related to all ground disturbing activities resulting from private and public projects within City boundaries, including operations and maintenance activities conducted by the City, public works projects, discretionary projects, and ministerial projects. The objective of this protocol is to serve as a comprehensive and proactive outline of requirements and responsibilities related to the protection and preservation of archaeological resources. This protocol is intended as a tool for City staff and project applicants to provide guidance on requirements for the treatment of archaeological resources. For a summary of the requirements included in this protocol, please see the handout entitled Archaeological Resources Review Protocol Summary.

This protocol contains guidelines for the identification, evaluation, and preservation of archaeological resources within the boundaries of the City of Pacific Grove. This protocol has been developed in consideration of all applicable regulations and City policies related to archaeological resources, including the California Environmental Quality Act (CEQA), California Coastal Act, California Health and Safety Code, California Assembly Bill 52 of 2014 (AB 52), California Senate Bill 18 of 2004 (SB 18), the City of Pacific Grove General Plan, Shoreline Management Plan, and Local Coastal Program, and the City of Pacific Grove Guidelines for Historic Assessments.

This protocol aims to:

- A. Safeguard the heritage of the City by preserving archaeological resources that reflect elements of the City's pre- and postcontact history and contemporary Tribal and community identities;
- B. Promote the preservation, conservation, and enhancement of archaeological resources;
- C. Discourage the demolition, destruction, alteration, misuse, or neglect of archaeological resources which represent an important link to Pacific Grove's past;

Under CEQA Guidelines Section 15378(b)(5), the adoption of this protocol is not considered a project because it addresses administrative governmental activities and will not cause a "direct physical change in the environment" or a "reasonably foreseeable indirect physical change in the environment." The protocol does not provide discretionary approval for any changes on the ground; rather, it only modifies the City's environmental review requirements for certain activities and projects involving ground disturbance. Any proposed new activities and projects will require independent review by the City, including appropriate CEQA review.

This protocol does not relieve the City of its obligations to consult with local Native Americans pursuant to AB 52 and SB 18. The City will continue to conduct consultation on a project-by-project basis when required.

## 1.1 Archaeological Sensitivity of the City of Pacific Grove

Development of this Protocol includes the development of archaeological sensitivity mapping, including identification of areas of high, moderate, low, and unknown sensitivity for pre- and postcontact archaeological resources (Appendix A). The City will regularly update this map as new information is received. The maps included in this protocol do not include specific location information to ensure specific archaeological site locations remain confidential. In addition to the sensitivity maps included in this document, the City maintains confidential versions depicting the boundaries of known archaeological resources for the purposes of City project planning and avoidance. Maps depicting the precise locations of archaeological sites are confidential and are exempt from public records act requests. Public access to information on the location of archaeological sites is restricted by laws including Section 6254.10 of the California State Government Code, Executive Order 13007, Section 304 of the National Historic Preservation Act, and Section 9(a) of the Archaeological Resources Protection Act.

Rincon Consultants, Inc. (Rincon) prepared the archaeological sensitivity mapping included in this protocol based the following information:

- A review of previous cultural resources documentation provided by the City,
- A records search of the California Historical Resources Information System (CHRIS) at the Northwest Information Center (NWIC) to identify all previously recorded archaeological resources within and immediately adjacent to the City.
- A review of historic topographic maps on file with the U.S. Geological Survey (USGS) dating to the period between 1913 and 2018 to identify the presence or absence of permanent fresh water sources conducive to human habitation, the presence or absence of steep slopes that would have discouraged human habitation, and the postcontact development history of the City.<sup>1</sup>
- Information provided by the Ohlone/Costanoan-Esselen Nation (OCEN) and the Esselen Tribe of Monterey County (the Esselen Tribe).

The sensitivity maps included herein specifically identify archaeological sensitivity; however, the City acknowledges that the entire peninsula is considered sacred by the OCEN, the Esselen Tribe, and other local tribes and that sacredness does not change as a result of disturbance.

Using the information gathered from the sources above, Rincon prepared pre- and postcontact archaeological sensitivity maps. The Precontact Archaeological Sensitivity Map was prepared primarily based on the location of previously recorded archaeological resources. “High Sensitivity” includes all areas within 1000 feet of previously recorded archaeological resources of Native American origin. “Moderate Sensitivity” includes all areas within 2000 feet of archaeological resources of Native American origin. All remaining areas within the City have been designated as “Unknown Sensitivity” due to a lack of available information on the presence or absence of archaeological resources.

The Postcontact Archaeological Sensitivity Map includes areas developed early in the City’s history, where postcontact refuse deposits or other features such as wells, privies, foundations, etc. are most likely to occur. This includes the location of the Chinese fishing village near Point Alones.

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<sup>1</sup> U.S. Geologic Survey. 2020. Topoview. Accessed online at: <https://ngmdb.usgs.gov/topoview/>.

## 2 HOW TO USE THIS PROTOCOL

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Archaeological resource research, analysis, and ultimately protection if required, should be started in the early stages of project site purchase and design. Property owners, private development applicants, planners, and others that may be involved in public or private development can refer to this protocol to anticipate review requirements, as well as potential City and tribal concerns, to avoid unnecessary delays during application review and construction. City staff could also refer to this protocol when determining the appropriate course of action for City projects and other activities such as capital improvement projects and operation and maintenance activities that may involve ground disturbance but does not constitute a project under CEQA. City staff could also refer to this protocol to confirm that private development applications are complete and include the necessary information to evaluate and mitigate potential impacts to archaeological resources.

### 2.1 Cultural Resources Considered in this Protocol

This protocol specifically addresses cultural resources of an archaeological nature, including pre- and postcontact resources. The term “cultural resources” is used throughout this document to refer broadly to archaeological resources as well as sacred places and Tribal Cultural Resources with archaeological components. Archaeological resources include any artifact, object, site, or other remains of material culture that is at least 50 years old. Archaeological resources of Native American origin may also be identified as sacred places and/or as Tribal Cultural Resources through the tribal consultation process related to the AB 52<sup>2</sup> and SB 18<sup>3</sup> consultation requirement. This protocol does not directly address Tribal Cultural Resources, which will continue to be treated on a case-by-case basis pursuant to the requirements of AB 52. Treatment of Tribal Cultural Resources containing an archaeological component may adhere to all or parts of this protocol, as determined through consultation between the City and consulting Tribe(s). Further discussion on AB 52 and SB 18 consultation, Native American involvement outside of the AB 52 and SB 18 process, and the applicability of this protocol to sacred places and/or Tribal Cultural Resources is included in Section 3.2 below and throughout the protocol. Postcontact archaeological resources include any artifact, object, site, or other remains of material culture that are at least 45 years old, and are typically associated with the Spanish (circa 1542 to 1822), Mexican (1822 to 1848), or American periods (1848 to present).

This protocol does not address historic-period built environment resources; for guidelines related to the identification, evaluation, and preservation of built-environment resources, see the City of Pacific Grove Guidelines for Historic Assessments.<sup>4</sup> This protocol also does not address cultural landscapes, nor sacred places or Tribal Cultural Resources that are not archaeological in nature. Cultural landscapes, sacred places, and Tribal Cultural Resources will continue to be treated on a case-by-case basis, pursuant to applicable regulations.

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<sup>2</sup> Additional information regarding Assembly Bill 52 of 2014 can be found at: <http://nahc.ca.gov/codes/>

<sup>3</sup> Additional information regarding Senate Bill 18 of 2004 can be found at: <http://nahc.ca.gov/wp-content/uploads/2019/04/SB-18-Tribal-Consultation-Guidelines.pdf>

<sup>4</sup>City of Pacific Grove. 2017. City of Pacific Grove Guidelines for Historic Assessments. Available online at: <https://www.cityofpacificgrove.org/sites/default/files/general-documents/historic-resources/guidelines-historic-assessments-08-03-17.pdf>.



## 2.2 Application of this Protocol

This protocol applies to any project that (1) involves ground disturbing activities that may impact archaeological resources; AND (2) is undertaken by the City, located on City-owned land, funded by the City, or that requires a discretionary City permit. Collectively, these activities are referred to as “Projects” herein. This includes operations and maintenance activities conducted by the City, public works projects, private discretionary development projects involving ground disturbance. Projects exempt from this protocol are discussed in further detail below, in Section 2.2.1 Exempt Projects.

An Archaeological Resource Review is a multi-step process with various reporting requirements that are Project-specific. The purpose of the Archaeological Resource Review is to determine whether or not activities conducted for a Project will adversely impact cultural resources, and to mitigate any such impacts as early as possible in the planning process. The City will require that applicants make a good faith effort to identify and assess any archaeological resources potentially impacted by Project activities and implement meaningful and feasible steps to lessen those impacts where necessary. Unless a project is exempt, the City will require that the Archaeological Resource Review process be complete prior to granting permits.

### 2.2.1 Exempt Projects

Activities that do not involve any ground disturbing activities are not subject to this protocol. Activities on private property that do not require permitting from the City are not subject to this protocol. For a complete list of permits and the applicability of this protocol, see Appendix B: Protocol Exemptions by Planning Permit Type. Ministerial permits, including encroachment permits, are not subject to this protocol.

Recent changes in State laws streamline administrative review processes and exempt qualifying housing projects from CEQA. There are a range of bills, including but not limited to, SB 35, SB 330, AB 2011, and AB 2221. These bills are intended to remove barriers to build affordable housing and take precedence over the requirements of this protocol. Projects meeting the requirements of these streamlining laws and similar future laws are exempt from this protocol. However, projects subject to streamlined processes may still be required to address potential impacts to archaeological resources and/or Tribal Cultural Resources. For example, AB 168 requires local agencies to invite California Native American Tribes to consult on SB 35 project applications.

Nothing in this Protocol relieves these projects of the obligation to follow all applicable federal and state laws in the event of discovery of any human remains or potentially significant cultural resources, nor does it relieve the City of the obligation to follow the requirements of AB 52.

#### **Minor Ground Disturbance**

Projects involving only minor ground disturbance as determined by City staff in areas without known resources do not need to adhere to this protocol. Exempt activities are categorized as minor ground disturbing activities including landscaping, planting or removal of grass, shrubs, flowers, or other decorative plantings, sidewalk/hardscape repair projects on existing structures, and other activities involving ground disturbance to a depth of three (3) feet or less, or one (1) foot or less for projects subject to the Local Coastal Program.

### **Previously Disturbed Areas**

Activities occurring in areas that can be verifiably documented as having undergone substantial subsurface disturbance with no documented archaeological finds do not need to adhere to this protocol. Documentation must include reporting from a qualified archaeologist on the results of a subsurface investigation, such as monitoring or excavation and must include consideration of the depth of previous disturbance compared to the depth of newly proposed disturbance. Archaeological studies used to document previous disturbance and lack of resources must meet current professional standards. Activities occurring entirely in artificial fill, as documented by a geotechnical investigation or other acceptable documentation, where ground disturbance will not extend below the depth of artificial fill, do not need to adhere to this protocol. This exemption does not apply to disturbed areas known to contain archaeological resources.

### **Emergency Work**

Emergency activities are not required to adhere to this protocol. Consistent with State CEQA guidelines, emergency activities include emergency repairs to public or private service facilities necessary to maintain service, specific actions necessary to prevent or mitigate an imminent emergency, and repair or restoration of facilities damaged or destroyed in a disaster declared as an emergency by the Governor. Emergency projects are not exempt from the requirements of regulations relating to human remains.

## 3 REGULATORY SETTING

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The following section includes summaries of relevant laws, guidelines, and plans as written at the time of the writing of this document. Please note that any of the laws, guidelines, or plans summarized herein may be amended and always refer to the most recent version.

### 3.1 Federal Regulations

#### **National Historic Preservation Act of 1966**

Enacted in 1966, the National Historic Preservation Act (NHPA) instituted a multifaceted program, administered by the Secretary of the Interior, to encourage sound preservation policies of the nation's cultural resources at the federal, state, and local levels. The NHPA authorized the expansion and maintenance of the NRHP, established the position of State Historic Preservation Officer (SHPO) and provided for the designation of State Review Boards, set up a mechanism to certify local governments to carry out the goals of the NHPA, assisted Native American tribes to preserve their cultural heritage, and created the Advisory Council on Historic Preservation (ACHP).

Cultural resources are considered during federal undertakings chiefly under Section 106 (as amended) through one of its implementing regulations, 36 CFR 800 (Protection of Historic Properties), and National Environmental Policy Act. Section 106 (16 United States Code 470f) requires federal agencies to account for the effects of their undertakings on any district, site, building, structure, or object included in or eligible for inclusion in the NRHP and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings (36 CFR 800.1).

#### **National Register of Historic Places**

The National Register of Historic Places (NRHP) was established by the NHPA of 1966 as "an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment" (CFR 36 CFR 60.2). The NRHP recognizes properties that are significant at the national, state, and local levels. To be eligible for listing in the NRHP, a resource must be significant in American history, architecture, archaeology, engineering, or culture. Districts, sites, buildings, structures, and objects of potential significance must also possess integrity of location, design, setting, materials, workmanship, feeling, and association. A property is eligible for the NRHP if it is significant under one or more of the following criteria:

- Criterion A: It is associated with events that have made a significant contribution to the broad patterns of our history;
- Criterion B: It is associated with the lives of persons who are significant in our past;
- Criterion C: It embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; and/or
- Criterion D: It has yielded, or may be likely to yield, information important in prehistory or history. Ordinarily cemeteries, birthplaces, or graves of historic figures, properties owned by religious

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institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, and properties that are primarily commemorative in nature, are not considered eligible for the NRHP, unless they satisfy certain conditions.

In general, a resource must be 45 years of age to be considered for the NRHP, unless it satisfies a standard of exceptional importance.

In addition to meeting these criteria, a property must retain historic integrity, which is defined in National Register Bulletin 15 as the “ability of a property to convey its significance”<sup>5</sup>. To assess integrity, the National Park Service recognizes seven (7) aspects or qualities that, considered together, define historic integrity.

To retain integrity, a property must possess several, if not all, of these seven (7) qualities, which are defined in the following manner in National Register Bulletin 15:

1. Location – the place where the historic property was constructed or the place where the historic event occurred;
2. Design – the combination of elements that create the form, plan, space, structure, and style of a property;
3. Setting – the physical environment of a historic property;
4. Materials – the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property.
5. Workmanship – the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory;
6. Feeling – a property’s expression of the aesthetic or historic sense of a particular period of time;
7. Association – the direct link between an important historic event or person and a historic property.

## 3.2 State Regulations

### **California Environmental Quality Act**

The California Environmental Quality Act (CEQA) applies to all projects undertaken by a public agency and to discretionary projects, those requiring the exercise of judgement by a public agency, undertaken by private applicants. CEQA does not apply to ministerial projects, or those that do not require the exercise of judgement by a public agency. Projects requiring planning permits or conditional use permits are typically discretionary, while projects requiring building permits are generally ministerial.<sup>6</sup>

As defined in the Public Resources Code, CEQA requires a lead agency to analyze whether historic and/or archaeological resources may be adversely impacted by a proposed project. Under CEQA, a “project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment” (PRC Section 21084.1). Answering this question is a two-part process: first, the determination must be made as to whether a given cultural resource qualifies as a historical or unique archaeological resource under Public Resources Code Section 21084.1 and 21083.2, respectively. Second, if

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<sup>5</sup> National Park Service. 1990. National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation. Available online at: [https://www.nps.gov/subjects/nationalregister/upload/NRB-15\\_web508.pdf](https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf).

<sup>6</sup> California Office of Historic Preservation. 2021. When Does CEQA Apply?. Available online at: [https://ohp.parks.ca.gov/?page\\_id=21723](https://ohp.parks.ca.gov/?page_id=21723).

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cultural resources are present, the proposed project must be analyzed for a potential “substantial adverse change in the significance” of the resource.

In addition, pursuant to CEQA Guidelines Section 15378, study of a project requires consideration of “the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”

According to CEQA Guidelines Section 15064.5, for the purposes of CEQA, historical resources are defined as:

1. A resource listed in, or formally determined eligible for listing in, the California Register of Historical Resources (CRHR) (PRC 5024.1, Title 14 CCR, Section 4850 et seq);
2. A resource included in a local register of historical resources, as defined in Section 5020.1(k) of the PRC or identified as significance in a historic resources survey meeting the requirements of Section 5024.1(g) of the PRC;
3. Any building, structure, object, site, or district that the lead agency determines eligible for national, state, or local landmark listing; generally, a resource shall be considered by the lead agency to be historically significant (and therefore a historic resource under CEQA) if the resource meets the criteria for listing on the CRHR (as defined in PRC Section 5024.1, Title 14 CCR, Section 4852).

According to CEQA, the fact that a resource is not listed in or determined eligible for listing in the CRHR or is not included in a local register or survey shall not preclude the lead agency from determining that the resource may be an historical resource (PRC Section 5024.1). Pursuant to CEQA, a project with an effect that may cause a substantial adverse change in the significance of a historical resource may have a significant effect on the environment (CEQA Guidelines, Section 15064.5).

CEQA Guidelines Section 15064.5 specifies that “substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.” Section 15064.5 further specifies that “material impairment” occurs when a project alters in an adverse manner or demolishes “those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion” or eligibility for inclusion in the NRHP, CRHR, or local register.

Archaeological resources must first be considered as historical resources (CEQA Guidelines, Section 15064.5(c)) and then as unique archaeological resources. PRC Section 21083.2(g) defines a unique archaeological resource as an archaeological artifact, object, or site about which it can be clearly demonstrated that without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

1. Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information;
2. Has a special and particular quality such as being the oldest of its type or the best available example of its type;
3. Is directly associated with a scientifically recognized important prehistoric or historic event or person.

If it can be demonstrated that a proposed project will impact a historical or a unique archaeological resource, mitigation may be required, guided by CEQA Statute Section 15126.4 for historical resources or 21083.2 for unique archaeological resources. CEQA notes that, if an archaeological resource is neither a unique

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archaeological resource nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment (CEQA Guidelines, Section 15064.5(c)(4)).

The CEQA Guidelines Section 15064.5 also assign special importance to human remains and specifies procedures to be used when Native American remains are discovered. The disposition of human remains is governed by Health and Safety Code Section 7050.5 and PRC Sections 5097.94 and 5097.98; it falls under the jurisdiction of the Native American Heritage Association (NAHC). If human remains are discovered, the county coroner must be notified immediately and there should be no further disturbance to the site where the remains were found. If the remains are determined by the coroner to be Native American, the coroner is responsible for contacting the NAHC within 24 hours. The NAHC, pursuant to PRC Section 5097.98, will identify those persons it believes to be most likely descended from the deceased Native Americans so they can inspect the burial site and make recommendations for treatment.

### **California Assembly Bill 52 of 2014**

As of July 1, 2015, AB 52 was enacted and expands CEQA by defining a new resource category, “Tribal Cultural Resources.” AB 52 establishes “a project with an effect that may cause a substantial adverse change in the significance of a Tribal Cultural Resource is a project that may have a significant effect on the environment” (PRC Section 21084.2). It further states the lead agency shall establish measures to avoid impacts that would alter the significant characteristics of a tribal cultural resource, when feasible (PRC Section 21084.3).

PRC Section 21074 (a)(1)(A) and (B) defines Tribal Cultural Resources as “sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe” and meets either of the following criteria:

- 1) Listed or eligible for listing in the CRHR, or in a local register of historical resources as defined in PRC Section 5020.1(k)
- 2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. In applying these criteria, the lead agency shall consider the significance of the resource to a California Native American tribe

AB 52 also establishes a formal consultation process for California tribes regarding those resources. The consultation process must be initiated within 14 days of the determination that a project application is complete or of a decision by a public agency to undertake a project, and completed before a CEQA document can be certified. Under AB 52, lead agencies are required to “begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.” Native American tribes to be included in the process are those that have requested notice of projects proposed within the jurisdiction of the lead agency.

### **California Senate Bill 18 of 2004**

California Government Code Section 65352.3 (adopted pursuant to the requirements of SB 18) requires local governments to contact, refer plans to, and consult with tribal organizations prior to making a decision to adopt or amend a general or specific plan. The Tribal organizations eligible to consult have traditional lands in a local government’s jurisdiction, and are identified, upon request, by the Native American Heritage Commission (NAHC). As noted in the California Office of Planning and Research’s Tribal Consultation Guidelines (2005), “The intent of SB 18 is to provide California Native American tribes an opportunity to

participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places.”

### **California Register of Historical Resources**

Created in 1992 and implemented in 1998, the California Register of Historical Resources (CRHR) is “an authoritative guide in California to be used by state and local agencies, private groups, and citizens to identify the state’s historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change” (PRC Sections 21083.2 and 21084.1). Certain properties, including those listed in or formally determined eligible for listing in the NRHP and California Historical Landmarks numbered 770 and higher, are automatically included in the CRHR. Other properties recognized under the California Points of Historical Interest program, identified as significant in historical resources surveys or designated by local landmarks programs, may be nominated for inclusion in the CRHR. According to PRC Section 5024.1(c), a resource, either an individual property or a contributor to a historic district, may be listed in the CRHR if the State Historical Resources Commission determines that it meets one or more of the following criteria, which are modeled on NRHP criteria:

- Criterion 1: It is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.
- Criterion 2: It is associated with the lives of persons important in our past.
- Criterion 3: It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- Criterion 4: It has yielded, or may be likely to yield, information important in history or prehistory.

Resources nominated to the CRHR must retain enough of their historic character or appearance to convey the reasons for their significance. Resources whose historic integrity does not meet NRHP criteria may still be eligible for listing in the CRHR.

### **California Historical Landmarks and Points of Historical Interest**

Two (2) other programs are administered by the state: California Historical Landmarks and California “Points of Historical Interest.” California Historical Landmarks are buildings, sites, features, or events statewide significance by meeting one of the following criteria: 1) the first, last, only, or most significant of its type in the state or within a large geographic region; 2) associated with an individual or group having a profound influence on the history of California; or 3) a prototype, or an outstanding example of, a period, style, architectural movement or construction or is one of the more notable works or the best surviving work in a region of a pioneer architect, designer, or master builder. California Points of Historical Interest are buildings, sites, features, or events of local (city or county) significance and that have anthropological, cultural, military, political, architectural, economic, scientific or technical, religious, experimental, or other historical value.

## **3.3 Local Regulations**

### **General Plan**

The 1994 General Plan for the City of Pacific Grove contains goals, policies, and programs aimed at historic preservation of historical and archaeological resources.

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Goal 4 of the Historic and Archaeological Resources chapter of the City's General Plan is to protect Pacific Grove's archaeological resources. The following policies are outlined to enforce this goal: support the enforcement of existing state and federal laws pertaining to pilfering of archaeological sites (Policy 20); ensure the protection and preservation of artifacts in those areas already identified as containing archaeological remains (Policy 21); work with the California Archaeological Inventory to develop information that will allow the prediction of additional sites likely to contain archaeological remains (Policy 22); and refer development proposals that may adversely affect archaeological sites to the California Archaeological Inventory (Policy 23).

In support of these policies, the City requires the following process outlined in the programs AA to EE for any projects on City land or requiring issuance of permits by the City prior to issuing any permits for development or the beginning of any project within areas potentially containing archaeological resources. The City will take all possible precautions to ensure that no action by the City results in the loss of any irreplaceable archaeological record present in the City's planning jurisdiction.

To identify sensitive sites early during the first phases of project design (Program DD), the City requires an inspection of the surface of sites which potentially contain archaeological resources and evaluate site records to determine the extent of known archaeological resources (Program AA). In those area identified as being actual or probable archaeological sites, the projects must be investigated during plan review to determine whether valuable archaeological remains will be affected by the project. All sites with potential resources likely to be disturbed by a proposed project are required to be analyzed by a qualified archaeologist with local expertise (Program BB). Upon the first discovery of any archaeological finding, development activity will be halted until professional archaeological examination and preservation is accomplished. A mitigation plan, adequate to protect the archaeological resource and prepared by a qualified archaeologist is required to be submitted for review and, if approved, be implemented as part of the project (Program CC). Where an archaeological site is in proximity to a project under review, City staff will determine the particular qualities to be preserved and the methods of preservation (Program EE).

### **Pacific Grove Municipal Code Chapter 23.76: Historic Preservation**

Pacific Grove Municipal Code Chapter 23.76 is aimed at the protection of historically and architecturally significant structures and neighborhoods within the city. The chapter establishes the City's Historic Resources Committee, criteria for the evaluation of built environment resources and listing on the City's Historic Resource Inventory, and requirements for alterations to historic structures.

As outlined in the Pacific Grove Municipal Code, chapter 23.76.021 and 23.76.025, the Historic Resources Committee of Pacific Grove has the power to determine additions and deletions from the Historic Resources Inventory and approve architectural and historic permits for structures listed on the HRI.

Properties may be included in the Historic Resource Inventory by initiation of the Historic Resources Committee or by submittal of a historic determination application by the property owner. Deletions proposed due to loss of integrity must demonstrate the loss of integrity was not the result of any illegal act or willful neglect by the owner or agent of the owner (per 23.76.030).

### **Shoreline Management Plan**

The Shoreline Management Plan (SMP) adopted by the City in June 2020 outlines recommendations for protecting archaeological resources within and along the shoreline.



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The SMP states that whenever grading or excavation happens along the shoreline – even at previously disturbed sites – the OCEN should be contacted and be invited to monitor the work. At the time of the preparation of the SMP, Esselen Tribe had not requested notification of projects under AB 52 and was therefore not invited to consult; however, the Esselen Tribe has subsequently requested AB 52 notification of projects and the City therefore contacts the Esselen Tribe in addition to OCEN. If human remains are discovered, work in the area shall halt and personnel shall adhere to PRC 5097.98 and State Health and Safety Code 7050.5.

The SMP further states that the preference for tribal human remains is avoidance. If disturbance is necessary and OCEN is identified as the most likely descendent (MLD), OCEN should be given the opportunity to remove the remains. Tribal artifacts should be “repatriated” (returned to the tribe).

### **Pacific Grove Local Coastal Program**

Under the California Coastal Act of 1976, local governments lying in whole or in part within the coastal zone must prepare and implement Local Coastal Programs (LCP) to protect coastal resources and maximize public access to the shoreline, which shall include implementing actions adequate to protect the coastal resources within designated sensitive coastal resource areas (PRC 30502(c)) and special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses (PRC 30254(e)). Additionally, PRC 30244 states that “where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.”

The Pacific Grove LCP, as required by the California Coastal Act, was certified by the California Coastal Commission in March 2020 and includes the Land Use Plan (LUP), which contains applicable resource protection and development policies, and Implementation Plan (IP), which contains goals, policies, and land use designations of the LUP.

Per the LCP LUP policies regarding archaeological resources, the City will conduct consultation with federally recognized California tribal governments and non-federally recognized California tribes listed by the NAHC that identify as native to the Monterey Peninsula (CRS-1). The City will ensure the protection, preservation, and proper disposition of archaeological resources within the Coastal Zone by assessing potential impacts of proposed development (CRS-2). In this effort, the City will ensure, to the extent feasible, that tribal concerns are considered before actions on proposed developments are taken. The City will provide developers early identification of sensitive sites so archaeological resources may be considered and protected during the early phases of project design (CRS-3).

Per the LCP IP section 23.90.200(B), an archaeological report and/or historic resources report are required for the approval of any applications for developments that may potentially affect cultural resources. Landscaping projects that do not involve construction of structures or changes to the site contours greater than one (1) foot are exempt from this requirement.

The archaeological report for projects that include soil disturbance must be prepared by a qualified archaeologist and must include the following:

- a. Site information including location, parcel number, address, owner, applicant, parcel size, location of structures or improvements, and applicable maps;

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- b. Review of relevant scientific literature or past archaeological reports describing archaeological resources on the site or on adjacent lands;
- c. Searches of the California Historical Resources Information System and Native American Heritage Commission Sacred Lands File;
- d. Documentation of consultation with appropriate tribes as required by state law;
- e. Date and findings of a preliminary archaeological reconnaissance;
- f. Discussion of potential adverse impacts on archaeological resources;
- g. Recommendations for further archaeological surveys, if deemed to be necessary; and
- h. Recommended mitigation, minimization, and/or avoidance measures to compensate for potential impacts to significant archaeological resources, including description of alternative designs for the proposed project (if any are proposed) and how alternative designs relate to the archaeological resources on the site and alternative design impacts compare to those of the project.

The historic resource report for projects that include demolition or alterations to potential historical resources must be prepared by a qualified professional who meets the Secretary of the Interior's Professional Qualification Standards in history or architectural history, and must include the following:

- a. Detailed description of the historical resources at the project site;
- b. Discussion of potential adverse impacts on historical resources from the project;
- c. Recommended mitigation, minimization, and/or avoidance measures to protect historical resources, including description of alternative designs for the proposed project (if any are proposed) and how alternative designs relate to the historical resources on the site and alternative design impacts compare to those of the project.

Historic resource is defined in section 23.90.020(H) as any object, building, structure, site, area or place which is at least 50 years old and is historically or archaeologically significant, or which is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural history of the City of Pacific Grove and/or California and/or the United States.

## **4 SUMMARY OF TRIBAL CONSULTATION CONDUCTED FOR THE DEVELOPMENT OF THIS PROTOCOL**

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As of the preparation of this protocol, OCEN and the Esselen Tribe are the only two tribes that have requested notification of projects from the City under AB 52. While the preparation of this protocol is not considered a project under CEQA and is therefore not subject to the requirements of AB 52, the City has chosen to consult with tribes that have requested AB 52 notification in the spirit of those requirements. Consultation efforts included providing an initial draft of this protocol to OCEN and the Esselen Tribe on August 9, 2021. Both Tribes provided feedback on the draft by September 9, 2021. The City held a consultation meeting with the Esselen Tribe and Rincon on December 16, 2021 to discuss their comments and subsequent revisions. The City attempted to hold a similar meeting with OCEN on December 28, 2021 and on January 12, 2022; however, OCEN was unable to attend. A revised copy of this protocol was submitted to OCEN and the Esselen Tribe on June 9, 2023. The City held an additional meeting with the Esselen Tribe on June 28, 2023. The City scheduled an additional meeting with OCEN on June 30, 2023, but OCEN was unable to attend. Both Tribes provided additional feedback on the protocol by July 7, 2023. A final draft of the protocol was sent to each Tribe.

## 5 ARCHAEOLOGICAL RESOURCE REVIEW PROTOCOL

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Archaeological resources are finite and cannot be replaced once damaged or destroyed. Adverse impacts to resources such as disturbance or destruction may result in irrevocable damage to the resource's significance or integrity. In compliance with Goal 4 of the Historic and Archaeological Resources chapter of the City's General Plan, the City will take all possible precautions to avoid the loss of any irreplaceable archaeological records present in the City's planning jurisdiction. The following steps have been developed in the spirit of that goal and will outline the protocols for determining impacts on archaeological resources and the appropriate steps for mitigating those impacts. This protocol is summarized in the flow chart found in Figure 1.

For any Project subject to the Archaeological Resource Review Protocol, the Project applicant will be responsible for paying the costs of consultant services and/or for City administration of consultant contracts to identify and evaluate archaeological resources and the report(s). Costs for administration related to this protocol will be accounted for in the overall Project permit fee; no separate fee will be charged for City review of documents prepared under this protocol. All work beyond the Preliminary Review Memorandum will be conducted under the supervision of a Qualified Archaeologist, defined as an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards for archaeology.<sup>7</sup> Consultants qualified to conduct this work may be identified through the CHRIS Historical Resources Consultant List at <http://www.chrisinfo.org/>.

This protocol is designed specifically to address archaeological resources and is not designed to address Tribal Cultural Resources or cultural landscapes. Treatment of Tribal Cultural Resources containing an archaeological component may adhere to all or parts of this protocol, as determined through consultation between the City and consulting Tribe(s). Treatment of cultural landscapes will vary widely based on the nature of the resource and individual project descriptions, and they will continue to be treated on a project-by-project basis.

### 5.1 Tribal Consultation and Descendant Community Involvement

Consultation under AB 52 and SB 18 refers to the process of meaningfully discussing with California Native Americans the potential for Project-related impacts to areas or resources of tradition or cultural significance to tribal communities, as well as appropriate resource protection measures for such impacts. The City regularly meets with members of the OCEN and the Esselen Tribe of Monterey County as part of the requirements for AB 52 and SB 18 and to discuss other upcoming work that does not require compliance with either of these regulations. Projects exempt from the Archaeological Resource Review process that are subject to CEQA still must comply with the requirements of AB 52 and SB 18 when applicable. Nothing in this protocol relieves the City of its legal obligations to consult with local Native Americans under AB 52 and SB 18.

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<sup>7</sup> National Park Service. 1983. Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, Professional Qualifications Standards. Washington, DC. [https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm), accessed March 18, 2021.

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For Projects not subject to CEQA and previously established consultation guidelines, the City will encourage the Project applicant or a designated consultant as appropriate to make a good faith effort to invite Locally Affiliated Tribes, defined as federally recognized and non-federally recognized California Tribes listed by the NAHC that identify as native to, or affiliated with, the Monterey Peninsula, to participate in the Archaeological Resource Review process for all Projects requiring more than a Preliminary Review Memorandum, as specified in each section below. Native American participation guidance is identified throughout the following protocol.

All Tribal concerns have the right to be heard. If issues or disagreements between Tribe(s) and Project proponent arise, the City or Locally Affiliated Tribe(s), acting in good faith and after reasonable effort, may conclude that mutual agreement cannot be reached, consistent with the requirements outlined in PRC Section 21080.3.2 (as currently amended). PRC Section 21080.3.2 applies specifically to Tribal Cultural Resources; however, the City will follow the same approach for any cultural resource of Native American origin and any involvement outside of the AB 52 or SB 18 process for City Projects. Additionally, the Native American Heritage Commission is tasked with mediation if disagreements arise between Most Likely Descendants and landowners related to the treatment of human burials, skeletal remains, and associated grave goods (PRC Section 5097.94(k) [as currently amended]).

If an Archaeological Monitoring Plan is enacted and the cultural resource is of Native American origin, then Locally Affiliated Tribe(s) will be consulted prior to Project implementation. If multiple Tribes request to monitor a Project, then a Tribal Monitor Rotation Schedule (rotation schedule) will be developed to prevent financial burden to the Project applicant. The rotation schedule will be developed such that no more than one (1) Native American monitor is present per activity/grading location on a given day. The Project applicant will be responsible for the cost of Tribal monitor(s). No Locally Affiliated Tribe will be rejected if participation is requested.

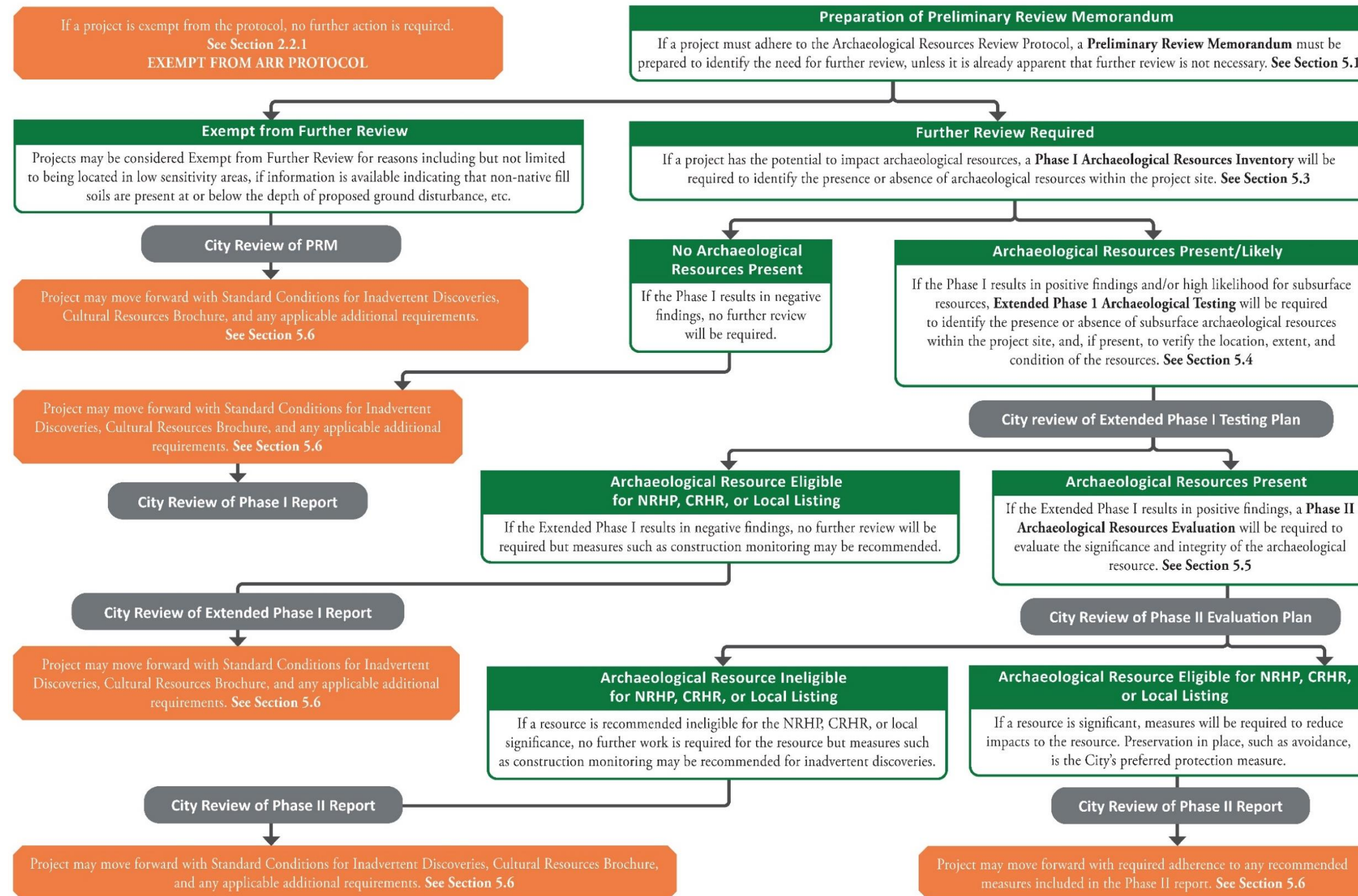
For Projects with the potential to impact postcontact archaeological resources, the City and/or archaeologist shall make attempts to involve descendant communities, if possible. This may involve outreach to local museums, historical societies, or other groups to identify appropriate contacts.

Figure 1. Archaeological Resource Review Process Flow Chart



# ARCHAEOLOGICAL RESOURCES REVIEW PROTOCOL

Identify if project is exempt or must adhere to the Archaeological Resource Review Protocol (See Section 2.2.1).



## 5.2 Step 1: Preliminary Review Memorandum

The first step of the Archaeological Resources Review is completion of a Preliminary Review Memorandum. Projects exempt from the protocol need not prepare a Preliminary Review Memorandum. A Preliminary Review Memorandum should be completed and approved by the City prior to approval of any Project subject to this protocol. For private Projects, the applicant or project archaeologist should prepare the Preliminary Review Memorandum for City review and approval; for City projects, the City project manager will prepare the Preliminary Review Memorandum. The Preliminary Review Memorandum need not be prepared by a qualified archaeologist. If it is already apparent that a Phase I Archaeological Resources Inventory will be needed for the Project, a Preliminary Review Memorandum need not be prepared.

The Preliminary Review Memorandum will include the following:

- Project area information, including location, parcel number, address, owner, applicant, parcel size (in acres), and applicable map(s)
- A full project description, including details on the nature and depth of all ground disturbing activities, location of structures or improvements, and applicable map(s)
- A brief description of past ground disturbance on the project area
- Applicable map(s) or other figures such as site plans
- Results of a records search from the Northwest Information Center (optional)
- An assignment of **Exempt from Further Review** or **Potential Impact** as assessed by the project description details and Archaeological Sensitivity Map and detailed here:
  - **Exempt from Further Review**: If the Project is deemed to be exempt from further review, the project may move forward with, at minimum, a standard Cultural Resources Sensitivity brochure review and adherence to the standard conditions for inadvertent discovery of cultural resources and human remains as detailed in Section 5.6.1. Projects occurring in low sensitivity areas may typically be exempt from further review. Projects located in high and/or moderate sensitivity areas typically may not be exempted from further review unless geotechnical studies and/or other information is available that clearly documents non-native fill soils are present at or below the depth of proposed ground disturbing activities or if the project location has been subject to previous archaeological study. For work that does not rise to the level of a “project” under CEQA and that is occurring in high sensitivity areas, the City may make the determination that additional review is not necessary and require archaeological and/or Native American spot checking or monitoring in lieu of further review if appropriate based on the project description and location. For language related to spot checking and monitoring requirements, see Section 5.6.1.
  - **Potential Impact**: If the Project is noted as having the potential to impact archaeological resources and is not exempt from this protocol, the applicant will be required to conduct further review before approval. All Projects that are located in areas deemed as moderately or highly sensitive to containing archaeological resources and include potentially impacting activities, such as ground disturbance, will be labeled as potentially impacting except in scenarios identified above. Areas considered sensitive are identified in the Archaeological Sensitivity Maps included in Appendix A. Projects with the potential to impact archaeological resources may move directly

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to preparation of a Phase I Archaeological Resources Inventory, described below, without submission or approval of the Preliminary Review Memorandum by the City.

Projects in low sensitivity areas may typically be exempted from further review.

Once submitted to the City, the Preliminary Review Memorandum will be reviewed and noted as **Accepted** or **Rejected**. If the Project is **Exempt from Further Review**, the Project will be given the necessary approval by the City to proceed as detailed in this Protocol. If the Project is determined **Accepted, Potential Impact**, then a Phase I Archaeological Resources Inventory (at minimum) will be necessary prior to Project approval. Projects with the potential to impact archaeological resources may move directly to preparation of a Phase I Archaeological Resources Inventory, described below, without submission or approval of the Preliminary Review Memorandum by the City. If the Preliminary Review Memorandum is **Rejected**, the City will provide reason(s) why. Reasons for rejection may include but not be limited to an incorrect assignment of finding based on this protocol, incomplete project description details, or other missing information. After rejection, the Preliminary Review Memorandum must be revised prior to resubmittal. City determinations regarding the acceptance or rejection of the Preliminary Review Memorandum are final.

### 5.3 Step 2: Phase I Archaeological Resources Inventory

If the Preliminary Review Memorandum identifies a potential impact and the need for further review, the City and/or project applicant and/or their designated consultant shall undertake a Phase I Archaeological Resources Inventory. The purpose of the Phase I Archaeological Resources Inventory (Phase I) is to identify the presence of archaeological resources in a Project site, consider the impacts of a Project on those resources, and make recommendations to mitigate any potential impacts in order to be considered as part of the City's action on a particular Project. The Phase I shall be conducted by a Qualified Archaeologist.

The results of the Phase I will be presented in a report. Projects within the Pacific Grove Coastal Zone will require reports that meet all requirements as specified in the LCP section 23.90.200(B). The archaeological report requirements specified in the LCP may also be referred to for Projects outside of the coastal zone. Further report guidance can be found in the OHP's Archaeological Resource Management Report: Recommended Contents and Format<sup>8</sup> and in the SCA's Fieldwork and Reporting Guidelines for Cultural Resources<sup>9</sup>. All Phase I Reports shall be submitted to the City in a timely manner. If applicable and appropriate, Phase I reports may be combined with historic assessments prepared to comply with the City's Guidelines for Historic Assessments.<sup>10</sup>

All Phase I reports shall include the following:

- A brief reference to the Project location and description from the Preliminary Review Memorandum
- A site-specific environmental and cultural context

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<sup>8</sup> Office of Historic Preservation. 1990. Archaeological Resources Management Reports: Recommended Contents and Format. Available online at <https://ohp.parks.ca.gov/pages/1069/files/armr-remediated.pdf>.

<sup>9</sup> Society for California Archaeology. 2020. Fieldwork and Reporting Guidelines for Cultural Resources. Available online at: <https://scahome.org/professional-guidance-documents/>.

<sup>10</sup> City of Pacific Grove. 2017. City of Pacific Grove Guidelines for Historic Assessments. Available online at: <https://www.cityofpacificgrove.org/sites/default/files/general-documents/historic-resources/guidelines-historic-assessments-08-03-17.pdf>.



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- Results from a CHRIS records search at the NWIC with a minimum 0.25-mile buffer zone and review of the results describing all archaeological resources within or adjacent to the project area
- A review of historic-period aerials and maps
- A search of the NAHC's Sacred Lands File (SLF) and description of all Native American outreach efforts, including copies of any correspondence with the NAHC and/or Native American contacts
- A pedestrian field survey no more than five (5) years old. If a pedestrian survey has included an entire project area within the last five (5) years and ground surface conditions on the project area have not changed, a new pedestrian survey will not be required. Discussion of past surveys shall be sufficient.
- A discussion of potential adverse impacts on archaeological resources
- Applicable map(s) and figures such as site plans, cultural resource location maps, survey limits, etc.
- An impact finding and recommendation for resource protection measures as appropriate OR a recommendation for further investigation as detailed below.
  - If the Phase I investigation shows the Project to potentially have an impact on archaeological resources, then resource protection measures, such as those detailed below, will be required. All Projects must include at minimum a Cultural Resources Sensitivity brochure review and standard conditions for unanticipated discoveries. Additionally, Projects located within the coastal zone shall include the resource protection measures outlined in the SMP.
  - If more information than the Phase I Report can provide is required to make a good faith effort to identify and evaluate archaeological resources for the purposes of considering the impacts of a Project as determined by the City, or an archaeological resource was identified within the Project site during the course of the Phase I investigation, then Extended Phase I Archaeological Testing, and if applicable, a Phase II Archaeological Resource Evaluation, as described below, shall be required prior to City approval of the Project.

If the findings of the Phase I are negative, a letter report with an abbreviated environmental and cultural context shall suffice.

Once submitted, the City will review the Phase I Report and **Accept** or **Reject** the impact finding and recommendations. If the City **Accepts** the Phase I Report, the Project may move forward with adherence to the resource protection measures detailed or conduct further investigation as recommended and approved by the City in the Phase I Report. If the City **Rejects** the Phase I Report, the City will provide comments regarding preferred resource protection measure(s) or required further action(s) prior to Project approval, such as a monitoring plan, a discovery and treatment plan, other measures as described in Section 5.6.1, or Extended Phase I Archaeological Testing Plan, described below. If rejected, the Phase I Report should be revised and resubmitted. City determinations regarding the acceptance or rejection of the Phase I Report are final.

Locally Affiliated Tribes may be invited to comment on Phase I Reports as noted above in Section 5.2. If the Project involves grading or excavation of the shoreline, as defined in the SMP, the Project applicant shall also follow the resource protection measures outlined in Chapter 9 of the SMP, including Native American monitoring.

## 5.4 Step 3: Extended Phase I Archaeological Testing

The purpose of Extended Phase I Archaeological Testing (Extended Phase I) is to identify the presence of subsurface archaeological resources within a Project site and, if present, to verify the location, extent, and

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condition of the resources. Extended Phase I Archaeological Testing shall be conducted by a Qualified Archaeologist. If archaeological resources are already known to be present on a given Project Area, the Extended Phase I Archaeological Testing Plan may be combined with a Phase II Evaluation Plan outlined in the following sections.

Prior to excavations, an Archaeological Testing Plan shall be prepared by a Qualified Archaeologist. If there is potential to identify resources of Native American origin, the Archaeological Testing Plan shall be prepared in cooperation with Locally Affiliated Tribes who have expressed interest in writing. The Archaeological Testing Plan shall be submitted to the City for approval prior to the start of fieldwork. An Archaeological Testing Plan may include shovel test pit(s) and/or test unit(s) strategically located in areas containing or potentially containing subsurface archaeological deposits. During XPI studies, artifacts are typically reburied within the excavated shovel test pits. Appropriate disposition of artifacts may vary project-by-project and should be either reburied on site or collected and curated at the Pacific Grove Museum of Natural History.

All Archaeological Testing Plans must include the following, at minimum:

- A brief reference to the Project location and description from the Preliminary Review Memorandum
- A brief reference to the cultural contexts from the Phase I Report
- A brief reference to the resources within the project area from the Phase I Report
- A research design and themes as related to cultural context
- A discussion of goals
- A brief review of the scope of research
- An outline of field methods and shovel test and/or test unit locations
- Applicable map(s), including maps of proposed testing locations
- Plans for the disposition of artifacts upon completion of excavation

If a resource is of Native American origin, then Locally Affiliated Tribes shall be notified of the intent to conduct XPI archaeological testing and may be invited to monitor all excavations at the Tribe(s) request. The Project applicant will be responsible for the cost of a Tribal monitor(s) as detailed above. If no responses to the invitation are received within 7 business days, then the Extended Phase I Investigations may move forward without Tribal participation.

Once submitted, the City will review the Archaeological Testing Plan and **Accept** or **Reject** it. If the City **Accepts** the Archaeological Testing Plan, the Extended Phase I fieldwork may move forward. If the City **Rejects** the Archaeological Testing Plan, then the City will provide comments regarding preferred testing method(s) or required further action(s) prior to approval of the testing plan. If rejected, the Archaeological Testing Plan should be revised and resubmitted. City determinations regarding the acceptance or rejection of the Archaeological Testing Plan are final.

After the completion of testing, the results of the Extended Phase I shall be incorporated into and/or appended to the Phase I Report. If the Project site is confirmed to contain archaeological resource(s), then the Project applicant must notify the City within seven (7) business days of determination of the need for a Phase II Archaeological Resource Evaluation.

## 5.5 Step 4: Phase II Archaeological Resources Evaluation

The purpose of the Phase II Archaeological Resources Evaluation (Phase II) Addendum is to determine the significance and integrity of archaeological cultural resources. An evaluation shall be required for all cultural resources located within a Project Area. If cultural resources have been previously evaluated and past evaluations are sufficient for the purposes of a given Project, a new Phase II may not be required, subject to City approval. In those instances, previous evaluations shall be discussed in the Phase I Report. Phase IIs shall be conducted by a Qualified Archaeologist and guided by a Phase II Evaluation Plan. Appropriate disposition of artifacts may vary project-by-project and should be either reburied on site or collected and curated at the Pacific Grove Museum of Natural History.

A Phase II Evaluation Plan must include the following, at minimum:

- A brief reference to the Project location and description from the Preliminary Review Memorandum
- A brief reference to the cultural context, resources within the Project site, research designs and themes included in the Archaeological Testing Plan
- A description of the known components of the archaeological resource(s)
- Applicable map(s), including locations of proposed testing locations
- Plans for the disposition of artifacts upon completion of excavation

Once submitted, the City will review the Phase II Evaluation Plan and **Accept** or **Reject** it. If the City **Accepts** the plan, the Phase II fieldwork may move forward. If the City **Rejects** the plan, then the City will provide comments regarding preferred testing method(s) or required further action(s) prior to Project approval. If rejected, the Phase II Evaluation Plan should be revised and resubmitted. City determinations regarding the acceptance or rejection of the Phase II Evaluation Plan are final.

If a resource is of Native American origin, then Locally Affiliated Tribes shall be notified of the intent to conduct Phase II archaeological testing and may be invited to monitor all excavations at the Tribe(s) request. The Project applicant will be responsible for the cost of a Tribal monitor(s) as detailed above. If no responses to the invitation are received within 7 days, then the Phase II Investigations may move forward without Tribal participation.

### 5.5.1 Determination of Significance

An archaeological resource shall be considered significant if it is listed on, eligible, or potentially eligible for listing in the NRHP or CRHR as summarized in the Regulatory Setting Section 3, or is locally significant as determined by the City with accompanying supportive data, or Tribally significant as expressed by a Locally Affiliated Tribe. The qualified archaeologist shall make a recommendation regarding the NRHP or CRHR eligibility of any identified archaeological resources. The integrity of an archaeological resource is the ability of the resource to convey its significance through physical features and context.

### 5.5.2 Determination of Impact

According to CEQA, substantial adverse change in the significance of a cultural resource will occur if a project causes the physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the resource would be materially impaired.

If an archaeological resource is determined and accepted as significant by the City, then that resource shall be afforded appropriate protections from adverse impacts that would diminish its significance resulting from Project activity. Preservation in place, such as avoidance, is the preferred protection by the City. If archaeological resource(s) cannot be avoided by or protected from the Project, other resource protection measures shall be implemented, such as those detailed in Section 5.6.1, Resource Protection Methods below.

### 5.5.3 Phase II Archaeological Resource Evaluation Final Report

A Phase II Archaeological Resource Evaluation Final Report shall be prepared and submitted to the City in a timely manner after the completion of fieldwork. If appropriate, the Phase II report may be combined with the Phase I and/or Extended Phase I report.

A Phase II Archaeological Resource Evaluation Final Report must include the following, at minimum:

- A brief reference to the Project location and description from the Preliminary Review Memorandum
- A brief reference to the cultural context, resources within the Project site, research designs and themes submitted in the Archaeological Testing Plan
- A brief reference of methods outlined in Archaeological Testing Plan and details of any changes
- A discussion of the results
- Impact Finding
- Applicable map(s) and figures such as site plans, cultural resource location maps, excavation location maps, etc.
- An impact finding and recommendations for resource protection measures as appropriate

Once submitted, the City shall review the Phase II Final Report and **Accept** or **Reject** the impact finding and recommendations for resource protection measures. The review period of the Phase II Final Report shall be 30 days. If the City **Accepts** the impact finding and recommendations, the Project can move forward with adherence to the recommended resource protection measures outlined in the Phase II Report. If the City **Rejects** the impact finding and/or recommendations, then the City will return the Phase II Report with comments. Recommendations included in a Phase II report will be required as resource protection measures and do not need to be completed prior to approval of a CEQA document. If rejected, the Phase II Final Report should be revised and resubmitted. City determinations regarding the acceptance or rejection of the Phase II Final Report are final.

## 5.6 Step 5: Impact Minimization

The purpose of impact minimization is to prevent or reduce adverse impacts caused directly or indirectly by Project activities on archaeological resources that are determined as significant or may be potentially significant, as described above.

All Projects subject to the Archaeological Resource Review Process shall receive, at minimum, a Cultural Resources Sensitivity brochure review. Resource protection measures shall be implemented as accepted by the City with the intention of protecting significant or potentially significant archaeological resources, or, if a resource cannot be reasonably protected, reducing adverse impacts of Project activities. The preferred method by the City is preservation in place. Where an archaeological resource cannot be preserved in place, other measures shall be necessary for Project approval. The list and description of measures included here is

not exhaustive. Depending on the nature of a cultural resource and the extent of potential impacts, other measures may be appropriate as recommended by a Qualified Archaeologist and/or Locally Affiliated Tribe.

### 5.6.1 Resource Protection Methods

The following sections include descriptions of appropriate resource protection measures to address impacts to archaeological resources. These descriptions are not intended to be used verbatim as resource protection measures, nor is this list exhaustive. Language included herein may be copied and adapted on a Project-by-Project basis during the development of mitigation measures, best management practices, and/or standard conditions of approval.

#### **Cultural Resources Sensitivity Training**

The following language may be copied and adapted on a Project-by-Project basis during the development of resource protection measures, including but not limited to mitigation measures or standard conditions of approval:

All Projects subject to the Archaeological Resource Review process shall require the presentation of a Cultural Resources Sensitivity training for personnel involved in ground disturbance. If the Archaeological Resource Review process identifies a Project as unlikely to impact archaeological resources, then the Project proponent may assign an individual to do the Cultural Resources Sensitivity training based on a brochure provided by the City. All other Projects must receive Cultural Resources Sensitivity training from a Qualified Archaeologist with Monterey County experience and/or a Locally Affiliated Native American Monitor. The Cultural Resources Sensitivity training will include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find.

#### **Standard Conditions for Inadvertent Discoveries**

The following language may be copied and adapted on a Project-by-Project basis during the development of resource protection measures, including but not limited to mitigation measures or standard conditions of approval:

##### *Unanticipated Discovery of Archaeological and Tribal Cultural Resources*

If archaeological resources are encountered during ground-disturbing activities, work within a minimum radius of 50 feet shall be halted and a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for archaeology<sup>11</sup> and with Monterey County experience shall be contacted immediately to evaluate the find. If the resource represents a potential tribal cultural resource, Locally Affiliated Tribe(s) shall be consulted on the significance and treatment of the find. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing and evaluation for significance and integrity. If the discovery proves to have significance and integrity as defined in Section 5.5.1 of the City's Archaeological Resource Review and Tribal Monitoring Protocol and cannot be avoided by the Project, additional work, such as data or heritage recovery excavation, may be warranted to mitigate any adverse impacts to archaeological resources. Treatment of the resource(s) shall be determined on a case-by-

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<sup>11</sup> National Park Service. 1983. Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines. Available at [http://www.nps.gov/history/local-law/Arch\\_Standards.htm](http://www.nps.gov/history/local-law/Arch_Standards.htm).

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case basis based on the nature of the find and in consultation between, the City, the tribes, a qualified archaeologist, and the Project applicant.

*Unanticipated Discovery of Human Remains*

Please note that this language is based on California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98 as written in January 2022. If one or both regulations is amended, this language may need revision before being applied to a project.

The discovery of human remains is always a possibility during ground-disturbing activities. If human remains are found, the State of California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. In the event of an unanticipated discovery of human remains, the County Coroner must be notified immediately. If the human remains are determined to be prehistoric, the Coroner will notify the Native American Heritage Commission, which will determine and notify an MLD. The MLD shall complete the inspection of the site and provide recommendations for treatment to the landowner within 48 hours of being granted access. The MLD and landowner may mutually agree to extend discussions if necessary.

**Monitoring**

Monitoring, or spot-checking as appropriate (see below), shall be required for any Project subject to the Archaeological Resource Review process located within areas considered highly sensitive for archaeological resources based on the City's Archaeological Sensitivity Maps and/or the results of the Archaeological Resource Review process. The following language may be copied and adapted on a Project-by-Project basis during the development of resource protection measures, including but not limited to mitigation measures or standard conditions of approval:

The Project proponent shall retain a Qualified Archaeologist with Monterey County experience, and if appropriate, Native American consultant(s), to conduct monitoring of all Project-related ground disturbing activities. Native American monitors will be required for projects in areas highly sensitive for archaeological resources of Native American origin. If there is low potential to encounter resources of Native American origin but a moderate to high potential to encounter historical-era archaeological resources, only an archaeological monitor will be required.

All monitoring activities will require the creation of an Archaeological Monitoring Plan. It shall be drafted by a Qualified Archaeologist, in cooperation with Locally Affiliated Tribes as appropriate, and accepted by the City prior to Project ground disturbance. Locally Affiliated Tribes will be given the opportunity to review Archaeological Monitoring Plans when there is a high likelihood of encountering archaeological resources of Native American origin.

An Archaeological Monitoring Plan must include the following:

- A brief reference to the Project location and description from the Preliminary Review Memorandum
- A summary of the sensitivity of the area and reasoning for the monitoring requirement
- A description of project ground disturbing activities, including identification of requirements relating to the use of equipment such as hand excavation, flat blades, rubber tires, or rubber tracks if necessary

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- A description of monitoring methods and locations
- Stop work authority
- When to reduce or stop monitoring
- Steps to be taken in the event of an archaeological discovery
- A Tribal monitor rotation schedule as necessary
- Applicable map(s) such as cultural resource locations

Archaeological and Tribal monitors will have stop-work authority used to halt and/or redirect work should any archaeological resources be identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work within a minimum of 50 feet of the area shall be temporarily stopped while the area is evaluated for significance as described in Section 5.5. Archaeological or Native American monitoring or both may be reduced to spot-checking or eliminated at the discretion of the monitors, in consultation with the City, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of rough grading. If monitoring is reduced to spot-checking, spot-checking will occur when ground disturbance moves to a new location within the project area and/or when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock).

As described in Section 5.2 above, if multiple Locally Affiliated Tribes are interested in monitoring, a rotation schedule shall be developed such that no more than one (1) Native American monitor is present per activity/grading location on a given day.

A final monitoring report shall be submitted to the City upon conclusion of monitoring activities. If monitoring findings are negative, a letter report shall suffice. Monitoring reports shall include, at minimum, methods of monitoring, a description of soils encountered, and a map depicting all areas monitored for cultural resources.

#### *Spot Checking*

For projects in moderate sensitivity areas, or high sensitivity areas that have been previously disturbed, full-time monitoring may not be warranted and a spot-checking program may be implemented instead. The appropriateness of a spot-checking program versus full time monitoring must be determined on a case-by-case basis, based on the project description, levels of previous disturbance, level of sensitivity, and other factors.

Spot-checking programs shall include a qualified archaeological monitor under the direction of an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for prehistoric and/or historic archaeology (National Park Service 1983) and a local Native American representative. Monitors shall be present to observe the first day of ground disturbance and shall spot-check ground disturbance at regular intervals thereafter. Spot-checking shall also occur when ground disturbance moves to a new location on the project site, and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). If archaeological resources are encountered, spot-checking shall be increased to full-time monitoring. Spot-checking may be reduced or halted at the discretion of the monitors as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of rough grading.

## **Preservation in Place**

According to PRC 15126.4(b)(3) (as of January 2022), public agencies should, whenever possible, seek to avoid damaging effects on any historical resource of an archaeological nature. If necessary and possible, the resource should be preserved in place, meaning the relationship between artifacts and the archaeological context is maintained. Preservation in place may be accomplished by avoidance or protection, which may include, but is not limited to, the following examples. The following language may be copied and adapted on a Project-by-Project basis during the development of resource protection measures, including but not limited to mitigation measures or standard conditions of approval:

### *Project Redesign*

If feasible, the Project proponent may revise the design or location of construction activities such that archaeological resources are avoided.

### *Environmentally Sensitive Area Fencing*

Environmentally Sensitive Area (ESA) Fencing shall be required when Project ground disturbance occurs within 15 feet of a significant archaeological resource. ESA fencing may be accomplished with high-visibility polyethylene fencing. ESA Fencing shall include signage indicating the area as an “Environmentally Sensitive Area” and shall not indicate in any way that an archaeological site is present in order to maintain the confidentiality of archaeological site locations.

### *Site Capping*

Site capping includes covering archaeological sites with a layer of geotextile fabric as well as culturally sterile and chemically stable soil. Capping shall only be used when all other resource protection measures are not applicable. Prior to implementation of a site capping program, a site capping plan should be prepared by a Qualified Archaeologist with Monterey County experience with input from Locally Affiliated Tribes for precontact resources, and/or the MLD when human remains are present, and approved by the City. The new soil layer shall be sufficiently thick to contain all foundation footings, utility trenches, grading, etc. A minimum of 24 inches of clean, sterile fill material should be maintained between the surface of the archaeological cap and any ground disturbing activities, such as excavation, grading, compaction, placement of soil or other material, vegetation clearing, construction, erection, or placement of any underground utilities, buildings, or structures. Archaeological site capping efforts shall be documented in a report identifying the location, extent, and methods of capping. Capping materials shall not consist of any reclaimed or hazardous materials.

### *Incorporation into Open Space*

Areas containing a known significant archaeological resource(s) may be incorporated into and protected as open space to protect the resource(s) from adverse impacts related to potential future developments.

### *Deeding into a Conservation Easement*

If an archaeological resource is located on land owned by the City, the City may place the land containing significant archaeological resource(s) into a conservation easement, preventing potential adverse impacts from potential future developments. A private landowner may coordinate with a Qualified Archaeologist with Monterey County experience and the City to include deeding portions of their land containing archaeological resources into a conservation easement as a resource protection measure meant to avoid adverse impacts.



*Other*

Other resource protection measures as proposed for preservation in place are subject to approval by the City.

### **Phase III Data or Heritage Recovery**

The following language may be copied and adapted on a Project-by-Project basis during the development of resource protection measures, including but not limited to mitigation measures or standard conditions of approval:

For significant archaeological resources that cannot be avoided by the Project, preserved in place, or protected by other means, and where archaeological resources would be damaged or destroyed, directly or indirectly, a Phase III Data or Heritage Recovery (Phase III) may be necessary to reduce adverse impacts. A Phase III includes the comprehensive and intensive documentation of the resource(s) via excavation. The goal of a Phase III shall be to produce a permanent record of the cultural resource being adversely impacted by the Project, which may be accomplished with various methods, including but not limited to, surface collection, archaeological excavation, mapping, photographs, special sampling, and technical drawing. Phase III Heritage Recovery typically involves excavation of a site for reasons other than data potential and specific methods are determined on a case-by-case basis. All Phase III Recovery Plans shall be prepared by a Qualified Archaeologist with Monterey County experience, in cooperation with Locally Affiliated Tribes and/or the MLD when human remains are present, as necessary, and submitted to the City for approval. The response window for requesting to contribute to a Phase III Data Recovery Plan is 30 business days post receipt. If no responses are received within 30 business days, the Phase III Recovery efforts may move forward without the contribution of any Locally Affiliated Tribes. All Phase III Heritage Recovery plans will be drafted in direct consultation with any identified MLD where human remains are present and/or other Locally Affiliated Tribe(s) as appropriate and approved by the Tribe(s) prior to submitting to the City.

The contents of a Phase III Heritage Recovery Plan will be highly dependent on the nature of the cultural resource. A Phase III Data Recovery Plan must include the following, at minimum:

- A brief reference to the Project location and description from the Preliminary Review Memorandum
- A brief reference to the cultural context, resources within the Project site, research designs and themes included in any previous reports produced through the Archaeological Resource Review process
- A brief reference to research design and themes as related to cultural context and the discussion of goals from the Archaeological Testing Plan
- Data recovery methods, including collection, excavation, screening, and recording methods
- A final disposition plan for recovered artifacts, including processing and analysis if appropriate; disposition may include curation, repatriation, and/or reburial
- Procedures for backfilling
- Applicable map(s)

Upon approval of the Phase III Recovery Plan, and prior to Project construction activities in the area, recovery excavations may begin in accordance with the methods outlined. Excavations may be limited to areas that will be directly or indirectly impacted by Project activities, except where necessary to develop a full understanding of the resource to be impacted. While data recovery efforts are ongoing, the Project proponent shall ensure the area is secure through fencing, security, or other means to prevent looting of the site.

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Upon completion of Phase III recovery excavations, all artifacts and other cultural remains, records, photographs, and other documentation shall be curated appropriately at an established curation facility, repatriated to local Native Americans as appropriate, or reburied in a location that will not be subject to further disturbance per the Phase III Recovery Plan.

A Phase III Final Report shall be prepared and submitted to the City by a Qualified Archaeologist with Monterey County experience. Phase III reports shall be provided to the participating Native American monitors, Locally Affiliated Tribes that have consulted on the project, and/or the MLD when applicable. The Phase III Final Report shall include the following:

- A brief reference to the Project location and description from the Preliminary Review Memorandum
- A brief reference to the cultural context, records search results, resources within the Project site and their significance, research designs and themes submitted in the Archaeological Resource Review process reporting
- Methods
- A description of the results
- Applicable map(s)
- All previous reports for the Project as attachments

**Monuments and Markers (Interpretive Plaques, etc.)**

An interpretive monument or marker may be erected as a resource protection measure for significant archaeological sites. Suggested use is after Phase III Data or Heritage Recovery, or for sites that have been determined to be important to local history. Monuments and markers must not be used in such a way that they divulge the confidential location of archaeological sites. Signage related to precontact sites shall include consultation with Locally Affiliated Tribes.

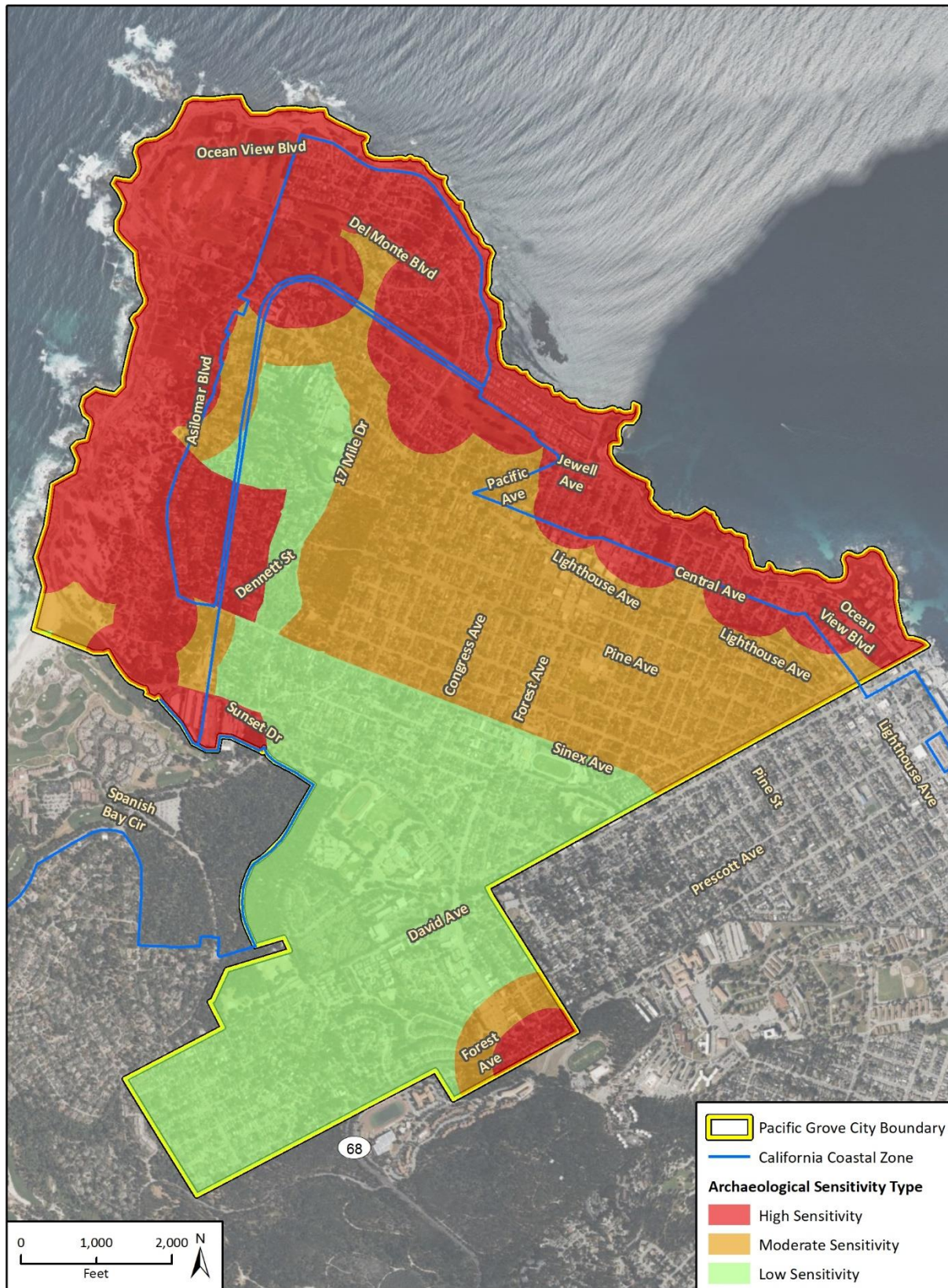
# Appendix A

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## Archaeological Sensitivity Maps

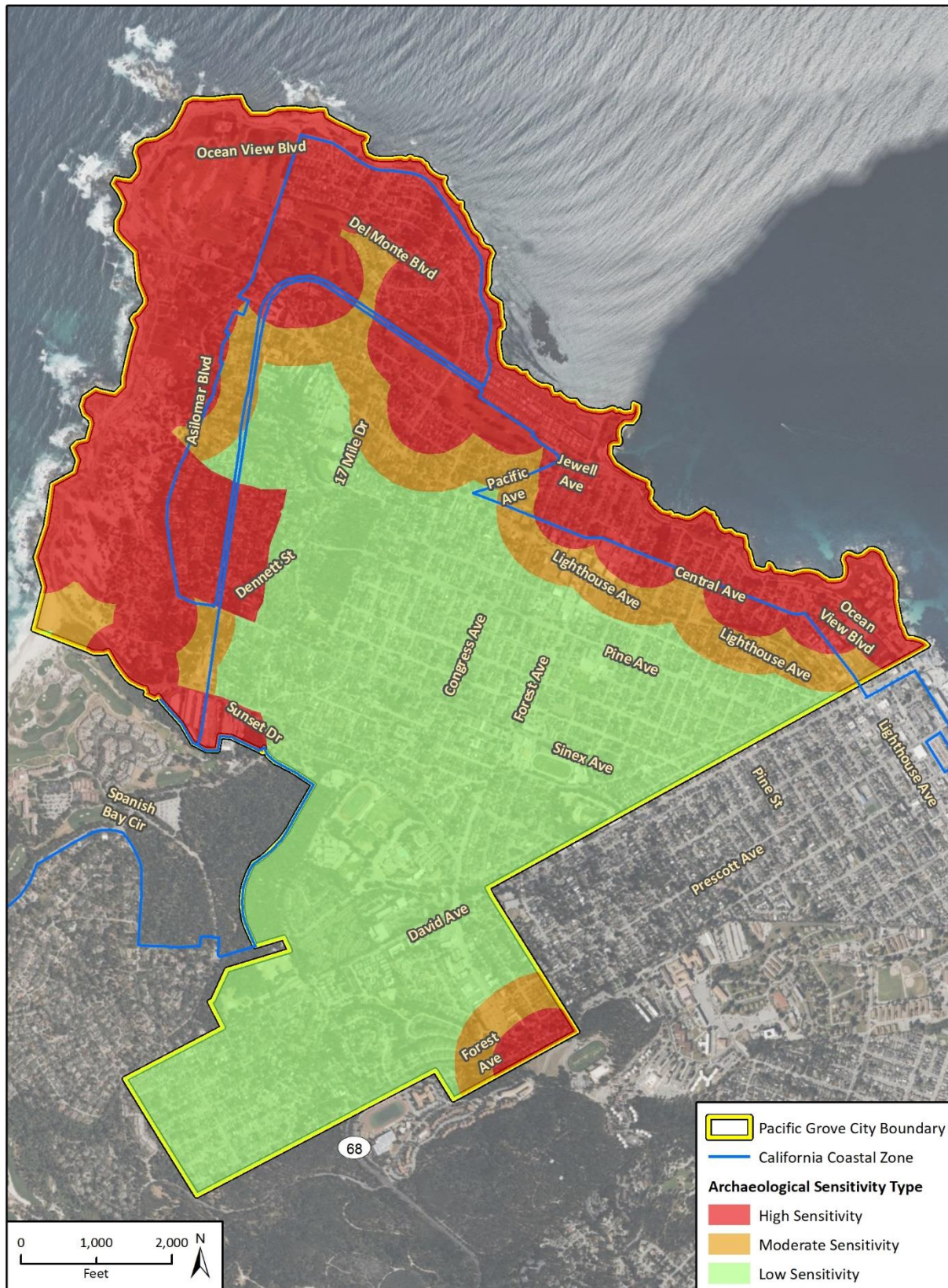
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General Archaeological Resources Sensitivity



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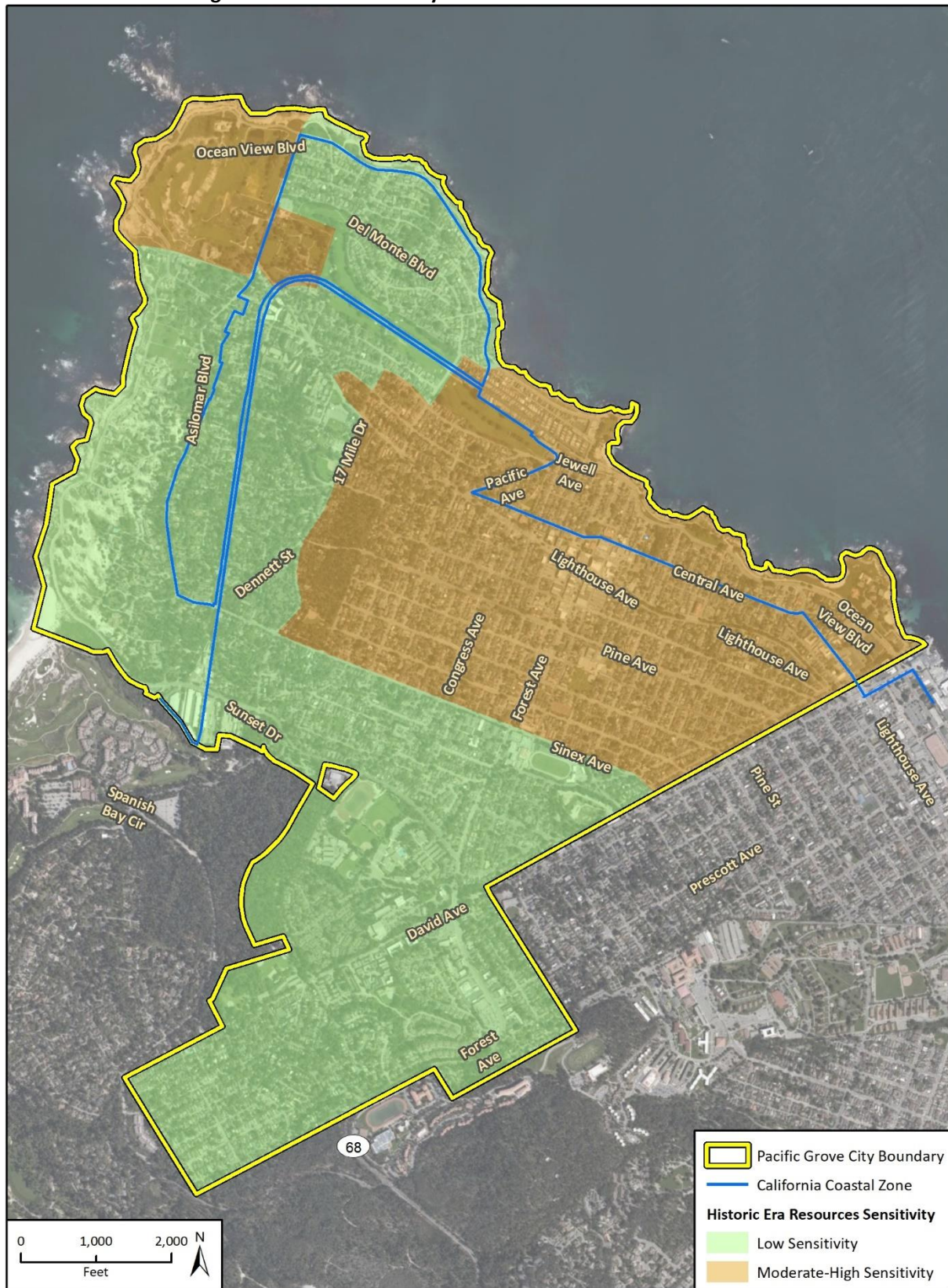
Precontact Archaeological Resource Sensitivity



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Postcontact Archaeological Resource Sensitivity



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# Appendix B

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## Protocol Exemptions by Planning Permit Type

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**Protocol Exemptions by Planning Permit Types**

<b>Project Type</b>	<b>Applicability of Protocol</b>
100% Affordable Housing Projects	Exempt
<b>Permit/Activity Type</b>	<b>Applicability of Protocol</b>
Administrative Architectural Permit	Exempt if ground disturbance is minor or area is previously disturbed (see Section 2.2.1)
Administrative Use Permit	Exempt if ground disturbance is minor or area is previously disturbed (see Section 2.2.1)
Administrative Wireless Telecommunications Facility Collocation	Exempt
Architectural Design Change Permit	Exempt
Architectural Permit	Protocol Applies
Architectural Permit - HRI	Protocol Applies
Coastal Development Permit	Protocol Applies
Counter Review and Determination	Exempt
Event Permit	Exempt
Final Map	Exempt
General Plan Amendment	Exempt
Initial Historic Screening	Exempt
Historic Demolition Permit	Protocol Applies
Historic Preservation Permit	Protocol Applies
Historic Relocation Permit	Protocol Applies
LCP Amendment	Exempt
Lot Line Adjustment/Lot Merger	Exempt
Parcel Map (4 lots or less)	Exempt
Sign Permit (and Administrative Sign Permit)	Exempt
Site Plan Review Permit (Conceptual)	Exempt
Tentative Map	Exempt if ground disturbance is minor or area is previously disturbed (see Section 2.2.1)
Tree Permit with Development	Exempt
Undocumented Dwelling Unit Permit	Exempt
Use Permit	Exempt if ground disturbance is minor or area is previously disturbed (see Section 2.2.1)
Use Permit Amendment	Exempt if ground disturbance is minor or area is previously disturbed (see Section 2.2.1)
Variance Permit	Exempt if ground disturbance is minor or area is previously disturbed (see Section 2.2.1)
Water Entitlement Permit	Exempt
Wireless Telecommunications Facilities Permit	Protocol Applies
Zoning Map Amendment	Exempt
Zoning Text Amendment	Exempt



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