

## 4.4 CULTURAL RESOURCES

### 4.4.1 Introduction

The section identifies existing conditions in the City and its Sphere of Influence (collectively referred herein as City) and evaluates potential impacts on cultural resources that could result from the Project, including future housing development on the housing sites facilitated by the Project. Historically, the term “cultural resources” encompassed archaeological, historical, paleontological, and tribal cultural resources, including both physical and intangible remains, or traces left by historic or prehistoric peoples. However, with changes to the *State CEQA Guidelines Appendix G*, this EIR addresses paleontological resources in **Section 4.6: Geology and Soils** and tribal cultural resources in **Section 4.16: Tribal Cultural Resources**.

### 4.4.2 Terminology

Key terms and concepts used in this section to describe and assess the potential cultural resource impacts are defined below:

**Archeological Site.** A site is defined by the National Register of Historic Places (NRHP) as the place or places where the remnants of a past culture survive in a physical context that allows for the interpretation of these remains. Archeological remains usually take the form of artifacts (e.g., fragments of tools, vestiges of utilitarian or non-utilitarian objects), features (e.g., remnants of walls, cooking hearths, or midden deposits), and ecological evidence (e.g., pollen remaining from plants that were in the area when the activities occurred). Prehistoric archaeological sites generally represent the material remains of Native American groups and their activities dating to the period before European contact. In some cases, prehistoric sites may contain evidence of trade contact with Europeans. Ethnohistoric archaeological sites are defined as Native American settlements occupied after the arrival of European settlers in California. Historic archaeological sites reflect the activities of non-native populations during the Historic period.

**Artifact.** An object that has been made, modified, or used by a human being.

**Cultural Resource.** A cultural resource is a location of human activity, occupation, or use identifiable through field inventory, historical documentation, or oral evidence. Cultural resources include archaeological resources and built environment resources (sometimes known as historic architectural resources), and may include sites, structures, buildings, objects, artifacts, works of art, architecture, and natural features that were important in past human events. They may consist of physical remains or areas where significant human events occurred, even though evidence of the events no longer remains. Cultural resources also include places that are of traditional, cultural, or religious importance to social or cultural groups.

**Historic Period.** The period that begins with the arrival of the first non-native population and thus varies by area.

**Historical Resource.** This term is used for the purposes of CEQA and is defined in the State CEQA Guidelines (14 California Code of Regulations [CCR] §15064.5) as: (1) a resource listed in, or determined to be eligible for listing in the California Register of Historical Resources (CRHR); (2) a resource included in a local register of historical resources, as defined in Public Resources Code (PRC) Section 5020.1(k) or identified as significant in a historical resource survey meeting the requirements which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California by the lead

agency, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Historical resources may also include tribal cultural resources including sites, features, places, cultural landscapes, sacred places, objects, and/or archeological resources with value to a California Native American Tribe per PRC Section 21074.

**Prehistoric Period.** The era prior to 1772. The latter part of the prehistoric period (post-1542) is also referring to as the protohistoric period in some areas, which marks a transitional period during which native populations began to be influenced by European presence resulting in gradual changes to their lifeways.

**Tribal Cultural Resource.** This term refers to a site, feature, place, cultural landscape, sacred place, object, or archaeological resource with cultural value to a California Native American tribe that is listed or eligible for listing in national, California, or local registers. A lead agency also has the discretion to determine that a resource is a tribal cultural resource if the determination is supported by substantial evidence. Tribal cultural resources are addressed in **Section 4.16: Tribal Cultural Resources** of this EIR.

### 4.4.3 Regulatory Setting

#### Federal

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

Enacted in 1966 and amended in 2000, the National Historic Preservation Act (NHPA) declared a national policy of historic preservation and instituted a multifaceted program, administered by the U.S. Secretary of the Interior, to encourage the achievement of preservation goals at the federal, State, and local levels. The NHPA authorized the expansion and maintenance of the National Register of Historic Places (NRHP), established the position of State Historic Preservation Officer and provided for the designation of State Review Boards, set up a mechanism to certify local governments to carry out the purposes of the NHPA, assisted Native American tribes to preserve their cultural heritage, and created the Advisory Council on Historic Preservation.

The NRHP was established by the NHPA, as "an authoritative guide to be used by federal, state, and local governments, private groups, and citizens to identify the Nation's historic resources and to indicate what properties should be considered for protection from destruction or impairment" (Code of Federal Regulations [CFR] Title 36 §60.2). The NRHP recognizes both historical-period and prehistoric archaeological properties that are significant at the national, state, and local levels. To be eligible for listing in the NRHP, a resource must be deemed significant in American history, architecture, archaeology, engineering, or culture. Districts, sites, buildings, structures, and objects of potential significance must meet one or more of the following four established criteria:

- **Criterion A:** Associated with events that have made a significant contribution to the broad patterns of our history;
- **Criterion B:** Associated with the lives of persons significant in our past;
- **Criterion C:** Embody the distinctive characteristics of a type, period, method of construction that represent the work of a master, that possesses high artistic values, or that represents a significant and distinguishable entity whose components may lack individual distinction;
- **Criterion D:** Have yielded, or may be likely to yield, information important in prehistory or history.

Unless the property possesses exceptional significance, it must be at least 50 years old to be eligible for listing in the NRHP. In addition to meeting the criteria of significance, a property must have the integrity of location, design, setting, materials, workmanship, feeling, and association. Sites that meet one or more NRHP eligibility criteria but do not retain integrity are not eligible for the NRHP. Guidance regarding the integrity of location, design, setting, materials, workmanship, feeling, and association is provided by National Register Bulletin 15.<sup>1</sup>

## State

### *California Office of Historic Preservation (OHP)*

The California State Office of Historic Preservation (OHP) is responsible for administering federally and State mandated historic preservation programs to further the identification, evaluation, registration and protection of California's archaeological and historical resources. The OHP manages four registration programs for historical resources: National Register of Historic Places, California Register of Historical Resources, California Historical Landmarks, and State Points of Historical Interest.

### *California Register of Historical Resources (CRHR)*

In 1992, Assembly Bill (AB) 2881 was signed into law establishing the California Register of Historical Resources (CRHR). The CRHR, implemented in 1998, 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" (Public Resources Code [PRC] §5024.1). The CRHR encourages public recognition and protection of resources of architectural, historical, archaeological, and cultural significance.

Eligibility for the CRHR is determined by the California Office of Historic Preservation in a formal review process in which a resource is proposed for listing. A resource deemed eligible for the NRHP is typically deemed eligible for the CRHR. Certain resources are determined by the statute to be included in the CRHR, including California properties formally determined eligible for or listed in the NRHP, as well as State Landmarks and State Points of Interest. The CRHR is maintained by the Office of Historic Preservation's State Historic Preservation Officer.

A resource, either an individual property or a contributor to a historic district, may be listed in the CRHR if the SHRC determines that it meets any 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; 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.

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<sup>1</sup> NRHP. (2002). National Register Bulletin 15. <https://www.nrc.gov/docs/ML1912/ML19120A529.pdf>. Accessed November 2023.

According to CCR Section 7050(a), the types of resources eligible for nomination:

- **Building.** A resource, such as a house, barn, church, factory, hotel, or similar structure created principally to shelter or assist in carrying out any form of human activity. “Building” may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn;
- **Site.** A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archaeological value regardless of the value of any existing building, structure, or object. A site need not be marked by physical remains if it is the location of a prehistoric event, and if no buildings, structures, or objects marked it at that time. Examples of such sites are trails, designed landscapes, battlefields, habitation sites, Native American ceremonial areas, petroglyphs, and pictographs;
- **Structure.** The term “structure” is used to describe a construction made for a functional purpose rather than creating human shelter. Examples of structures include mines, bridges, and tunnels;
- **Object.** The term “object” is used to describe those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed, as opposed to a building or a structure. Although it may be moveable by nature or design, an object is associated with a specific setting or environment. Objects should be in a setting appropriate to their significant historic use, role, or character. Objects that are relocated to a museum are not eligible for listing in the California Register. Examples of objects include fountains, monuments, maritime resources, sculptures, and boundary markers; and
- **Historic district.** Historic districts are unified geographic entities that contain a concentration of historic buildings, structures, objects, or sites united historically, culturally, or architecturally. Historic districts are defined by precise geographic boundaries. Therefore, districts with unusual boundaries require a description of what lies immediately outside the area, in order to define the edge of the district and to explain the exclusion of adjoining areas. The district must meet at least one of the criteria for significance discussed in Section 4852(b)(1)-(4) of this chapter.

Under PRC Section 5024.1 and 14 CCR Section 4852(c), a cultural resource must retain integrity to be considered eligible for the CRHR. Specifically, it must retain sufficient character or appearance to be recognizable as a historical resource and convey reasons of significance. Integrity is evaluated with regard to the retention of such factors as location, design, setting, materials, workmanship, feeling, and association. Cultural sites that have been affected by ground-disturbing activities, such as agricultural activities and off-road vehicle use, often lack integrity because they have been directly damaged or removed from their original location, among other changes.

**California Points of Historical Interest.** California Points of Historical Interest are sites, buildings, features, or events that are of local (city or county) significance and have anthropological, cultural, military, political, architectural, economic, scientific, technical, religious, experimental, or other value. No historical resource may be designated as both a California Historical Landmark and a Point of Historical Interest. If a Point of Historical Interest is subsequently granted status as a California Historical Landmark, the Point of Historical Interest designation is retired. To be eligible for designation as a Point of Historical Interest, a resource must meet at least one of the following criteria. It must be:

- The first, last, only, or most significant of its type in the State or within the local geographic region (city or county);
- Associated with an individual or group having a profound influence on the history of the local area;
- A prototype of, or an outstanding example of, a period, style, architectural movement, or construction; or
- One of the more notable works or the best-surviving work in the local region of a pioneer architect, designer, or master builder.

**California Historical Landmarks.** California Historical Landmarks are buildings, sites, features, or events that are of statewide significance and have anthropological, cultural, military, political, architectural, economic, scientific or technical, religious, experimental, or other historical value by meeting at least one of the criteria listed below:

- The first, last, only, or most significant of its type in the State or within a large geographic region (Northern, Central, or Southern California).
- Associated with an individual or group having a profound influence on the history of California.
- A prototype of, 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 Environmental Quality Act*

Pursuant to State CEQA Guidelines, all California public agencies must consider the effects of their actions on both “historical resources” and “unique archaeological resources.” Pursuant to PRC Section 21084.1, 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.” Additionally, PRC Section 21083.2 requires agencies to determine whether proposed projects would have effects on “unique archaeological resources.”

- “Historical resource” is a term with a defined statutory meaning. Under California Code of Regulations (CCR), Title 14, Chapter 3 (CEQA Guidelines), Section 15064.5 (a) “historical resource” includes the following:
  - A resource listed in, or determined to be eligible by the State Historical Resources Commission (SHRC), for listing in the California Register of Historical Resources (CRHR) (PRC §5024.1 and Title 14 CCR, §4850 et seq.);
  - A resource included in a local register of historical resources, as defined in PRC Section 5020.1(k) or identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g), shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
  - Any object, building, structure, site, area, place, record, or manuscript that a Lead Agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of

California may be considered to be a historical resource, provided the Lead Agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the Lead Agency to be "historically significant" if the resource meets the criteria for listing on the CRHR (PRC §5024.1 and Title 14 CCR §4852) including the following:

- **Criterion 1** - Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- **Criterion 2** - Is associated with the lives of persons important in our past;
- **Criterion 3** - 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; or
- **Criterion 4** - Has yielded, or may be likely to yield, information important in prehistory or history.

CEQA Guidelines Section 15064.5(b)(1) states, "a project with an effect 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. A substantial adverse change in the significance of a historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historical resource would be materially impaired."

The State CEQA Guidelines also require agencies to consider whether projects will affect "unique archaeological resources." PRC Section 21083.2(g), states "'unique archaeological resources means 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:

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

*California Health and Safety Code Section, 7050.5 and 7052*

California Health and Safety Code (HSC) Section 7050.5, declares that, in the event of the discovery of human remains outside of a dedicated cemetery, all ground disturbance must cease, and the county coroner must be notified. HSC Section 7052 establishes a felony penalty for mutilating, disinterring, or otherwise disturbing human remains, except by relatives. If human remains are encountered during future housing development facilitated by the Project, HSC Section 7050.5 states:

- a) "Every person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any human remains in or from any location other than a dedicated cemetery without authority of law

is guilty of a misdemeanor, except as provided in PRC Section 5097.99.<sup>2</sup> The provisions of this subdivision shall not apply to any person carrying out an agreement developed pursuant to PRC Section 5097.94(I)<sup>3</sup> or to any person authorized to implement PRC Section 5097.98.<sup>4</sup>

- b) In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code<sup>5</sup>, that the remains are not subject to the provisions<sup>6</sup> of Government Code Section 27491<sup>6</sup> or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in PRC Section 5097.98.<sup>7</sup> The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative notifies the coroner of the discovery or recognition of the human remains.
- c) If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission (NAHC).<sup>8</sup>

### *California Coastal Act*

The California Coastal Act, in part, authorizes the California Coastal Commission (Coastal Commission) to review permit applications for development within the coastal zone and, where necessary, to require reasonable mitigation measures to offset the effects of that development. Permits for development are issued with "special conditions" to ensure the implementation of these mitigation measures. Section 30244 of the Act, "Archaeological or Paleontological Resources," states that: Where development would adversely impact archaeological or paleontological resources as identified by the SHPO, reasonable mitigation measures shall be required. In the City, this is implemented via the certified Local Coastal Program (LCP), which applies to all development located within the portion of the City located in the Coastal Zone.

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<sup>2</sup> State of California. (2011). *PRC Section 5097.99*.  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5097.99.&lawCode=PRC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.99.&lawCode=PRC). Accessed November 2023.

<sup>3</sup> State of California (2019). *PRC Section 5097.94*.  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5097.94.&lawCode=PRC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.94.&lawCode=PRC). Accessed November 2023.

<sup>4</sup> State of California (2010). *PRC Section 5097.98*.  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5097.98.&lawCode=PRC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.98.&lawCode=PRC). Accessed November 2023.

<sup>5</sup> State of California. (1947). *GC Chapter 10*.  
[https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?lawCode=GOV&division=2.&title=3.&part=3.&chapter=10.&article=1.&goUp=Y](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=GOV&division=2.&title=3.&part=3.&chapter=10.&article=1.&goUp=Y). Accessed November 2023.

<sup>6</sup> State of California. (2016). *GC Section 27491*.  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=27491.&lawCode=GOV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=27491.&lawCode=GOV). Accessed November 2023.

<sup>7</sup> State of California (2010). *PRC Section 5097.98*.  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5097.98.&lawCode=PRC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.98.&lawCode=PRC). Accessed November 2023.

<sup>8</sup> State of California (1987). *Health and Safety Code Section 7050.5*.  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=HSC&sectionNum=7050.5](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=7050.5). Accessed November 2023.

### *California Historical Building Code*

The California Historical Building Code (CHBC) is intended to save California's architectural heritage by recognizing the unique construction issues inherent in maintaining and adaptively reusing historic buildings. The CHBC provides alternative building regulations for permitting repairs, alterations, and additions necessary for the preservation, rehabilitation, relocation, related construction, change of use, or continued use of a "qualified historical building or structure."

The California Health and Safety Code Section 18955 defines a "qualified historical building or structure" as "any structure or property, collection of structures, and their associated sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction. This shall include structures on existing or future national, state, or local historical registers or official inventories, such as the NRHR, State Historical Landmarks, State Points of Historical Interest, and City or County registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks. This shall also include places, locations, or sites identified on these historical registers or official inventories and deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction."

The CHBC's standards and regulations are intended to facilitate the rehabilitation or change of occupancy so as to preserve their original or restored elements and features, to encourage energy conservation and a cost-effective approach to preservation, and to provide for reasonable safety from fire, seismic forces or other hazards for occupants and users of such buildings, structures, and properties and to provide reasonable availability and usability by the physically disabled.

In the City, any building or structure rated as Class 1, 2, 3, or 4 in the Newport Beach Register of Historical Property is deemed a "qualified historical building or structure" for purposes of applying the CHBC. The City Building Official may apply the said CHBC to any such building or structure, providing, however, that the highest standards of structural and fire safety are maintained. Class 5 properties are listed in the City Register for recognition purposes only.

### Local

#### *Newport Beach City Council Policy Manual*

The Newport Beach City Council (City Council) Policy Manual identifies policies applicable to cultural resources. These policies are discussed below.

**Places of Historical and Architectural Significance (K-2).** This regulation establishes the City Council's authority to designate as historical property any building, object, structure, monument, or collection having importance to the history or architecture of the City and provides a procedure for listing. Accordingly, the City Clerk is required to maintain the City Register. The City Council may at any time repeal, revise, or modify any such designation upon reconsideration of the historical or architectural importance of the structure.

**Paleontological and Archaeological Resource Protection Guidelines (K-5).** Under this guideline, the City will ensure that potential impacts on paleontological and archaeological resources by public or private development are properly evaluated and mitigated in accordance with the General Plan, Local Coastal Program, and State CEQA Guidelines. The guideline requires development projects to determine if paleontological or archaeological resources exist at or near a project site. If the site is located in the Coastal Zone, the requirements and procedures provided in Municipal Code Section 21.30.105(A), or any



successor statute, shall be implemented. If resources are known to exist at or near a project site or if the project could otherwise affect known resources, a preliminary investigation report (PIR) shall be prepared by a qualified professional archaeologist or paleontologist. If the preliminary investigation report concludes that resources are not likely to be at the present at the project site or encountered during construction, no further analysis shall be required. If the preliminary report concludes that resources are present at the site or are likely to be present at the site or may be encountered by project construction, additional investigative work shall be prepared to identify and disclose the potential impacts of the project.

### *City of Newport Beach General Plan*<sup>9</sup>

The *City of Newport Beach General Plan 2006 Update* (General Plan) includes goals and policies to address the protection and sustainability of the City's historic and paleontological resources. Preserving and maintaining these resources helps to create an awareness and appreciation of the City's rich history. According to the General Plan, adopted policies related to historical and cultural resources were designed to recognize, maintain, and protect the community's unique historical, cultural, and archeological sites and structures.

The following General Plan goals and policies that have been adopted by the City for the purpose of avoiding or mitigating an environmental effect are applicable to future development projects associated with the proposed Project. General Plan goals and policies associated with paleontological resources are addressed in **Section 4.6: Geology and Soils** and tribal cultural resources in **Section 4.16: Tribal Cultural Resources**.

## Historical Resources Element

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| <b>Goal HR 1</b>     | <b>Recognize and protect historically significant landmarks, sites, and structures.</b>  |
| <b>Policy HR 1.2</b> | <b>Preservation or Re-Use of Historical Structures.</b> Encourage the preservation of structures listed on the NRHR and/or the list of California Historical Landmarks, and/or the City Register. Provide incentives, such as grading reductions or waivers of application fees, permit fees, and/or any liens placed by the City to properties listed in the federal, State, and local Registers or the in exchange for preservation easements.       |
| <b>Policy HR 1.4</b> | <b>Adaptive Re-use.</b> Encourage alternatives to demolition of historical sites or structures by promoting architecturally compatible rehabilitation or adaptive re-use. Provide incentives such as permit and application fee waivers, flexible building requirements and free technical advice by person(s) qualified in historical preservation.   |
| <b>Policy HR 1.5</b> | <b>Historical Elements within New Projects.</b> Require that proposed development that is located on a historical site or structure incorporate a physical link to the past within the site or structural design, if preservation or adaptive reuse is not a feasible option. For example, incorporate historical photographs or artifacts within the proposed project or preserve the location and structures of existing pathways, gathering places, |

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<sup>9</sup> City of Newport Beach. (2006). *City of Newport Beach General Plan*. <https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/general-plan>. Accessed November 2023.

seating areas, rail lines, roadways, or viewing vantage points within the proposed site design.

**Policy HR 1.6**      **Documentation.** Require that, prior to the issuance of a demolition or grading permit, developers of a property that contains a historic structure as defined by CEQA retain a qualified consultant to record the structure in accordance with U.S. Secretary of Interior guidelines (which includes drawings, photographs, and written data) and submit this information to the Newport Beach Historical Society, Orange County Public Library, and City Planning Department.

**Policy HR 1.7**      **Offer for Relocation of Historic Structure.** Require that, prior to the demolition of a historic structure, developers offer the structure for relocation by interested parties.

**Goal HR 2**      **Identification and protection of important archeological and paleontological resources within the City.**

**Policy HR 2.1**      **New Development Activities:** Require that, in accordance with CEQA, new development protect and preserve paleontological and archaeological resources from destruction and avoid and mitigate impacts to such resources. Through planning policies and permit conditions, ensure the preservation of significant archeological and paleontological resources and require that the impact caused by any development be mitigated in accordance with CEQA.

**Policy HR 2.2**      **Grading and Excavation Activities.** Maintain sources of information regarding paleontological and archeological sites and the names and addresses of responsible organizations and qualified individuals, who can analyze, classify, record, and preserve paleontological or archeological findings. Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural, archeological, or paleontological resources. If these resources are found, the applicant shall implement the recommendations of the paleontologist/archeologist, subject to the approval of the City Planning Department.

**Policy HR 2.3**      **Cultural Organizations.** Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow representatives of such groups to monitor grading and/or excavation of development sites.

**Policy HR 2.4**      **Paleontological or Archaeological Materials.** Require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Newport Beach, or Orange County, whenever possible.

## Land Use Element

**Goal LU 6.8:**      **A series of commercial, visitor-serving, marine-related, civic, and residential neighborhoods that are vibrant throughout the year, differentiated by their historic and functional characteristics and architectural style, yet integrated by streetscape amenities.**

**Policy LU 6.8.6:** **Historic Character.** Preserve the historic character of Balboa Peninsula’s districts by offering incentives for the preservation of historic buildings and requiring new development to be compatible with the scale, mass, and materials of existing structures, while allowing opportunities for architectural diversity.

#### Natural Resources Element

**Goal NR 18:** **Protection and preservation of important paleontological and archaeological resources.**

**Policy NR 18.1** **New Development.** Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources in accordance with the requirements of CEQA. Through planning policies and permit conditions, ensure the preservation of significant archeological and paleontological resources and require that the impact caused by any development be mitigated in accordance with CEQA.

**Policy NR 18.3** **Potential for New Development to Impact Resources.** Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.

**Policy NR 18.4** **Donation of Materials.** Require new development, where on-site preservation and avoidance are not feasible, to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.

#### *City of Newport Beach Local Coastal Program – Coastal Land Use Plan*

The Coastal Act requires each local jurisdiction wholly or partly within the coastal zone to prepare an LCP, which is used to carry out California Coastal Act policies and requirements. The City lies partly within the coastal zone. The City’s LCP sets forth goals, objectives, and policies that govern the use of land and water in the coastal zone within the City and its Sphere of Influence, with the exception of Newport Coast and Banning Ranch. The City’s Coastal Land Use Plan includes the following policies applicable to cultural resources:

**Policy 4.5.1-1** Require new development to protect and preserve paleontological and archaeological resources from destruction and avoid and minimize impacts to such resources. If avoidance of the resource is not feasible, require an in situ or site-capping preservation plan or a recovery plan for mitigating the effect of the development.

**Policy 4.5.1-2** Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural or paleontological resources. If grading operations or excavations uncover paleontological/archaeological resources, require the paleontologist/archeologist monitor to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/archaeological resources. If resources are determined to be significant, require submittal of a mitigation plan. Mitigation measures considered may range from in-situ preservation to recovery

and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space.

**Policy 4.5.1-3** Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.

**Policy 4.5.1-4** Where in situ preservation and avoidance are not feasible, require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Orange County, whenever possible.

**Policy 4.5.1-5** Where there is a potential to affect cultural or paleontological resources, require the submittal of an archeological/cultural resources monitoring plan that identifies monitoring methods and describes the procedures for selecting archeological and Native American monitors and procedures that will be followed if additional or unexpected archeological/cultural resources are encountered during development of the site. Procedures may include, but are not limited to, provisions for cessation of all grading and construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options to allow for significance testing, additional investigation and mitigation.

### *City of Newport Beach Municipal Code*

**Title 21, Chapter 30, Section 105 Cultural Resource Protection.**<sup>10</sup> Newport Beach Municipal Code (Municipal Code) Section 21.30.105 ensures archeological/paleontological resources are afforded protection on sites known to contain or are suspected of containing archeological/paleontological cultural resources. This regulation provides for the determination of the nature and extent of on-site archaeological/paleontological cultural resources during the early stages of planning for the development of the site, thereby allowing for a full range of mitigation options. Accordingly, development sites with known or high potential for the presence of archaeological/paleontological cultural resources are required to be analyzed through a comprehensive archaeological research plan (ARP) and implemented through a coastal development permit, prior to consideration of a permit to develop the site.

Through this process, the ARP is then used to guide any subsequent development of a site. The ARP, when properly designed and reviewed by qualified archaeologists, along with consultation with Native American tribes with ancestral ties to the area can establish whether the site was used in prehistoric times by Native Americans, determine whether evidence of that use remains, and provide for the in situ preservation of intact significant resources and other mitigation options to otherwise protect significant cultural resources on site. The regulation also provides procedures for archaeological and Native American tribe monitoring of grading and other activities during project development to ensure any newly discovered cultural resources are protected.

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<sup>10</sup> City of Newport Beach (2021). *City of Newport Beach Municipal Code – Cultural Resource Protection*. <https://www.codepublishing.com/CA/NewportBeach/#!/NewportBeach21/NewportBeach2130.html#21.30.105>. Accessed Nov, 2023.

Future housing development facilitated by the Project would be subject to the following performance standards:

- **Archaeological Research Plan.** When a development is proposed in an area where there are known or has potential for archaeological or paleontological resources on the site an ARP shall be prepared by a qualified archaeologist/paleontologist and implemented through a coastal development permit before the submittal of a coastal development permit for the proposed development of the site. The purpose of the ARP is to determine whether or not significant cultural resources are present, determine the boundaries of cultural resources, and provide measures that result in the avoidance and/or minimization of impact to archaeological or paleontological cultural resources present on the site. A coastal development permit is required to implement an ARP since such implementation involves development (e.g., excavating shovel test pits, trenching, etc.) that has the potential to result in significant impacts to known or suspected on-site cultural resources.
- **Monitoring and Mitigation Plan (MMP).** Even after implementation of an approved ARP, prepared in accordance with the above provisions, there is potential for proposed development activity to adversely affect archaeological/paleontological resources, a qualified paleontologist/archeologist shall monitor all grading and/or excavation activities. Therefore, a coastal development permit application for any subsequent development at the site shall include the submittal of evidence that the approved ARP, including all mitigation, has been fully implemented. Further, the coastal development permit for subsequent development of the site shall include the requirement for the submittal of a MMP to be implemented during any site grading, utility trenching or any other development activity that has the potential to uncover or otherwise disturb archaeological/cultural resources and shall provide for appropriate mitigation measures for any additional resources that are found. The elements of the MMP shall be consistent with subsection (A)(3)(ii)(A) of this section and specify that sufficient archaeological and Native American monitors must be provided to assure that all activity that has the potential to uncover or otherwise disturb cultural deposits will be monitored at all times while those activities are occurring. The MMP shall be ongoing until grading activities have reached sterile soil.

The MMP shall include demonstration of a good faith effort to avoid impacts to the resources through measures including project redesign, in situ preservation/capping, and placing cultural resource areas in open space; if avoidance of the resource is not feasible, a recovery and/or relocation plan for mitigating the effect of the development shall be required.

#### 4.4.4 Existing Conditions

The following information summarizes the major prehistoric, historic, and known cultural resources in and around the City based on the General Plan and General Plan Program EIR (General Plan EIR), City Register, and Historic Resources Inventory.

## Prehistoric Setting<sup>11</sup>

Archaeologists and ethnologists have long contemplated the cultural sequences that occurred before Spanish contact. William Wallace (1955) developed the first comprehensive California chronologies and defines four periods for the Southern California coastal region. These four periods are: Early Man, Milling Stone, Intermediate, and Late Prehistoric.

**Horizon I: Early Man or Paleo-Indian Period.** Spanning the period from the end of the Pleistocene to approximately 8,000 years before present (YBP),<sup>12</sup> archaeological assemblages attributed to this horizon are characterized by large projectile points and scrapers. The limited data available suggests that prehistoric populations focused on hunting and gathering and moved about the region in small nomadic groups. Encampments were probably temporary, located near major kills or important resource areas. Some evidence for the earliest human occupation of Orange County was discovered at archaeological sites around Upper Newport Bay and dates approximately 9,500 YBP. Over 50 sites have been recorded in the City, including the Newport Coast area and Banning Ranch, many yielding substantial information regarding the prehistory of the City and County, and have included human burials.

**Horizon II: Milling Stone Assemblages.** Characterized by the appearance of handstones and millingstones, this horizon tentatively dates to between 8,000 YBP and 3,000 YBP. Assemblages in the early Milling Stone Horizon reflect an emphasis on plant foods and foraging subsistence systems. For inland locales, it has been assumed that grass seed exploitation formed a primary subsistence activity. Artifact assemblages include choppers and scraper planes, but generally lack projectile points. The appearance of large projectile points in the latter portion of the Milling Stone Horizon suggests a more diverse economy. The distribution of Milling Stone sites reflects the theory that aboriginal groups may have followed a modified, centrally based wandering settlement pattern. In this semi-sedentary pattern, a base camp would have been occupied for a portion of the year but a small population group seasonally occupied subsidiary camps in order to exploit resources not generally available near the base camp. Sedentism apparently increased in areas possessing an abundance of resources available for longer time periods. More arid inland regions would have provided a seasonally dispersed resource base, restricting sedentary occupation. Along the coast, shell midden sites are common site types. Some formal burials, occasionally with associated grave goods, are also evident.

**Horizon III: Intermediate Cultures.** Dated to between 3,000 YBP and 1,350 YBP, the Intermediate Horizon represents a transitional period. The Intermediate Period is identified by a mixed strategy of plant exploitation, terrestrial hunting, and maritime subsistence strategies. Site assemblages retain many attributes of the Milling Stone Horizon. In coastal areas, the introduction of the circular shell fishhook and the growing abundance of fish remains in sites over the course of the period suggest a substantial increase in fishing activity during the Intermediate Horizon. Additionally, Intermediate Horizon sites contain large stemmed or notched projectile points and portable mortars and pestles. The mortars and pestles suggest that the aboriginal populations may have harvested, processed, and consumed acorns. It has been proposed that sedentism increased with the exploitation of storable food resources (acorns), and that the duration and intensity of base camp occupation increased, especially toward the latter part of this horizon. This subsistence strategy continued until European contact. Material culture became more diverse and

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<sup>11</sup> City of Newport Beach. (2006) *City of Newport Beach General Plan Update Draft EIR – Cultural Resources*. [https://newportbeachca.gov/PLN/General\\_Plan/GP\\_EIR/Volume\\_1/09\\_Sec4.4\\_Cultural\\_Resources.pdf](https://newportbeachca.gov/PLN/General_Plan/GP_EIR/Volume_1/09_Sec4.4_Cultural_Resources.pdf). Accessed November 2023.

<sup>12</sup> “Years Before Present” assumes that 1950 is “present”, so in this case, 8,000 YBP would be 6,050 BCE (Before Common Era).

elaborate and included steatite containers, perforated stones, bone tools, ornamental items, and asphalt adhesive.

**Horizon IV: Late Prehistoric Cultures.** Extending from the year 750 to Spanish contact in 1769, the Late Prehistoric Horizon reflects an increased sophistication and diversity in technology. During this period, exploitation of many food resources, particularly marine resources among coastal groups, continued to intensify. The material culture in the Late Prehistoric Horizon increased in complexity in terms of the abundance and diversity of artifacts being produced. This is characterized by the presence of small projectile points that simplified the use of the bow and arrow. In addition, assemblages include steatite bowls, asphaltum, grave goods, and elaborate shell ornaments. Use of bedrock milling stations was widespread during this horizon. Increased hunting efficiency and widespread acorn exploitation provided reliable and storable food resources. These innovations apparently promoted greater sedentism.

The Late Prehistoric Period includes the first few centuries of early European contact (1542–1769); it is also known as the Protohistoric Period as there was a low level of interaction between native Californians and Europeans prior to Portolá's overland expedition in 1769. In the few centuries prior to European contact, records note substantial increases in the indigenous population. Some village sites may have contained as many as 1,500 individuals and many of these village sites were occupied throughout the year rather than seasonally. This shift in settlement strategy was likely influenced by improved food procurement and storage technology, which enabled population growth.

Please refer to **Section 4.16: Tribal Cultural Resources**, regarding Ethnographic Setting.

### Early History of Newport Beach<sup>13</sup>

In July 1769, Spaniard Gaspar de Portola led an expedition that reached the boundaries of present-day Orange County. Father Junipero Serra, a member of the expedition, dedicated the Mission of San Juan Capistrano, Orange County's first permanent settlement, on November 1, 1776. The Mission's chapel and adjoining structure were the first signs of civilization erected in the Santa Ana Region. In the 1800s, the Capistrano Mission's land holdings were parceled out as Spanish and Mexican land grants to war heroes and aristocratic families. The most prominent landowners of the area, Don Sepulveda and Don Bernardo Yorba, whose combined holdings comprised Newport Beach's upper bay and lower bay, sold their tracts to American entrepreneurs Flint, Bixby, Irvine, and McFadden. Commerce began in the Newport Beach community in 1870 when a small stern wheeler from San Diego named "The Vaquero" made its first trip to a marshy lagoon to exchange lumber for hides, tallow, livestock, and grain. James McFadden and ranch owner James Irvine named the landing on the bay "Newport." The McFadden brothers brought in lumber from Northern California and shipped out produce from local farmers on a shallow draft steam schooner named Newport.

In 1888, due to the treacherous harbor entrance, James McFadden moved the isolated settlement to the peninsula and built a wharf that extended to deep water where large steamers could dock. In 1891, the McFadden brothers completed a railway connection to Santa Ana. Shipping activity increased dramatically for the next eight years, making the McFadden Wharf area a booming commercial and shipping center and creating a growing company town. However, in 1899, the federal government allocated funds for major improvements to a new harbor at San Pedro, which was served by the Southern Pacific Railroad

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<sup>13</sup> City of Newport Beach (2006). *City of Newport Beach General Plan – Historical Resources Element*. [https://www.newportbeachca.gov/PLN/General\\_Plan/07\\_Ch6\\_HistoricalResources\\_web.pdf](https://www.newportbeachca.gov/PLN/General_Plan/07_Ch6_HistoricalResources_web.pdf). Accessed November 2023.

and would become Southern California's major seaport. The McFadden Wharf and Southern Pacific Railroad were sold to a beet-sugar producer in Los Alamitos who, six months later, sold to the Southern Pacific Railroad, signaling the end of Newport as a commercial shipping center.

In 1902, James McFadden sold his Newport town site and about half of the Newport Peninsula to William S. Collins, who saw Newport Bay's resort and recreation potential. Collins took on Henry E. Huntington as a partner in the Newport Beach Company. Huntington acquired the Pacific Electric Railway and used it to promote new communities outside of Los Angeles. In 1905, the Pacific Electric Railroad established itself in Newport Beach, connecting it to the City of Los Angeles by rail. Rapid transit "Red Cars" brought new visitors to the waterfront, and small hotels and beach cottages were developed for the tourist industry. Between 1902 and 1907, many of the waterfront communities were subdivided, including West Newport, East Newport, Bay Island, Balboa, Corona del Mar, Balboa Island, and Port Orange (at old Newport Landing).

On September 1, 1906, Newport Beach became the fifth city to incorporate in Orange County; Newport Heights and Corona del Mar were annexed in 1917. In the 1920s, the City and County began work to improve the harbor entrance and create navigable channels in the bay. Between 1934 and 1936, the federal government and the County Harbor District undertook work around the harbor. They dredged the Lower Bay, extended jetties, and created the present-day contour of Newport Harbor. During World War II, the harbor became a vital hub as naval ships were built and repaired in its coastal waters. After the war, many servicemen returned to build their homes in the City and the surrounding area.

The Santa Ana freeway, built in the 1950s, triggered further growth. During this time, housing development began to spread north and eastward from the waterfront to the hills and mesa areas. The community's economic industry changed, as the fishing industry, once the backbone of the City's economy, gradually declined and was replaced with new businesses and commercial centers. Beginning in 1967 and through the 1970s and 1980s, the construction of the Fashion Island shopping center, hotels, offices, and new homes led to the creation of active employment, retail, and residential areas.

### Historical Resources<sup>14</sup>

Eleven properties in the City have been listed or designated eligible for listing on the NRHP or CRHR, or otherwise listed as historic or potentially historic in the California Historic Resources Information System (CHRIS) maintained by the Office of Historic Preservation. In addition, the City Register also formally recognizes five structures or properties of local historical or architectural significance, most of which are not listed in the NRHP and CRHR. These structures meet the definition of historical resources under State CEQA Guidelines Section 15064.5. State CEQA Guidelines Section 15064.5 states that a project with an effect 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. In addition to the formally recognized resources described above, the City's Historic Resource Inventory includes 61 properties, which while not officially adopted, serves as a useful guide to potentially historic properties that may have historic or cultural significance to the City.

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<sup>14</sup> Ibid.



The General Plan Historical Resources Element identifies recognized historical resources throughout the City.

**Nationally Recognized Resources.** Four properties in the City are listed on the NRHP.

- **Balboa Inn**—Built in 1929, the Balboa Inn is representative of Spanish Colonial Revival architecture and beachfront tourist development.
- **Balboa Pavilion**—Constructed in 1905, the Balboa Pavilion has been the site of numerous social and cultural activities over the turn of the century. It is one of the State’s last surviving examples of great waterfront recreational pavilions.
- **Crystal Cove Historic District**—The Crystal Cove Historic District is a 12.3-acre coastal portion of the 2,791-acre Crystal Cove State Park. The federally listed Historic District is an enclave of 46 vintage rustic coastal cottages originally built in the 1920s and 1930s that are nestled around the mouth of Los Trancos Creek. It is one of the last remaining examples of early twentieth-century Southern California coastal development.
- **Lovell Beach House**—Built in 1926, the Lovell Beach House was designed by Rudolf Schindler and is considered the first pure International Style house built in America.

**State-Recognized Resources.** No properties are listed on the CRHR. There are four properties in the City have been listed as California Historical Landmarks.

- **Old Landing**—Established by Captain Dunnells in the 1870s, it was the site of the first shipping business in Newport Bay.
- **Site of First Water-to-Water Flight**—Commemorates the May 10, 1912, flight of pioneer pilot Glenn L. Martin who flew from the waters of the Pacific Ocean at Balboa to Catalina Island; on a primitive hydroplane; the first water-to-water flight. Today a plaque at the foot of the Balboa Pier honors the memory of Glenn Martin.
- **McFadden Wharf**—The site of the original wharf built in 1888 by the McFadden brothers.
- **Balboa Pavilion**—described above.

**Additional Properties.** The below four additional properties are also listed in the CHRIS database.

- B.K. Stone Building—one of the oldest commercial structures in Newport Beach.
- Balboa Island Firehouse No. 4—early police and fire station for the Balboa Peninsula.
- Bank of Balboa/Bank of America—Bank of Balboa, Bank of America, provided services from 1928 to 1984 (now demolished).
- Our Lady of Mount Carmel Church.

**Locally Recognized Resources.** Properties not listed on the NRHP or CRHR may also be considered historical resources. The City has established the Newport Beach Register of Historical Property (“City Register”) to recognize structures or properties of local historical or architectural significance. The City has listed seven properties in the City Register in recognition of their local historical or architectural significance, as described above. In addition to the Balboa Pavilion and the Balboa Inn, which are also listed in the NRHP and CRHR, the City Register includes the following:

- **Balboa Pavilion** – Constructed in 1905, the Balboa Pavilion has been the site of numerous social and cultural activities over the turn of the century. It is one of the State’s last surviving examples of great waterfront recreational pavilions.
- **Rendezvous Ballroom Site**—A popular Balboa Dance Hall that featured numerous famous Big Bands of the 1930s and 1940s. It was destroyed by fire in 1966.
- **Wilma’s Patio (formally Pepper’s Restaurant/Jolly Roger/Dippy’s)**—Located on Balboa Island, the exposed structural components of Wilma’s Patio are timbers used in the original Balboa Island Bridge and McFadden Wharf.
- **Balboa Inn**—Built in 1929, the Balboa Inn is representative of Spanish Colonial Revival architecture and beachfront tourist development.
- **Bank of America Site**— Now demolished, Bank of America provided services from 1928 to 1984.
- **Solar House**—A significant example of the work of Los Angeles architect John Lautner and an example of Modernist residential architecture.
- **Balboa Theater**—Built in 1928, the Balboa Theater is a former vaudeville theater that at one time housed an infamous speakeasy during the prohibition period.
- **Balboa Saloon**—The 1924 building is representative of the nautical history and Main Street commercial masonry style of Newport Beach.
- **Dory Fishing Fleet**—The Dory Fishing Fleet is located adjacent to Newport Pier. The fleet and open-air fish market have operated at this location since the founding of the fleet in 1891 by Portuguese fishermen. The last remaining fleet of its type, it is a historical landmark designated by the Newport Beach Historical Society. It is a City Council policy that an area immediately west of the Newport Pier be reserved for the Newport Dory Fishing Fleet.
- **Goldenrod Avenue Footbridge** – Constructed in 1928 to span what was known then as “Pacific Gulch” with the purpose of providing more direct access to the beach.

In 1991, the City Council established an Ad Hoc Historic Preservation Advisory Committee (AHPAC) to investigate the historic resources of the community and make recommendations regarding preservation. The AHPAC completed its assignment on May 12, 1992, and reported its findings, which included a Historic Resource Inventory of 61 properties, to the City Council on June 8, 1992. The inventory categorized the properties surveyed into five hierarchical “classes” of significance:

- **Class 1—Major Historic Landmark:** A building, structure, object, site, or natural feature of major historical significance. The property exemplifies historic/architectural themes of local and statewide importance and serves as a significant part of the City’s heritage.
- **Class 2—Historic Landmark:** A building, structure, object, site, or natural feature of historical significance. The property is representative of historical/architectural themes of local and statewide importance and serves as a physical link to the City’s historical past.
- **Class 3—Local Historic Site:** A building, structure, object, site, or natural feature of local significance only. The property is representative of historic/architectural themes of local importance.

- **Class 4—Structure of Historic Interest:** A building, structure, object, site, or natural feature that has been altered to the extent that the historic/architectural integrity has been substantially compromised but is still worthy of recognition.
- **Class 5—Point of Historic Interest:** A site of a building, structure, or object that no longer exists, but is associated with historic events or persons, or architecturally significant structures.

Under this system, Class 1 to Class 3 resources would be eligible to use the CHBC; Class 4 and Class 5 properties would be listed for recognition purposes only. The inventory was never officially adopted by the City and the structures were never placed on the City Register. However, the inventory still serves as a useful guide to potentially historic properties that may have historic or cultural significance to the City.

#### 4.4.5 Thresholds of Significance

In accordance with the *State CEQA Guidelines Appendix G* thresholds, the Project would result in a significant impact to cultural if it would:

- Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5;
- Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5; or
- Disturb any human remains, including those interred outside of formal cemeteries.

#### 4.4.6 Methodology

This analysis considers the *State CEQA Guidelines, Appendix G* thresholds, as described above, in determining whether Project implementation would result in impacts concerning cultural resources. The evaluation was based on reviewing the regulations and determining their applicability to the Project. The intent of this Program EIR is to address any potential impacts to cultural resources associated with future development facilitated by the Project using all available information known at the time of its preparation. The housing sites are evaluated in this Program EIR at a programmatic level. As a result, no site-specific surveys were conducted for this Program EIR analysis. Cultural resource information was acquired through a review of relevant planning documents including the General Plan, General Plan EIR, City Register, Historic Resources Inventory, Municipal Code, and consultation with City staff. The determination that the Project would or would not result in "substantial" adverse effects concerning cultural resources considers the relevant policies and regulations established by federal, State, and local agencies and the future housing development facilitated by the Project's compliance with such policies.

#### 4.4.7 Project Impacts and Mitigation

**Threshold 4.4-1: Would the Project cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?**

As discussed above, State CEQA Guidelines Section 15064.5, defines "historical resources" as resources listed in the CRHR, or determined to be eligible by the California Historical Resources Commission for listing in the CRHR.<sup>15</sup> A resource included in a local register of historical resources, like the City Register,

<sup>15</sup> California Public Resources Code §5020.1(k), §5024.1(g).

is also presumed to be historically or culturally significant. Generally, a resource is considered to be “historically significant” if the resource meets the criteria for listing on the CRHR (PRC SS5024.1, Title 14, §4852) including the following:

- a) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage;
- b) Is associated with the lives of persons important in our past;
- c) 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; or
- d) Has yielded, or may be likely to yield, information important in prehistory or history.

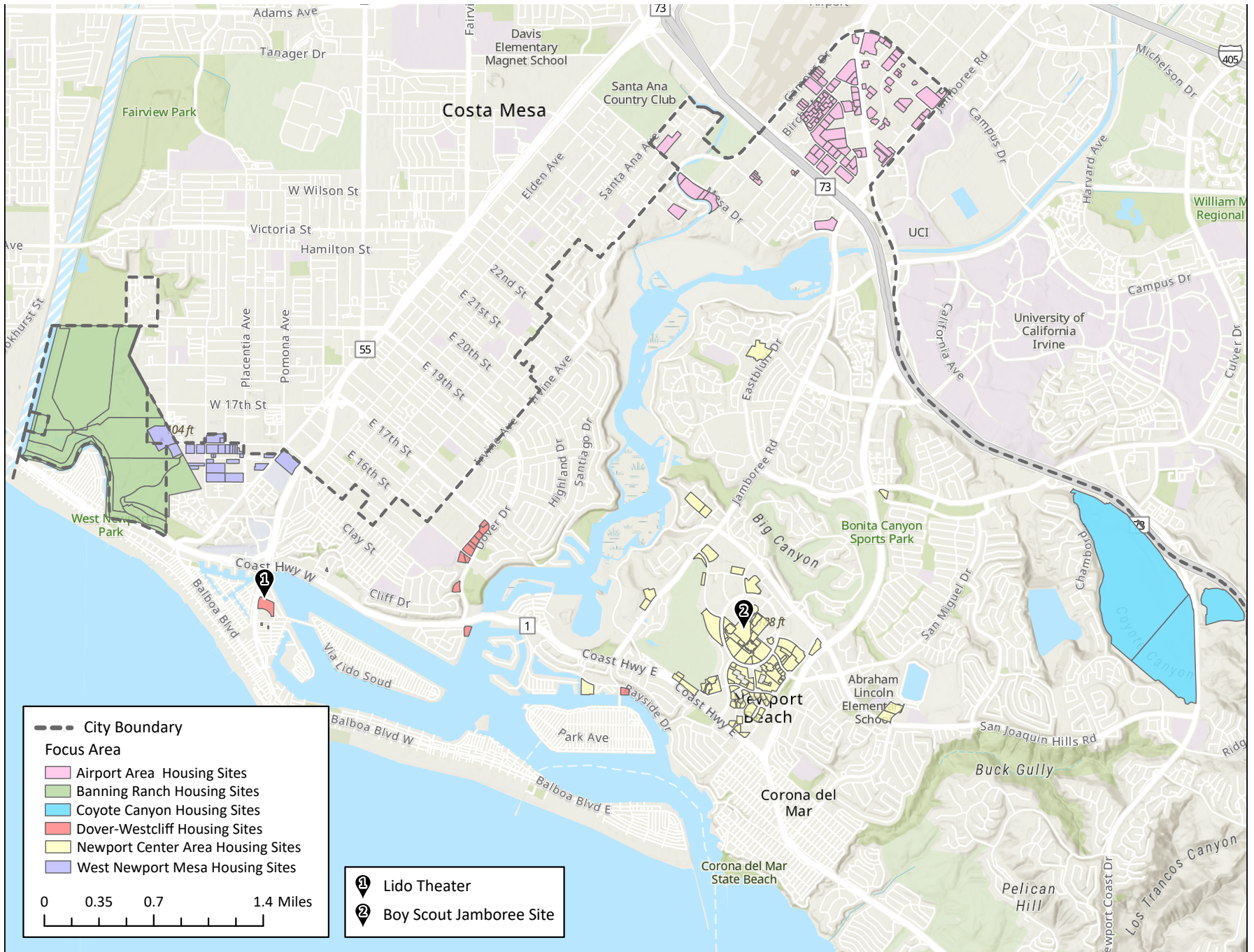
The fact that a resource is not listed in, or determined to be eligible for listing in the CRHR, not included in a local register of historical resources (PRC §5020.1(k)), or identified in a historical resources survey (PRC §5024.1(g)) does not preclude the City from determining that the resource may be a historical resource. State CEQA Guidelines Section 15064.5, defines a “substantial adverse change in a historical resource” as 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.

The proposed Project would not directly construct new housing but would facilitate the development of residential units by adopting implementing actions associated with the 2021-2029 Housing Element. Of the 247 housing sites, all are developed/occupied by structures except 21 sites; therefore, the developed housing sites could be (now or in the future) occupied by historic (≥50 years) buildings. Therefore, future housing development facilitated by the Project could cause a substantial adverse change in the significance of a historical resource on the housing sites.

As previously discussed in **Section 4.4.4; Existing Conditions**, the AHHPAC identified a Historic Resources Inventory of 61 properties around the City and categorized them into five hierarchical “classes” of significance.<sup>16</sup> **Figure 4.4-1: Housing Sites Located on Historic Resources Inventory Sites** shows housing sites that are located on Historical Resources Inventory sites as identified by the AHHPAC. As show in **Figure 4.4-1**, housing site 205, which is located in the Newport Center Focus Area, is identified as the Boy Scout Jamboree Site which is a Class 5 Point of Historic Interest. Additionally, housing site 334, which is located in the Dover-Westcliff Focus Area, is identified as the Lido Theater which is a Class 3 Local Historic Site. Although housing sites 205 and 334 are located on Historic Resources Inventory sites as identified by the AHHPAC, the inventory was never officially adopted by the City, and the structures were never placed on the City Register. Therefore, housing sites 204 and 334 would not cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5, but the inventory serves as a useful guide to potentially historic properties.

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<sup>16</sup> City of Newport Beach (2006). *City of Newport Beach General Plan – Historic Resources Element, Page 6-10 to 6-11.* <https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/general-plan>. Accessed December 2023.



**Figure 4.4-1: Housing Sites Located on Historic Resources Inventory Sites**  
 City of Newport Beach General Plan Housing Implementation  
 Program Environmental Impact Report

All proposed future development projects facilitated by the Project would be subject to the City's development review process and required under to comply with applicable regulations. The City may require any future housing development on sites with potential historic resources to conduct site-specific evaluation prior to any alteration, demolition, relocation, or new development to determine the presence of historically significant resources. This site-specific analysis would be used to determine, prior to the approval of future development permits, if the proposed development has the potential to impact a significant historical resource, or whether the existing development or property is eligible for listing on the NRHP, CRHR, or local listing.

As Project implementation has the potential for development over the next several years, existing buildings or other structures on the housing sites could reach an age of 50 years or older during Project implementation. Generally, structures 50 years of age or older have the potential to be historic resources, based on NRHP guidelines. Structures must have retained their original integrity and context to be considered a historical resource. Any housing site that is presently developed has the potential, however, to contain a historical structure(s) during Project implementation. All of the housing sites, except Sites 110-118, 120-124, and 126-131, are developed and therefore have the potential to contain a structure that would meet the criteria as a historical resource, as determined by the NRHP or the CRHR (50 years or greater) during future construction of housing units. Historically significant resources would be identified through site-specific evaluation in conjunction with future development prior to the approval of development permits. Any future development would be required to comply with applicable federal, State, and local laws that concern the preservation of historical resources, including the National Historic Preservation Act and State CEQA Guidelines.

Further, all future development facilitated by the Project would be subject to compliance with applicable General Plan policies. General Plan Historical Resources Element Policies HR 1.2, HR 1.4, HR 1.5, HR 1.6, and HR 1.7, described above, are in place to protect historically significant landmarks, sites, and structures within the City. General Plan Land Use Element Policy LU 6.8.6 addresses development on the Balboa Peninsula. Specifically, Policies HR 1.5 through 1.7 outline requirements that future development would be required to comply with to protect historically significant resources. Policy HR 1.5 requires that proposed development located on a historical site or structure incorporate a physical link to the past within the site or structural design, if preservation or adaptive reuse is not a feasible option. Policy HR 1.6 requires that prior to the issuance of a demolition or grading permit, developers of a property that contains a historic structure, as defined by State CEQA Guidelines, retain a qualified consultant to record the structure in accordance with U.S. Secretary of Interior guidelines and submit the information to the City's Historical Society, Orange County Public Library, and City Planning Department. Policy HR 1.7 further requires that prior to the demolition of a historic structure, developers offer the structure for relocation by interested parties. Policy LU 6.8.6 addresses the historic character of the Balboa Peninsula and requires development on the Balboa Peninsula to be compatible with the scale, mass, and materials of existing structures, while allowing opportunities for architectural diversity.

Additionally, since various structures on housing sites could age beyond 50 years during Project implementation, any future development facilitated on a site with buildings or structures aged 50 years or more having its original structural integrity intact would be required to comply with **MM CUL-1**, which requires the applicant to retain a qualified professional historian to determine whether the affected buildings or structures are historically significant.

As set forth in the General Plan EIR, the City's General Plan policies do not preclude the alteration or demolition of known historically significant resources or resources that have not yet been evaluated for potential historical significance. Because the demolition of a historic significant resource would be a physical effect on the environment and neither the City's General Plan or CEQA statutes precludes this demolition or alteration, the potential loss of historically significant structures and resources would be a significant unavoidable impact. This finding is consistent with the General Plan EIR.

**Impact Summary:**      **Significant Unavoidable Impact With Mitigation Incorporated.** MM CUL-1 is required. However, because the demolition of a historic significant resource would be a physical effect on the environment and neither the City's General Plan or CEQA statutes precludes this demolition or alteration, the potential loss of historically significant structures and resources would be a significant unavoidable impact.

<b>Threshold 4.4-2:</b> <b>Would the Project cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?</b>
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Prehistoric archaeological resources are known to exist and have been recorded in the City. The Project does not propose any development or alteration of known archaeological resources. Future development facilitated by the Project could involve ground-disturbing activities such as grading or excavation that could directly or indirectly impact undiscovered subsurface archaeological resources. Should archaeological deposits be encountered during project ground disturbance, a substantial adverse change in the significance of the archaeological resource could occur. Undeveloped sites often have a higher potential for the presence of unknown archaeological resources as the likelihood of encountering archaeological resources is greatest on sites that have been minimally excavated in the past (e.g., vacant properties). Previously excavated areas are generally considered to have a lower potential for archaeological resources since the soil containing the archaeological resources has been removed or previously disturbed. However, the depth of subsurface excavation would influence whether previously undisturbed areas may be impacted. Therefore, the vacant housing sites have more potential to contain archaeological resources. Sites 110-118, 120-124, and 126-131 are vacant and any future development could have the potential to contain archaeological resources. All other housing sites have been previously graded and developed.

Any surface and shallow subsurface archaeological deposits at the housing sites have likely been destroyed or heavily disturbed because of previous development. However, future development facilitated by the Project still has the potential to disturb and potentially destroy subsurface prehistoric/historic archaeological resources through grading and development, therefore future development facilitated by the Project would be subject to City Council Policy K-5, which requires preservation of significant archeological and tribal cultural resources, as set forth in **SC CUL-1**.

Further, compliance with General Plan Policy HR 2.1, Policy HR 2.2 and Policy NR 18.1 require new development projects to identify and protect important archaeological resources within the City. Specifically, General Plan Policy HR 2.1 and Policy NR 18.1 requires that new development protects and preserves archaeological resources from destruction and avoids or mitigates impacts to such resources. General Plan Policy HR 2.2 would require any future development with the potential to affect archaeological resources to have a qualified archeologist on site to monitor all ground-disturbing activities

and outlines the procedure if such resources are found. General Plan Policy HR 2.3 and Policy NR 18.3 require the notification of cultural groups to proposed development adversely impacting cultural resources and permitting monitoring during grading. Additionally, Policy HR 2.4 and Policy NR 18.4 require any new development, where on-site preservation is infeasible, to donate archaeological resources to responsible institutions. Compliance with these City policies would ensure that future development facilitated by the Project would protect and preserve archaeological and tribal resources from destruction during new development construction facilitated by the Project.

For those housing sites in the coastal zone, the City's Coastal Land Use Plan (CLUP) includes applicable policies. CLUP Policy 4.5-1 requires an in situ or site-capping preservation plan or a recovery plan for mitigating the effect of the development where avoidance is not feasible. Policy 4.5.1-2 requires monitoring during grading and excavation by a qualified archeologist and describes the process for determination of significance and mitigation should archaeological resource be discovered. Policy 4.5.1-3 requires the notification of cultural organizations of proposed developments that have the potential to adversely impact cultural resources and to allow monitoring during grading and/or excavation. Policy 4.5.1-4 addresses the disposition of archaeological materials when in situ preservation and avoidance are not feasible. Policy 4.5.1-5 requires an archeological/cultural resources monitoring plan that identifies monitoring methods, procedures to be followed should additional or unexpected archeological/cultural resources be encountered during development of the site.

In addition to the noted policies, to ensure that archaeological resources are properly identified prior to the construction of any future development facilitated by the Project, **MM CUL-2** is required, which requires the preparation of an archaeological survey where deemed necessary by the City. Following compliance with General Plan and Coastal Land Use Plan policies, and **MM CUL-2**, the Project's potential to cause a substantial adverse change in the significance of an archaeological resource would be reduced to a less than significant level.

**Impact Summary:** **Less Than Significant Impact With Mitigation.** The Project would potentially have direct impacts on archaeological resources. This impact would be mitigated to a level considered less than significant with implementation of MM CUL-2.

<b>Threshold 4.4-3:</b>	<b>Would the Project disturb any human remains, including those interred outdoors of dedicated cemeteries?</b>
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According to the General Plan EIR, archaeological materials, including human burials, have been found in the City. Human burials outside of formal cemeteries often occur in prehistoric archeological contexts. The potential still exists for these resources to be present, particularly in the areas of the City that are still mostly underdeveloped for urban uses, such as but not limited to the Banning Ranch area. While the Project does not propose activities such as grading or construction, human remains could be uncovered during future grading activities facilitated by the Project.

In the unlikely event that human remains are found, those remains would require proper treatment in accordance with applicable laws, including California Health and Safety Code (HSC) (§§7050.5, 7051, and 7054) and PRC Sections 5097.98 and 5097.99. HSC Sections 7050.5, 7051, and 7054 describe the general provisions for the treatment of human remains. Specifically, HSC Section 7050.5 prescribes the requirements for the treatment of any human remains that are accidentally discovered during site



excavation. HSC Section 7050.5 also requires that all activities cease immediately and that a qualified archaeologist and Native American monitor be contacted immediately. As required by State law, the future development facilitated by the Project would implement the procedures set forth in PRC Section 5087.98, including evaluation by the County Coroner and notification of the NAHC in the unlikely event that Native American human remains are discovered during ground disturbing activities. The NAHC would designate the “Most Likely Descendent” of the unearthed human remains. If excavation results in the discovery of human remains, the future development would halt excavation near the find and any area that is reasonably suspected to overlay adjacent remains shall remain undisturbed until the County Coroner has investigated, and appropriate recommendations have been made for treatment and disposition of the remains. Therefore, following compliance with the established regulatory framework, future development facilitated by the Project would have a less than significant impact concerning human remains and no mitigation is required.

**Impact Summary:**      **Less Than Significant Impact.** The Project would be required to comply with existing regulations, which establishes procedures to be implemented should human remains be discovered.

#### 4.4.8 Cumulative Impacts

As previously stated, the Project does propose development but would facilitate implementation of the City’s 2021-2029 Housing Element. The anticipated site-specific impacts of future development facilitated by the Project, in conjunction with cumulative development allowed in the City by existing development regulations, would increase the potential for housing development in an already urbanized area and could result in impacts to historic and archaeological resources. Potential impacts are site-specific and would require site-specific evaluation on a case-by-case basis prior to approval of permits at the project level when future development is proposed. Each project would require separate review by the City to address potential cultural resource impacts and identify necessary mitigation measures, where appropriate.

Potential future housing development in the City could include the demolition or alteration of significant historic resources. As addressed in the General Plan EIR, although historic resources may be listed in the NRHP or CRHR, or otherwise determined to be historic or potentially historic, the listing itself often does not preclude demolition, destruction or alteration. Where a future housing project could significantly impact a historic resources, the project would be subject to the requirements of CEQA. However, even with these requirements, the City could consider mitigation infeasible and the impact overridden to allow for future project approval. It is therefore possible that future housing projects could result in the adverse demolition or destruction of historic buildings. Consistent with the findings of the General Plan EIR, this potential loss of historically significant resources would, therefore, be considered significant and unavoidable.

With respect to archaeological resources, such resources are required by law to be protected as they are discovered. The Project would not conflict with or obstruct a State or local plan, ordinance, or standards aimed at avoiding or minimizing impacts to these resources. Therefore, consistent with the findings of the General Plan EIR, with the implementation of mitigation and compliance with applicable regulations, the Project’s contribution to a cumulatively considerable impact on cultural resources would be less than significant.

## 4.4.9 Mitigation Program

All future housing development facilitated by the Project would be subject to the City's development review process, which may include review pursuant to CEQA, and would be assessed on a project-specific basis for potential effects concerning historical and cultural resources. Future housing development would be subject to compliance with relevant federal, State, and local requirements including requirements set forth in the Newport Beach General Plan and Newport Beach Municipal Code.

### General Plan Policies

See **Section 4.4.3: Regulatory Setting** for complete policy text.

#### *Historic Resources*

- Policy HR 1.2
- Policy HR 1.4
- Policy HR 1.5
- Policy HR 1.6
- Policy HR 1.7
- Policy HR 2.3
- Policy LU 6.8.6

#### *Archaeological Resources*

- Policy HR 2.1
- Policy HR 2.2
- Policy HR 2.3
- Policy HR 2.4
- Policy NR 18.1
- Policy NR 18.3
- Policy NR 18.4

### Coastal Land Use Plan Policies

See **Section 4.4.3: Regulatory Setting** for complete policy text.

#### *Historic Resources*

- Policy 4.5-3

#### *Archaeological Resources*

- Policy 4.5-1
- Policy 4.5-2
- Policy 4.5-3
- Policy 4.5-4
- Policy 4.5-5

### Standard Conditions of Approval

**SC CUL-1** In compliance with City Council Policy K-5, prior to the issuance of a grading permit by the City of Newport Beach, the Applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. During construction activities, if Native American resources (i.e., Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation

activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities. If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

**SC CUL-2** California Health and Safety Code Section 7050.5, CEQA Guidelines Section 15064.5, and Public Resources Code Section 5097.98 mandate the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery. California Health and Safety Code Section 7050.5 requires that in the event that human remains are discovered within the project site, disturbance of the site shall be halted until the coroner has conducted an investigation into the circumstances, manner and cause of death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes or has reason to believe the human remains to be those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

## Mitigation Measures

**MM-CUL-1:** Applications for future development facilitated by the Project, where the City has determined a potential for impacts to historic resources, shall be required to comply with the following mitigation framework:

For any building/structures in excess of 50 years of age having its original structural integrity intact, the applicant shall retain a qualified professional historian to determine whether the affected building/structure is historically significant. The evaluation of historic architectural resources shall be based on criteria such as age, location, context, association with an important person or event, uniqueness, or structural integrity, as indicated in State CEQA Guidelines Section 15064.5. A historical resource report shall be submitted by the applicant to the City and shall include the methods used to determine the presence or absence of historical resources, identify potential impacts from the proposed project, and evaluate the significance of any historical resources identified.

**MM-CUL-2:** Prior to any earth-disturbing activities (e.g., excavation, trenching, grading) that could encounter undisturbed soils, the project-level applicant for future development shall retain an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology to determine if site-specific development

allowed under the General Plan Update could result in a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5 of the CEQA Guidelines. The investigation shall include, as determined appropriate by the archaeologist and the City of Newport Beach, an updated records search of the South Central Coastal Information Center of the California Historical Resources Information System, updated Native American consultation, and a pedestrian survey of the area proposed for development. The results of the investigation shall be documented in a technical report or memorandum that identifies and evaluates any archaeological resources within the development area and includes recommendations and methods for eliminating or avoiding impacts on archaeological resources or human remains. The measures shall include as appropriate, subsurface testing of archaeological resources and/or construction monitoring by a qualified professional and, if necessary, appropriate Native American monitors identified by the applicable tribe and/or the Native American Heritage Commission.

#### 4.4.10 Level of Significance After Mitigation

With implementation of the mitigation program identified above, the proposed Project would not result in significant archaeological impacts on a project-specific or cumulative basis. However, the Project could result in the loss of historic resources; this impact is considered significant and unavoidable on a project-specific and cumulative basis. These findings are consistent with the General Plan EIR. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which notes that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project. The conclusions of this EIR with respect to potential impacts to historic resources are consistent with the General Plan Findings of Fact and Statement of Overriding Considerations.

#### 4.4.11 References

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