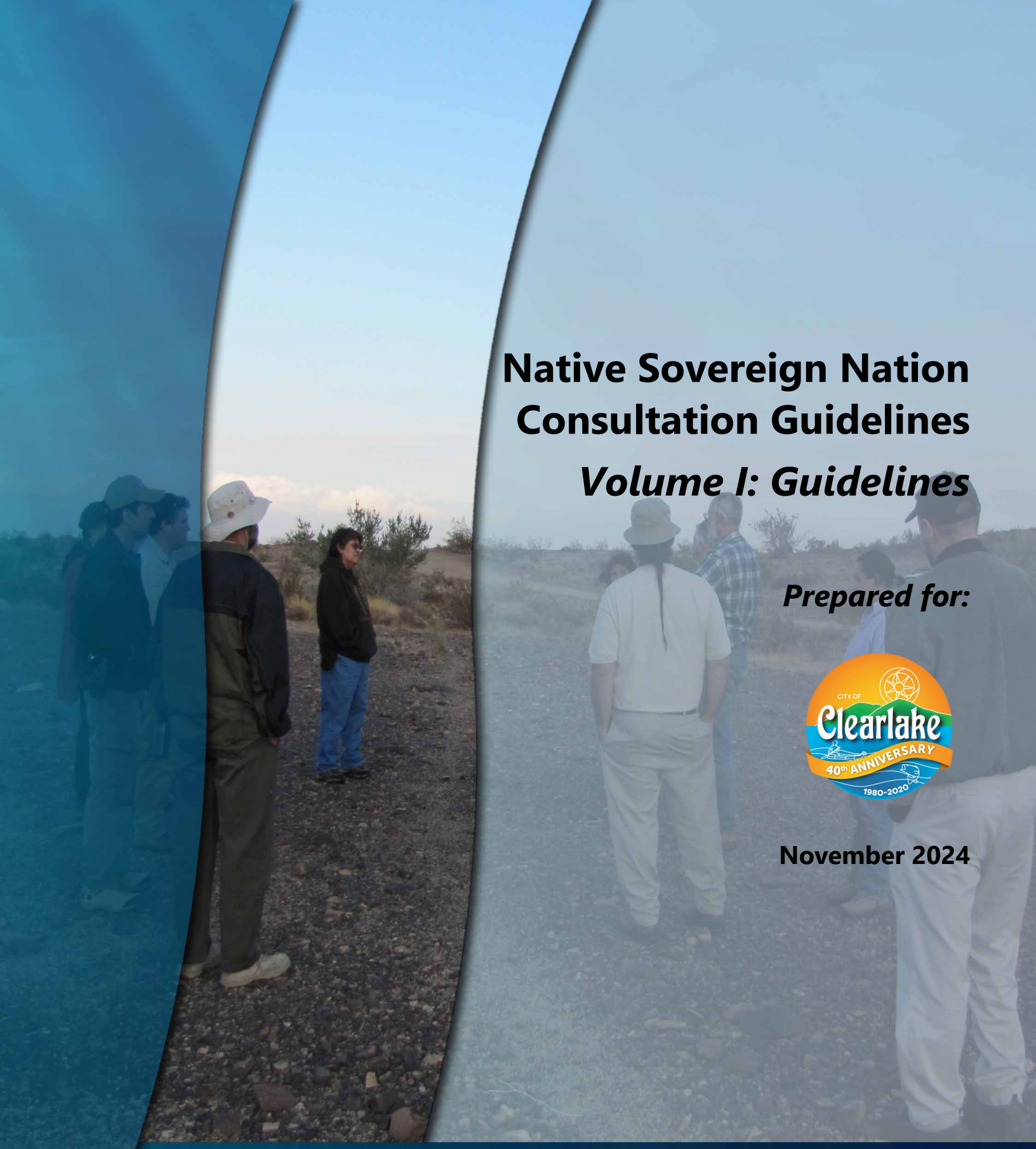

Native Sovereign Nation Consultation Guidelines

Volume I: Guidelines

Prepared for:

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ECORP Consulting, Inc.
ENVIRONMENTAL CONSULTANTS

Contents

1.0 INTRODUCTION

In recent years, a number of changes have occurred in the regulatory context within which the City of Clearlake operates. These changes occurred at various levels of jurisdiction, including at the city, state, and national levels and in the thresholds and expectations for best professional practices in cultural resources management. Changes have also occurred in terms of the level of involvement by stakeholders in cultural resources, particularly Native American tribes, as well as historical societies and the general public. The changes germane to these guidelines relate to tribal consultation.

At the direction of the City Council, staff and consultants prepared these Native Sovereign Nation Consultation Guidelines to assist City staff in navigating the complex regulatory environment. On December 7, 2022, the City's consultant, ECORP Consulting, Inc., contacted the NAHC with a request for a list of culturally affiliated Native American tribes associated with the City.

On January 4, 2023, the NAHC responded to indicate that the search of the SLF was positive for sacred lands and included a list of 22 individuals representing 12 culturally affiliated tribes.

On May 24, 2023, the City of Clearlake mailed notification letters to 22 individuals representing 12 culturally affiliated tribes recommended by the California Native American Heritage Commission. The notification letters invited each representative to participate in the development of formal Native Sovereign Nation consultation guidelines for the City. Of these 12 tribes:

- three accepted the invitation and actively consulted on the guidelines (Koi Nation, Elem Indian Colony Pomo Tribe, and Middletown Rancheria of Pomo Indians);
- two deferred to other local tribes (Yocha Dehe Wintun Nation and Habematolel Pomo of Upper Lake); and
- the balance failed to respond to the opportunity to consult (Big Valley Rancheria of Pomo Indians, Cachil Dehe Band of Wintun Indians, Guidiville Indian Rancheria, Mishewal-Wappo Tribe of Alexander Valley, Pinoleville Pomo Nation, Robinson Rancheria of Pomo Indians, and Scotts Valley Band of Pomo).

The City and it's consultant exchanged drafts and met with the three consulting tribes separately and periodically throughout 2023 and 2024. On April 23, 2024, the Middletown Rancheria approved the draft guidelines. On May 2, 2024, the Elem Indian Colony provided its final comments on the draft, which were incorporated. The final meeting with the Koi Nation occurred on July 19, 2024, and their comments were addressed in the final guidelines, as feasible.

1.1 Definition of Consultation

Consultation is defined in California state law. California Public Resources Code Section 21080.3.1(b)(2) states:

> For purposes of [compliance with AB 52], c*onsultation* shall have the same meaning as provided in Section 65352.4 of the Government Code.

California Government Code 65352.4 states:

> For purposes of [compliance with Senate Bill 18], c*onsultation* means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is

> cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

The City has identified the need to develop Native Sovereign Nation Consultation Guidelines to guide staff during tribal consultation.

1.2 Government-to-Government

The relationship of the consultation between the City and culturally affiliated California Native American tribes is referred to as government-to-government, which is defined in state and federal law. This definition is provided herein to the extent that federal requirements apply.

Section 1 of the November 30, 2022 memorandum from President Joseph R. Biden, Jr. to the heads of executive departments and agencies on uniform standards for tribal consultation states:

> The United States has a unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations, which is recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The United States recognizes the right of Tribal governments to self-govern and supports Tribal sovereignty and self-determination. The United States also has a unique trust relationship with and responsibility to protect and support Tribal Nations. In recognition of this unique legal relationship, and to strengthen the government-to-government relationship, Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies (agencies) with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Executive Order 13175 also sets forth fundamental principles and policymaking criteria.

The Department Manual of the US Department of the Interior (512 DM 4, November 30, 2022) defines "government-to-government" as:

> … a process based on a bilateral recognition of sovereignty and is generally focused on a given issue or set of issues, including compliance with a variety of statutes, policies and administrative actions that direct the Federal government to consult with Indian Tribes. Consultations are defined as having both Department and Tribal officials with decision-making authorities present at the government-to-government consultation session(s)/ meeting(s) regarding the proposed Departmental Action with Tribal Implications.

The California Governor's Office of Planning and Research, Tribal Consultation Guidelines, Supplement to General Plan Guidelines (2005:16) notes:

> Government leaders of the two consulting parties may consider delegating consultation responsibilities (such as attending meetings, sharing information, and negotiating the needs and concerns of both parties) to staff. Designated representatives should maintain direct relationships with and have ready access to their respective government leaders.

For the purpose of these Guidelines, the City Council of the City of Clearlake has designated the City Manager to consult on behalf of the City.

2.0 DEFINITIONS

2.1 Tribal Cultural Resources

AB 52: California Public Resource Code Section 21074:

> (a) "Tribal cultural resources" are either of the following:
>
> (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
>
> (A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
>
> (B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
>
> (2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.
>
> (b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.
>
> (c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

Public Resources Code 21080.3.1 (a):

> The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources.

AB 52: Section I (b)(4):

> …it is the intent of the Legislature, in enacting this act, to… (4) Recognize that California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.
>
> (5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review process, so that tribal cultural resources can be

identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decision making body of the lead agency.

2.2 Cultural Places

SB 18: Public Resources Code §5097.9 and 5097.993 define "cultural places":

> Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9).
>
> Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site (Public Resources Code §5097.993).

2.3 Historic Properties

Historic Properties are defined in federal law. This definition is provided herein to the extent that federal requirements apply. S 106: 36 CFR 800.16(l)(1) states:

> Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

2.4 Indigenous Knowledge

The Advisory Council on Historic Preservation's policy statement on indigenous knowledge and historic preservation in 2024 defines indigenous knowledge as follows. This definition is provided herein to the extent that federal requirements apply.

> "…a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes, [Native Hawaiians,] and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Knowledge can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct and indirect contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Each Indian Tribe, Native Hawaiian, and Indigenous community has its own place-based body of knowledge. Indigenous Knowledge is based in ethical foundations often grounded in social, spiritual, cultural, and natural systems that are frequently intertwined and inseparable, offering a holistic perspective. Indigenous Knowledge is inherently heterogeneous due to the cultural, geographic, and socioeconomic differences from which it is derived, and is shaped by the Indigenous Peoples' understanding of their history and the surrounding environment. This knowledge is unique to each [Indian Tribe, Native Hawaiian community, or] group of Indigenous Peoples, and each may elect to utilize different terminology or express it in different ways. Indigenous Knowledge is deeply connected to the Indigenous Peoples holding that knowledge" (Executive Office of the President Office of Science and Technology Policy [OSTP] and Council on Environmental Quality [CEQ], 2022).

2.5 Traditional Cultural Properties

National Register Bulletin 38 defines Traditional Cultural Properties as follows. This definition is provided herein to the extent that federal requirements apply.

> A traditional cultural property… can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

2.6 Cultural Landscapes

The Advisory Council on Historic Preservation's 2016 Information Paper on Cultural Landscapes defines cultural landscapes. This definition is provided herein to the extent that federal requirements apply.

> Landscapes can be defined as large-scale properties often comprised of multiple, linked features that form a cohesive area or place. They have cultural and historical meanings attached to them by the peoples who have traveled, used, and interwoven these places into generations of practice. In addition to the physical, on the ground components, visual and audio aspects of place are often important to how they are defined.

2.7 Confidentiality

Public Resources Code Section 21082.3(c):

> (c) (1) Any information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with subdivision (r) of Section 6254 of, and Section 6254.10 of, the Government Code, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations, without the prior consent of the tribe that provided the information. If the lead agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. This subdivision does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the environmental document.
>
> (2) (A) This subdivision does not prohibit the confidential exchange of information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the lead agency, the California Native American tribe, the project applicant, or the project applicant's agent. Except as provided in subparagraph (B) or unless the California Native American tribe providing the information consents, in writing, to public disclosure, the project applicant or the project applicant's legal advisers, using a reasonable degree of care, shall maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to a tribal cultural resources and shall not disclose to a third party confidential information regarding tribal cultural resources.
>
> (B) This paragraph does not apply to data or information that are or become publicly available, are already in the lawful possession of the project applicant before the provision of the

information by the California Native American tribe, are independently developed by the project applicant or the project applicant's agents, or are lawfully obtained by the project applicant from a third party that is not the lead agency, a California Native American tribe, or another public agency.

(4) This subdivision does not prevent a lead agency or other public agency from describing the information in general terms in the environmental document so as to inform the public of the basis of the lead agency's or other public agency's decision without breaching the confidentiality required by this subdivision.

Section 6254.10 of the California Code:

Nothing in [the Public Records Act] requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

For Federal actions, to the extent that federal requirements apply, the following provisions are potentially applicable:

Title 43 Subtitle A Part 7.18 Implementing16 U.S.C. 470aa-mm:

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469 through 469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

54 U.S.C. 307103:

(a) AUTHORITY TO WITHHOLD FROM DISCLOSURE.-The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary, shall withhold from disclosure to the public information about the location, character, or ownership of a historic property if the Secretary and the agency determine that disclosure may-

(1) cause a significant invasion of privacy;

(2) risk harm to the historic property; or

(3) impede the use of a traditional religious site by practitioners.

(b) ACCESS DETERMINATION.-When the head of a Federal agency or other public official determines that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with the Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this division.

(c) CONSULTATION WITH COUNCIL.-When information described in subsection (a) has been developed in the course of an agency's compliance with section 306107 or 306108 of this title, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

Exemption 3 of the Federal Freedom of Information Act:

Information that is prohibited from disclosure by another federal law [is withheld from disclosure under the Freedom of Information Act].

3.0 REGULATORY CONTEXT

3.1 City of Clearlake General Plan

Excerpt from the City of Clearlake General Plan:

"Recognizing the importance of cultural resources in the region, the City entered into a Memorandum of Agreement (MOA) with the Koi Nation of Northern California [Koi Nation] on August 28, 2014. The MOA memorializes the City's policy of respecting the City's rich cultural heritage and provides a pro-active approach to preserving these resources by formalizing a collaborative effort between the City and [Koi Nation] for consultation on development projects received by the City for processing. In addition, the MOA provides for additional collaborative preservation work, such as developing a cultural resources management plan among other things. The City has also established Tribal Consultation Procedures within the City's Environmental Guidelines to provide the opportunity for tribes, including the [Koi Nation], Elem [Indian Colony of Pomo Indians of the Sulphur Bank Ranchera] and Middletown Rancheria [of Pomo Indians], to consult with the City over projects to evaluate impacts on tribal cultural resources in accordance with Assembly Bill 52.

Goal CO 10 Important cultural, historical, and archaeological sites managed and protected for the benefit of present and future generations.

Objective CO 10.1 Identify and evaluate Cultural and Archaeological Resources.

Policy CO 10.1.1 The City shall identify and evaluate cultural resources, including "tribal cultural resources" (as defined in AB 52) during the land use planning process pursuant to CEQA and participate in and support efforts by others to identify significant cultural, historical, and archaeological resources using appropriate State and Federal standards.

Program CO 10.1.1.1 The City shall collaborate with California Native American Tribes, as identified by the Native American Heritage Commission, pursuant to Government Code Section 65352.3, through collaboration with the Sonoma State University Northwest Information Center (SSUNIC) to prepare an archaeological, cultural, and historical resources map and inventory within the City.

Policy CO 10.1.2 The City shall continue to solicit views from the local Native American communities regarding cultural resources. Any changes, modifications, or additions to the Clearlake City General Plan will require consultation with local Native American representatives prior to adoption, as specified in California Senate Bill 18.

Program CO 10.1.2.1 The City shall work with the Native American Heritage Commission to identify locations of importance to Native Americans, including archaeological sites and traditional cultural properties.

Objective CO 10.2 Protection of sites of cultural, historical, or archaeological significance are protected for present and future generations.

Policy CO 10.2.1 The City shall encourage the protection of cultural, historical, and archaeological sites.

Program CO 10.2.1.1 The City shall help identify sites of statewide or local significance that have anthropological, cultural, military, political, architectural, economic, scientific, religious, or other values for potential for placement on the National Register of Historic Places and/or inclusion in the California Inventory of Historic Resources.

Program CO 10.2.1.2 The City shall update the City's Grading Ordinance to be consistent with California Code of Regulations, Title 20, and Section 2501 et seq. to ensure protection of cultural resource sites during the grading process.

Policy CO 10.2.2 Development on sites of cultural significance shall follow the guidelines outlined in the California Environmental Quality Act (CEQA) Section 21083.2 (b1, b2, b3, b4) and the CEQA Guidelines Section 15126.4c.

Program CO 10.2.2.1 The City shall develop a set of mitigation measures to be used for any project which may impact an identified site of cultural significance.

Program CO 10.2.2.2 The City shall enforce procedures to ensure that mitigation measures established for the protection of historical resources are carried out prior to development.

Policy CO 10.2.3 The City shall adhere to construction standards for development on sites of cultural, historical, or archaeological significance.

Program CO 10.2.3.1 The City shall establish construction standards for the protection of historic resources during development.

Program CO 10.2.3.2 Use the State Historic Building Code for designated historic properties.

Policy CO 10.2.4 The City shall, to the extent feasible, maintain confidentiality regarding the locations of archaeological sites in order to preserve and protect these resources from vandalism and the unauthorized removal of artifacts.

Policy CO 10.2.5 In the event that archaeological/paleontological resources are inadvertently discovered during ground disturbing activities, the City shall require that all grading and construction work within 100 feet of the find be suspended until the significance of the resource can be determined by a Registered Professional Archaeologist /Paleontologist as appropriate. The City will require that a Registered Professional Archaeologist/Paleontologist make recommendations for measures necessary to protect the find or to undertake data recovery, excavation, analysis, and curation of archaeological/paleontological materials, as appropriate.

Policy CO 10.2.6 Pursuant to CEQA Guidelines (Section 15064.5), if human remains are discovered during project construction, comply with state laws relating to prohibitions on disinterring, disturbing, or removing human remains from any

location other than a dedicated cemetery (California Health and Safety Code Section 7050.5).

Policy CO 10.2.7 If human remains of Native American origin are discovered during project construction, comply with State laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (Public Resources Code Sec. 5097).

Policy CO 10.2.8 The City shall continue to require "Project Reviews" (archaeological/historical) record searches for all discretionary projects under the California Environmental Quality Act (CEQA) that involves any subsurface soil work. If the record search determines that the project site has the potential to contain archaeological, historical or other cultural resources (per Section 15064.5 of the CEQA Guidelines), an archaeological survey shall be conducted of the project site by a Registered Professional Archaeologist selected by the City. The survey shall include consultation with Native American Indian Tribes for the City of Clearlake (as maintained by the Native American Heritage Commission). The survey shall include a report summarizing findings and include any required measures that will mitigate damage to the cultural resource to a level of non-significance. Recommended mitigation measures shall be incorporated into the project to insure potential that impacts are mitigated to a level of non-significance.

Policy CO 10.2.9 The City shall maintain a list of approved Registered Professional Archaeologist [sic] for conducting archaeological, cultural, or historical resource surveys. This list shall undergo periodic review by California Native American Tribes, as identified by the Native American Heritage Commission, pursuant to Government Code Section 65352.3. The City will consider concerns presented regarding those on the list and will consult with Tribes in a good faith effort to resolve concerns received regarding the list.

Policy CO 10.2.10 The City shall enter into a memorandum of understanding, memorandum of agreement, or other agreements with the Native American Heritage Commission (SSUNIC) for facilitated record searches for projects that may result in ground disturbance.

Policy CO 10.2.11 The City shall implement provisions of the Memorandum of Agreement (MOA) with the Koi Nation of Northern California for addressing preservation of cultural resources within the City. The City will consider entering into other similar agreements with other Native American Indian Tribes, as identified by the Native American Heritage Commission, pursuant to Government Code Section 65352.3.

Policy CO 10.2.12 In collaboration with the Koi Nation of Northern California, the Elem Indian Colony of Pomo, and the Middletown Rancheria, the City will establish a consultation protocol for project consultation. The City will encourage other American Indian Tribes to consult with the Koi Nation of Northern California to develop consensus in project consultations with the City. For the purposes of

project consultation pursuant to Public Resources Code Section 21077, the City shall consult with tribes according to the boundary map noted below [redacted]:

Policy CO 10.2.13. The City shall support the development of a Cultural Heritage Preservation Program if developed by the areas Native American Tribes. This program could be used as a preservation tool to apply to properties within the City determined to preserve significant cultural.

Policy CO 10.2.14. In order to assure compliance with the Native American Graves Protection Act, the City will work with California Native American Tribes as identified by the Native American Heritage Commission, pursuant to Government Code Section 65352.3 and other groups to the extent reasonably feasible to communicate develop procedures and enforce existing cultural resource protection laws.

Policy CO 10.3.1 The City will support local, state, and national education programs on cultural, historical, and archaeological resources.

Policy CO 10.3.2 The City shall support public and private efforts to preserve, rehabilitate, and continue the use of historic structures, sites and districts determined to be of significant value by the City.

Program CO 10.3.2.1 The City shall encourage the use of the Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.

Policy CO 10.3.3 The City should encourage the cooperation of property owners to treat cultural resources as assets rather than liabilities, and encourage public support for the preservation of these resources." (General Plan pages 90-96.)

3.2 City of Clearlake Environmental Review Guidelines

Excerpts from Appendix O of the 2019 City of Clearlake Environmental Review Guidelines (Native American Tribe Consultation Program):

- "The Koi Nation, Elem, and Middletown Rancheria Tribes are the three federally recognized tribes that have requested consultations in the past and are key to the success of the City's programs to address AB 52" (2019:73).
- "The City has been proactive to address this and other related Native American Resource preservation laws, such as SB 18, including:
    - Collaborated with the Koi Nation to develop and execute a Memorandum of Agreement addressing cultural resource preservation.
    - Prepared a Cultural Resource Section in the Draft 2040 General Plan Update (in collaboration with the Koi Nation).
    - Established new cultural resource preservation procedures for addressing archaeological resource impacts for new development projects (in collaboration with the Koi Nation).
    - Assembled an approved list of archaeologists/historic professionals for preparing cultural resource surveys and related reports.
    - Meet regularly with Koi Nation representatives to review and consult on projects."

- "Consultation shall also be provided for those Native American Tribes who have cultural geographic affiliation with the project site. Map A identifies three tribes in Clearlake that must be offered the opportunity for consultation under SB 52, including the Koi, Elem and Middletown Rancheria. Projects falling into the identified territory or within the transition zones identified in Map A need to be notified and offered the opportunity for comment and potentially consult. Note that Map A is subject to change as tribes provide information on their areas of cultural affiliation. The Consultation Process for this shall be conducted in accordance with California Public Resources Code Section 21080.3 (see Diagram A)."

3.3 AB 52 / CEQA

Each CEQA lead agency maintains its own file of general request letters from California Native American tribes under AB 52. The City shall first review project applications and "within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, (California Public Resources Code Section 21080.3.1d)", it shall notify in writing those tribes that specifically requested notification under CEQA. The tribes notified may be different than the tribes being consulted under SB 18 or Section 106, although some overlap may occur. For tribes that respond within 30 days with a request to consult, the City shall initiate consultation within 30 days of receiving the written request to consult. As required by California Public Resources Code Section 21080.3.2(a), "if the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommended [sic] to the lead agency."

In accordance with Section 21080.3.2 (b), "the consultation is considered concluded when either of the following occurs: 1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource. (2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached." The procedures outlined in AB 52 shall be conducted as specified in the California Public Resources Code Sections 21074, 21080.3 et seq., 21082.3, 21083.09, and 21084.3.

3.4 SB 18

If a project will require a general plan or specific plan adoption or amendment, the City must comply with SB 18, which requires local agencies, including cities and counties, to contact and consult with California Native American tribes prior to amending or adopting a general plan or specific plan, or designating land as open space containing Native American cultural resources. The consultation that is conducted under SB 18 is different than that which is normally conducted in conjunction with cultural resources studies under AB 52 or Section 106 of the NHPA. In addition, consultation under SB 18 must be government-to-government, between the Native American community and the local agency and in accordance with the Governor's Office of Planning and Research's Tribal Consultation Guidelines (2005).

3.5 AB 168 / SB 35

In 2018, the Legislature enacted SB 35 to provide a pathway for the ministerial approval of low- and moderate-income housing development projects without the need to be reviewed under the California Environmental Quality Act (CEQA). Because CEQA requires tribal consultation to identify Tribal Cultural

Resources that may be affected by these projects, bypassing CEQA review meant that such resources might be impacted without consideration. As a result, in 2020, the Legislature enacted AB 168, which creates a new AB-52-like "scoping consultation" process before a project can be considered eligible for ministerial approval under SB 35. If consultation is not concluded in agreement with a consulting tribe, the project would not be eligible for ministerial approval and would be required to complete CEQA review instead.

3.6 Section 106 NHPA

The federal law that covers cultural resources that could be affected by federal undertakings is the National Historic Preservation Act (NHPA) of 1966, as amended. Section 106 of the NHPA requires that federal agencies take into account the effects of a federal undertaking on properties listed in or eligible for the NRHP. The agencies must afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the undertaking. A federal undertaking is defined in 36 CFR 800.16(y):

"A federal undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval." The regulations that stipulate the procedures for complying with Section 106 are in 36 CFR 800.3 through 800.6. The Section 106 regulations require:

- definition of the Area of Potential Effects (APE);
- identification of cultural resources within the APE;
- evaluation of the identified resources in the APE using NRHP eligibility criteria;
- determination of whether the effects of the undertaking or project on eligible resources will be adverse; and
- agreement on and implementation of efforts to resolve adverse effects, if necessary.

The aforementioned steps may be conducted in a sequential manner or, in accordance with 36 CFR 800.3(g), "A consultation by the agency official with the SHPO [or THPO if on tribal lands, as per 800.16(w)] and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO [or THPO if on tribal lands] agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d)."

The federal agency must seek comment from tribes and other members of the public, the State Historic Preservation Officer (SHPO), if on tribal lands, the Tribal Historic Preservation Officer (THPO) as defined in 36 CFR 800.16(w), and, in some cases, the ACHP, for its determinations of eligibility, effects, and proposed mitigation measures. Section 106 procedures for a specific project can be modified by negotiation of a Memorandum of Agreement or Programmatic Agreement between the federal agency, the SHPO, and, in some cases, the project proponent or tribes. Unless an MOA or PA are needed, concurrence from SHPO is not required.

Effects to a cultural resource are potentially adverse if the lead federal agency, with the SHPO's concurrence, determines the resource eligible for the NRHP, making it a Historic Property, and if application of the Criteria of Adverse Effects (36 CFR 800.5[a][2] et seq.) results in the conclusion that the effects will be adverse.

4.0 ROLES AND RESPONSIBILITIES

4.1 City of Clearlake

The City will serve either as a CEQA lead or responsible agency for discretionary approval of private-sector projects, or as lead agency and a project proponent for City projects. The City also administers the issuance of ministerial approvals, plan checks, and non-discretionary actions related to projects under its jurisdiction, which are not subject to compliance with CEQA. There are three primary divisions or departments that may be expected to implement these Guidelines, in whole or in part, as follows.

- The Community Development Department is responsible for ensuring compliance of all development proposals with the City's zoning, subdivision, and environmental ordinances, as well as various codes, standards, and policies. It also monitors and enforces the building and safety standards contained in the state Building Codes and in various municipal codes and policies. This includes oversight of ministerial actions, which are not subject to these Guidelines.
- The Engineering Department is responsible for the oversight of all matters relating to the design and construction of specific infrastructure projects that serve the citizens of the City of Clearlake, including parks and recreation facilities, city buildings, drainage system/flood control, public facilities, the senior / community center, sidewalks, street lights, streets and commercial/residential development.
- The Public Works Department is responsible for administering and planning City projects that affect public streets, the water and sewer system, and other important infrastructure in the City.

These Departments are those most likely to be responsible for CEQA compliance. The City Planning Commission and City Council may also be responsible for CEQA compliance.

There are two broad types of actions that the City is responsible for: discretionary projects and ministerial actions. Discretionary projects are those that require that the City exercise judgment or deliberation when determining whether or not to approve a project. Because discretionary projects can result in no approval (denial), they are subject to compliance with CEQA and, by extension, these Guidelines.

Ministerial actions are agency decisions involving little or no judgment by City staff as to the wisdom or manner of carrying out the project. These actions include plan checks, over-the-counter building permit issuance, dog or business licenses, and other similar actions for which an agency official has no ability to deny or reject the action, as long as the subject of the action meets the pre-approved parameters and the required terms and conditions are met. Ministerial actions are not subject to CEQA or to these Guidelines. Therefore, the following procedures for the identification, evaluation, determination of effect, and mitigation of significant impacts to tribal cultural resources apply only to discretionary projects (in which the City has the ability to deny a project through the exercise of judgment as to the wisdom or manner of carrying out the project), or to applicable City projects not exempt under CEQA.

4.2 California Native American Tribes

California Native American tribes are defined in Section 21073 of the California Public Resources Code and Chapter 905 of the Statutes of 2004. The City is required to follow the procedures enacted by AB 52 for all California Native American tribes that notified the City in writing of their request to receive notice

of proposed projects. These tribes need not be physically located in or near the City, but must be traditionally and culturally affiliated with the land currently under the jurisdiction of the City.

In addition, California Native American Tribes, including but not limited to those that do not request that the City notice them under AB 52, may be consulted under SB 18, as determined by the NAHC. The City is required to offer consultation under SB 18 to all of the tribes named by the NAHC on its SB 18 list.

Federally recognized tribes are those defined in 25 CFR Part 83 and identified through the Federally Recognized Indian Tribe List Act of 1994, which requires the Secretary of the Interior to publish a list of federally recognized Indian tribes (Pub. L. 103-454, 108 Stat. 4791 (Nov. 2, 1994)). These tribes are recognized by the federal government as having special sovereignty, immunities, and privileges by virtue of their government-to-government relationship with the United States. Federally-recognized tribes are eligible for funding and services from the BIA and are afforded special consultation rights under Section 106 of the NHPA. Federally-recognized tribes may include, but are not limited to, California Native American tribes as described in Section 5.6.

4.3 California Office of Historic Preservation

The California OHP is a state agency led by the SHPO that, through delegation of authority by Congress, acts on behalf of the Advisory Council on Historic Preservation in the implementation of the regulations in 36 CFR Part 800 that implement Section 106 of the NHPA. The OHP is also responsible for maintaining the California Historical Resources Information System (CHRIS), and for administering the CRHR, NRHP, CHL, and various grants and programs related to historic preservation in California. Although OHP does not participate in the CEQA process for individual private-sector projects, it may enter into consultation as part of Section 106 compliance or when state-owned historical resources may be affected by a project.

4.4 California Native American Heritage Commission

The California NAHC is composed of a nine-member governor-appointed advisory body responsible for the identification and cataloging of places of special religious or social significance to Native Americans, including sacred sites and known Native American graves and cemeteries. The NAHC may serve as a trustee agency under CEQA, and is responsible for identifying a Most Likely Descendant for Native American human remains that are unearthed in California.

4.5 Federal Agencies

There are several federal agencies that may issue federal approvals, permits, licenses, or funding for projects in the City, which will trigger compliance with Section 106 NHPA and potential consultation with interested parties including but not limited to California Native American tribes, historical societies, and preservation organizations, etc.:

- U.S. Army Corps of Engineers (USACE): issuance of a permit for temporary and permanent discharge of fill into Waters of the United States, in accordance with Section 404 of the Clean Water Act
- U.S. Fish and Wildlife Service (USFWS): issuance of a biological opinion or incidental take permit for federally-listed biological species
- Federal Highways Administration (FHA), and its designee, California Department of Transportation (Caltrans): issuance of Federal pass-through funds, which will require separate

compliance with the Caltrans Section 106 PA, or issuance of encroachment permits, which will require separate review by Caltrans

- US Forest Service and US Bureau of Land Management as land managing agencies that may require special use permits
- Other federal agencies that may provide funding to City or private projects such as the U.S. Department of Housing and Urban Development's Community Development Block Grant program or US Bureau of Reclamation for water rights

When Section 106 applies to a City project, the City serves in the role of a consulting agency. If the City is also the project proponent, then the City is responsible for implementing requirements from federal agencies as they, not the City, carry out Section 106 consultation.

4.6 Cultural Resources Consultants

Cultural Resources Consultants, and in particular, professional archaeologists, are expected to work collaboratively with Native American tribes when conducting a cultural resources inventory to support the City's discretionary decision for a project. In accordance with General Plan Policy CO 10.2.9, the City maintains a list of professionally qualified cultural resources consultants who meet the Secretary of the Interior's Professional Qualification Standards (PQS) in 36 CFR Part 61 and Volume 62, No 119 of the Federal Register (June 20, 1997). In order for consultants to be included on the City's list, they must sign a Memorandum of Understanding with the City that specifies the standards for adequate studies, and acknowledges the requirement to coordinate with tribes during the preparation of technical studies and meet professional standards. The City's list shall be posted on the City's website for review by any tribe or member of the public. All coordination and communication between consultants and tribes must be described or characterized in all forms of communication as "coordination" and not consultation.

4.7 Private Applicants for Projects

Developers and citizens who propose development projects within the City, which are typically funded wholly with private money on privately-owned property, are considered private-sector applicants. These applicants are subject to compliance with all applicable laws, codes, regulations, and permits, both discretionary and ministerial. Although the City is ultimately responsible for approval or denial of a proposed project, the applicants and City may engage third-party consultants to implement portions of these Guidelines and carry out analyses used to support decision-making of discretionary projects. The City may not delegate its duty to engage in government-to-government consultation with a Native American tribe to any third party.

5.0 TRIBAL CONSULTATION

5.1 General Purpose and Intent

Engaging Native American tribes in project planning of public and private projects is not only consistent with the legislative intent of AB 52, but by involving them early enough in project design, impacts to tribal cultural resources and costly redesigns can be avoided. Planning for tribal participation can also ensure that sufficient funding is secured during the planning process.

The way in which tribes will be engaged in planning depends on the role that the City takes: either as project proponent for City projects or as lead agency for private projects. This is primarily due to the fact that the City may not be aware of future private projects until an application is filed and by that time, much of the preliminary design has been completed.

When the City serves as lead agency for a private project, the City may not have as much advance notice. Therefore, the City shall ensure that the requirement for tribal outreach is communicated to private project proponents to:

- Ensure that cultural resources consultants contracted by private parties extend the opportunity to tribes named on the NAHC list to participate in pre-project surveys and document tribal involvement as appropriate in the report. If no tribes that were noticed send a representative or respond with interest within 30 days, the City will accept a report without tribal participation provided the notice was given and documented.
- Ensure that interested tribes named on the NAHC list are afforded 30 days to review and provide comments on the consultant's technical report before it is submitted to the City.

6.0 PAYMENT POLICY

6.1 Policy of Payment for Consultation

In many areas of California, including the City of Clearlake, some tribes have requested payment of public funds for their participation in the early planning stages of City projects. The purpose of this guidance is to clarify what costs the City will pay in the event the City receives a request for payment for participation in a project planning process.

There are no laws or regulations that require payment to either consulting parties or tribes during project planning activities, consultation, or construction. In fact, "consultation" is defined by Government Code Section 65352.4 as "the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance."

The City recognizes the importance of providing information, staff time, or contract labor time at no cost to the tribes and expects tribes to provide information to the City at no cost to the City. Additionally, there are numerous California Native American tribes in the region that may ascribe cultural affiliation to the Clearlake area and may request consultation or participation in the future. Because different tribes have different opinions, interpretations, cultural values, and information, it is the City's intent to consult meaningfully with all California Native American tribes who wish to do so.

Furthermore, because CEQA is founded on consultation with interested parties, commenting agencies, stakeholders, and the public, the City is tasked with consulting with many organizations and individuals regarding all aspects of CEQA review, including biological and wildlife non-profit organizations, professional societies and associations, and members of the public. All voluntarily provide input and information to the City on a wide range of environmental topics covered by CEQA, which is taken into account during the decision-making process for discretionary projects. It has always been the City's view that meaningful consultation cannot take place if such discussions are couched in financial or contractual relationships between the consulting parties and the public.

In addition, the City recognizes the difference between a "consulting party" (as described above) and a "consultant," where the City delegates the preparation of environmental documents and supporting technical information to third party consultants, selected according to qualifications, cost, and technical expertise. Use of registered professionals is defined further in Section 15149 of the CEQA Guidelines and does not include consulting parties.

The City does not generally compensate any "consulting parties," including tribes, members of the public, or stakeholders, during project planning and environmental review for: 1) consultation during the City's project planning process; 2) for information that any consulting tribe or party wishes the City to take into consideration during project planning; and 3) for tribes, members of the public, stakeholders, or other parties to visit or survey project areas to make recommendations to the City.

6.2 Policy of Payment for Tribal Participation During Construction

If the City determines that tribal monitoring or participation is required as a mitigation measure or condition of approval, then payment is appropriate (payment for non-required tribal observation and

for consultation is not). The following policy is intended for both City and private projects under the jurisdiction of the City.

When a mitigation measure of a certified environmental document or a condition of a permit or approval requires tribal monitoring of construction-related activities, the City shall retain the requisite number of tribal monitor(s) under contract from a list of pre-qualified culturally-affiliated Native American tribes that are on a list, maintained by the City, that is generated as a result of a Request for Qualifications advertisement. When the City will require tribal monitoring for a project, tribes on the list will be invited through a public advertisement to provide a scope, cost, and schedule proposal for the City's consideration and selection.

A tribal representative that is paid for his or her participation as a monitor shall:

- have the Tribe's authority to make daily decisions on Native American beliefs, wishes or policy, but may consult with other tribal members with authority and/or experience when it does not delay project progress;
- have the Tribe's authority to consult on their behalf with the Project Archaeologist on the archaeological investigations;
- report to the appropriate tribal members on project progress, activities, finds, problems by whatever methods are appropriate;
- report to the designated job supervisor on a daily basis; and
- have the Tribe's authority to lodge a formal complaint.

Examples (for the purpose of this section) include Tribal Historic Preservation Officers, Tribal Council Members, and Tribal Monitors.

Consistent with the process used for other consultants for the City, retention of tribal monitors will require compliance with Chapter III, Section 3-4 of the Municipal Code.

In addition, the following parameters apply:

- Tribal Monitors shall be compensated only for City-authorized labor spent on the job site and are subject to applicable labor laws with respect to paid rest breaks and unpaid meal periods.
- The City shall not compensate more than one Tribal Monitor per project without prior approval by City staff in advance.
- The City shall not compensate trainees or interns for tribal monitoring.
- The City shall not pay for monitoring of activities that do not involve ground disturbance that would have the potential to impact a TCR, as determined through the City's environmental review and associated consultation process.
- All representatives and monitors must adhere to job site safety protocols.
- Private property owners reserve the right to prohibit entry to private lands.

- The City will identify Tribal Monitors and will discuss Tribal Monitor assignments with culturally affiliated tribes prior to monitoring activities.
- Tribal Monitors shall not be considered employees of the City.

Pay rates for tribal monitoring and participation for private developments (where the City is not the project proponent) may be separately negotiated between the tribe and project proponent. Nothing in these guidelines or in applicable law prohibits a private landowner from separately entering into an agreement with a tribe to provide unrequired monitoring or monitoring at higher rates, so long as doing so does not attempt to circumvent existing laws and consultation processes.

In the event that the City receives a request for tribal monitoring after project approval, which may be just before or during construction, when tribal monitoring was not a mitigation measure or condition of approval, the City shall not pay for tribal monitoring. However, the City will consider requests from interested tribes to visit the project site to observe project activities on a voluntary basis, as long as appropriate safety procedures are followed and a waiver of liability (including proof of workers compensation insurance) is on file with the City.

7.0 CEQA EXEMPTIONS

7.1 Statutory Exemptions

Section 15061 of the CEQA Guidelines requires that the City first consider whether the project is subject to CEQA or exempted by statute or by category. Statutory exemptions are provided in Article 18 of the CEQA statute, from Section 15260 to 15285 and include, but are not limited to:

- projects ongoing since 1970;
- feasibility and planning studies;
- discharge requirements;
- adoption of coastal plans and programs;
- general plan time extensions;
- financial assistance to low or moderate income housing;
- ministerial projects;
- emergency projects;
- family day care homes;
- specified mass transit projects;
- transportation improvement and congestion management programs;
- application of coatings;
- air quality permits;
- specifically named projects either in the CEQA guidelines (Section 15282) and CEQA statute (Section 21080 et seq.).

Statutory exemptions under CEQA are not subject to these guidelines.

7.2 Categorical Exemptions

Section 21084 of the Public Resources Code required the development of a list of classes of projects that have been determined not to have a significant effect on the environment and are therefore exempt from CEQA, as long as there is no exception to the exemption as specified in Section 15300.2 of the CEQA Guidelines. These categorically exempted projects currently include the following projects in Sections 15301 through 15333:

- operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use;
- replacement or reconstruction of existing structures and facilities;
- new construction or conversion of small structures;

- minor alterations to land;
- minor alterations in land use limitations;
- information collection; inspections;
- loans;
- accessory structures;
- surplus government property sales;
- minor additions to schools;
- minor land divisions;
- acquisition or transfers of lands for conservation or preservation of parks, wilderness, historical resource, or wildlife conservation;
- transfer of ownership of land in order to create parks;
- open space contracts or easements;
- annexation of existing facilities;
- educational or training programs;
- normal operations of facilities for public gatherings;
- leasing facilities;
- small hydroelectric or cogeneration projects at existing facilities;
- some types of hazardous materials responses;
- in-fill development; and
- small areas of habitat restoration.

Section 15300.2 of the CEQA Guidelines provides several exceptions which may subject a categorically exempt project to CEQA review. Among those exceptions are when the project will have cumulatively significant effects, when unusual circumstances create a reasonable possibility that the project will have a significant environmental effect, and when the project may cause a substantial adverse change in the significance of a historical resource. When considering potential exceptions to categorical exemptions, the City shall consider TCR.

The City will first screen every discretionary project to determine whether or not it is categorically exempt from CEQA and these Guidelines and does not invoke the exception to the exemption rule. The following types of projects are expected to be categorically exempt and have no likely potential to impact either historical resources or TCRs, and therefore, shall not be subject to tribal consultation:

- statutory exemptions, including ministerial projects;

- subdivisions that do not approve or obligate the City to take any action to approve or permit (ministerially or otherwise) construction or any other ground-disturbing activity;
- wireless communication projects without ground-disturbing activity;
- changes of use of existing structures and facilities without ground-disturbing activity that do not increase the width of the structure or facility;
- sign permits;
- Consistency Determinations;
- time extensions;
- loans;
- annexation or leasing of existing facilities;
- repair, minor alteration, repaving or replacement of existing infrastructure within previously excavated alignments, trenches or facilities that do not include new disturbance of previously undisturbed ground; and
- other similar projects or permits, without ground disturbing activities or occurring within previously excavated graded areas, alignments, or trenches, and that do not include new disturbance of previously undisturbed ground, as determined by the City Planner.

Tribes interested in receiving notices of exemption are encouraged to visit the City's website at www.clearlakeca.us or CEQAnet hosted by the Governor's Office of Planning and Research.

8.0 CONDITIONS AND MITIGATION MEASURES

Any given project will have a different suite of conditions and mitigation measures that are specific to the project's unique dynamics. The City will, in consultation with tribes, select the most appropriate options. Additional tailoring for any option may be required. It is not the City's intention to require all or any of the conditions and mitigation measures discussed below for a project – the use of conditions and mitigation measures shall meet the significant nexus and rough proportionality tests of the California State Supreme Court. Each consulting tribe is entitled to request modifications to the conditions and mitigation measures, and to request any other measure that avoids or mitigates a potential significant impact to TCR.

8.1 Avoidance and Preservation

Avoidance is the preferred treatment method for TCR. This could include converting a lot that had been planned for residential development to open space designation or redesigning a road to curve around a TCR. However, not all TCR can be avoided. In cases where TCR are located in close proximity to a work area, the installation of temporary fencing (Option 1) would ensure that there is no inadvertent damage to TCR. This may or may not be coupled with construction monitoring. In cases where avoidance and preservation in place is feasible because, among other options, it will be included within dedicated open space, the recording of a deed restriction to ensure future activities do not unintentionally damage the resource is preferred (Option 2). In cases where avoided TCRs will be exposed to the public, the incorporation of Covenants, Conditions, and Restrictions (CC&Rs) will communicate the prohibition of artifact collection and site disturbance to new residents of housing developments (Option 3). Deed restrictions and CC&Rs should be designed to provide only the information necessary to protect the resource while preserving the confidentiality of TCR and preventing the public from knowing the exact location of the resource. Depending on the situation, the City may exercise its discretion to require one or more of these options, and tailored as appropriately determined by the City. The following are examples of how these measures may be worded:

> Option 1. Installation of Temporary Fencing. Prior to ground-disturbing activities commencing, the contractor shall install high-visibility temporary exclusionary fencing to prevent ground disturbance within 100 feet of site [number]. A photograph of the installed fencing and a map indicating the photo point shall be submitted to the City as proof of compliance. Fence installation shall be monitored by a qualified professional archaeologist and, for tribal cultural resources, a culturally affiliated tribal monitor, and inspected at least once per month during active construction to ensure integrity of the fence line. Once all construction equipment and personnel have vacated the project area, the exclusionary fencing may be removed. The contractor shall provide the City with documentation that the fence was installed, monitored, and removed in compliance with this measure.
>
> Option 2. Recording a Deed Restriction. Prior to [recording of the final map OR to issuance of building permits or improvement plans], the property owner shall record a deed restriction over site [name or number] to restrict development in the future. The area included in the deed restriction shall be delineated by a qualified professional archaeologist, in consultation with a culturally affiliated tribe(s), and described by a licensed surveyor prior to recording. Because archaeological site locations are restricted from public distribution, the deed restriction shall cite an "environmentally sensitive area." A copy of the recorded deed restriction that includes the site shall be provided to the City for retention in a confidential project file as proof of compliance. The qualified professional archaeologist shall submit a copy of the deed restriction to the Northwest

Information Center of the California Historical Resources Information System and shall copy the City and any culturally affiliated consulting tribe on this correspondence.

Option 3. Recording of CC&Rs. Notification of the restrictions on artifact collection and digging shall be included in a restrictive type of covenant recorded on each parcel, as follows: "The collecting, digging, disturbance, or removal of any artifact or other prehistoric or historic object located in an open space area, conservation easement, a lot subject to a deed restriction, or at any archaeological site that may become unearthed in the future, is prohibited." For TCR that are not physical resources, a CC&R shall establish appropriate limits on height, setback, or other installations. The form and language of the covenant shall be provided by the Project Proponent to the City for approval prior to execution or recordation. A copy of the recorded or executed covenant shall be provided by the Project Proponent to the City as proof of compliance within 30 days of the sale of each lot subject to this restriction.

8.2 Capping in Place

In cases where horizontal avoidance and preservation in place is not feasible, but a vertical separation between the TCR and future activities can be achieved, capping in place may be an appropriate means to reduce impacts to a resource. This may occur in the developments of City parks or areas that will be landscaped as part of a Project, but would likely not be appropriate when building foundations or excavation for utilities or other facilities will occur.

Capping in Place. Site [number or name] shall be capped to protect and preserve subsurface archaeological deposits identified within the project area, as described in this measure, and in consultation with a qualified professional archaeologist. Capping design may include a combination of geotextile fabric, culturally-sterile soil, where feasible, or other barriers or restrictions to prevent accidental or unauthorized disturbance in the future. The City shall provide the consulting tribe with a list of any proposed fill or capping material prior to any capping activity for input and recommendation from the tribe. The City retains discretion in the design and composition of the cap. All parties will work diligently to cap the site as quickly as possible. The capping specifications shall be demarcated on the project construction plans and approved by the City prior to issuance of improvement plans, grading permits, or building permits, and prior to commencement of ground-disturbing activities. The capping shall be monitored by a qualified professional archaeologist and culturally affiliated tribal monitor that represents a consulting tribe on the project, identified as such by the City. Within 30 days of the conclusion of the capping activity, the property owner shall record a deed restriction or other type of development restriction (approved by the City) over the capped site to restrict disturbance in the future. Prior to recording, the City shall review and approve the proposed boundaries of the restriction to ensure that the resource is protected. Because archaeological site and tribal resource locations are restricted from public distribution, the restriction shall cite an "environmentally sensitive area." A copy of the recorded restriction that includes the site shall be provided to the City for retention in a confidential project file as proof compliance. The qualified professional archaeologist shall submit a copy of the restriction and updated site record documenting the capping to the North Central Information Center of the California Historical Resources Information System and shall copy the City and any culturally affiliated consulting tribe on this correspondence.

8.3 Reburial

In the event of the discovery of TCRs or remains, or in the event that a known resource must be relocated to avoid impact, a reburial process may guide the placement and methods of repatriating the materials. In some cases, particularly in areas of high sensitivity or Projects that have known resources present, designating a reburial area free from future disturbance before the commencement of ground disturbing activities may be warranted (Option 1). At the City's discretion, if there is a lower likelihood of the potential to encounter buried resources, pre-designation may not be necessary, and in this case, the procedures in Option 2 may be appropriate.

Option 1. Predesignate Reburial Location. Prior to the commencement of ground-disturbing activities associated with the Project, the owner and a qualified professional archeologist shall consult with consulting tribal representatives regarding the designation of an appropriate onsite reburial location that is in an area not subject to future disturbance. If an appropriate onsite reburial location is not feasible, the owner shall identify, in consultation with consulting tribal representatives, an alternative reburial location that is in an area not subject to future disturbance. Such alternative location shall be accessible to the consulting tribe and protected from future disturbance by deed or other restriction. The reburial location will be used by the consulting tribe to rebury any Native American cultural items encountered which the tribe wishes to rebury, in accordance with its customs and traditions. The reburial location will be recommended to a designated MLD for reburial of Native American human remains and associated cultural items.. Following the completion of all ground disturbing activity, the reburial area will be backfilled and capped in accordance with the City guidelines, landscaped in consultation with the culturally affiliated tribe. Within 30 days of the conclusion of the capping activity, the property owner shall record a deed restriction or other type of development restriction (approved by the City) over the capped site to restrict disturbance in the future. Prior to recording, the City shall review and approve the proposed boundaries of the restriction to ensure that the resource is protected. Because archaeological site and tribal resource locations are restricted from public distribution, the restriction shall cite an "environmentally sensitive area." A copy of the recorded restriction that includes the site shall be provided to the City for retention in a confidential project file as proof compliance. The qualified professional archaeologist shall submit a copy of the restriction and updated site record documenting the capping to the North Central Information Center of the California Historical Resources Information System and shall copy the City and any culturally affiliated consulting tribe on this correspondence. If the City and the tribe agree that there is no need for a reburial area because no resources were encountered during construction, the location area will be available for unencumbered use after construction.

Option 2. Reburial without Predesignated Location. If tribal cultural resources are discovered during construction activities, and re-burial is warranted, ground-disturbing activities within 100 feet of the discovery shall temporarily cease and the property owner shall identify a location to accommodate reburial of any tribal cultural resources or human remains in consultation with the culturally affiliated tribe. The location selected shall be under the control of the property owner, in an area not planned for future disturbance, and can accommodate the recording of a deed restriction, should the reburial location be utilized for the project. A copy of a map showing the reburial location shall be filed with the City for proof of compliance prior to resuming construction and shall remain confidential. If the reburial location is not utilized for the project because there were no discoveries encountered during construction, then no further documentation or deed restrictions are required. In the event that human remains or tribal cultural resources are

encountered, the consultation and evaluation process in Mitigation Measure [XX] for the management of unanticipated discoveries shall be followed. Upon conclusion of that process, the Construction Manager shall facilitate the culturally affiliated consulting tribe's reburial of specified materials in the location selected for reburial, as directed by the City. The City shall reserve the right to dictate the nature, methods, and timing of the reburial, in consultation with the owner and the culturally affiliated consulting tribe. Within 30 days of the reburial, the property owner shall record a deed restriction or other type of development restriction (approved by the City) over the reburial site to restrict disturbance in the future. Prior to recording, the City shall review and approve the proposed boundaries of the restriction to ensure that the resource is protected. Because archaeological site and tribal resource locations are restricted from public distribution, the restriction shall cite an "environmentally sensitive area." A copy of the recorded restriction that includes the reburial site shall be provided to the City for retention in a confidential project file as proof compliance. The qualified professional archaeologist shall submit a copy of the restriction and updated site record documenting the reburial to the North Central Information Center of the California Historical Resources Information System and shall copy the City and any culturally affiliated consulting tribe on this correspondence.

8.4 Public Interpretation

In cases where TCRs will be impacted and such resources possess public education and interpretation potential regarding topics such as traditional ecological knowledge, lifeways, or subsistence, for example, it may be appropriate to require the development of interpretive panels. The panels would be developed in consultation with culturally affiliated tribes and placed in a public location.

Interpretive Panels. The Project Proponent shall ensure that the precontact and modern Indigenous context of the project area will be interpreted for the benefit of the general public through the development and installation of [X #] interpretive panel(s) with not less than [X #] of square feet each, developed in consultation with the [tribe(s)]. The panel(s) that shall be incorporated into publicly accessible areas of the project, or in a locale amenable to the City and consulting tribe(s). The proposed location of the panel, as well as conceptual layouts of the panel, shall be developed by a qualified professional and submitted to the City no later than 30 days prior to the commencement of ground disturbing activities. The City will submit the conceptual layout to the [tribe name] within 10 business days of receipt. The project construction may proceed during subsequent review and approval unless the City determines that the conceptual layout is not consistent with this mitigation measure. The [tribe name] shall have 60 days to provide recommendations on the conceptual layout to the City. Upon the close of the 60-day period, the City will forward any recommendations from the [tribe name] to the qualified professional for incorporation, as deemed appropriate by the City. The final design of the panel is subject to review and approval by the City. A PDF of the final panel(s), a photograph of the installed panel(s), and a map showing the location of the panel(s) shall be submitted by the contractor or qualified professional to the City within 60 days of installation, as proof of compliance. This information may be tied to a website, with provisions for long-term maintenance of the website. If requested by a [tribe(s)], the City may extend the timeframes in this measure, which shall be documented in writing (electronic communication may be used to satisfy this measure).

8.5 Construction Monitoring

In the event that the City determines that construction monitoring is preferred to reduce the potential impact to a TCR to less than significant, then a mitigation measure requiring paid tribal monitoring may be used and tailored to the specific project and circumstances (Option 1). In all other cases when a tribe has requested monitoring, the City may allow for voluntary (unpaid) observation (Option 2).

In the event that more than one culturally affiliated consulting tribe requests paid monitoring, the City shall consider either of the following circumstances to satisfy a tribal monitoring requirement, as applicable: 1) the tribes rotate monitoring shifts such that only one tribe is monitoring at a time; or 2) when the City determines that more than one tribal monitor is necessary at a single time, the tribes share the monitoring duties such that the number of paid monitors at a single time does not exceed what is required.

> Option 1. Tribal Monitoring. The [tribe name] shall be invited to provide a tribal monitor, under a paid tribal monitoring agreement, to observe all ground-disturbing activity associated with the project construction within the monitoring area depicted on the confidential Tribal Monitoring Map (dated xxxxx) and as described below.
>
> No later than seven calendar days prior to the start of ground disturbing activities, the construction supervisor or their designee shall notify the Tribe of the construction schedule for any work within the tribal monitoring area. Should the tribe choose not to provide a tribal monitor, or if the monitor is not present at the project location at the scheduled time, work may proceed without a monitor as long as the notification was made and documented.
>
> The tribal monitor shall observe all vegetation clearing and removal, all initial surface grading of the project area, placement of any geo-tech fabric or capping material, all excavation, and all ground disturbing activity of any kind within the tribal monitoring area from the surface to [x] feet below the surface of the tribal monitoring area.
>
> Tribal monitoring is not required outside of the tribal monitoring area, during above-surface construction activities that have no potential to protrude past a cap (if used), during shallow project disking when the archaeologist and tribe agree that there are no archaeological materials located within the depth of disking, or for flush-cutting or mowing of vegetation that does not disturb the underlying soil.
>
> The tribal monitor shall have the authority to temporarily pause ground disturbance within 100 feet of the discovery for a duration long enough to examine potential tribal cultural resources that may become unearthed during the activity. If no such resources are identified, then construction activities shall proceed, and no agency notifications are required. In the event that a potential tribal cultural resource is identified by the monitor, the monitor shall flag off the discovery location and notify the City immediately to consult with the tribe's designated cultural resources contact person on appropriate and respectful treatment of the tribal cultural resource pursuant to mitigation measure [cite unanticipated discovery measure here].
>
> Option 2. Voluntary Observation. In the event that the City provides for voluntary monitoring, the Construction Manager shall notify the City of the proposed ground disturbance a minimum of seven days prior to the start-date, in order to provide the City representative sufficient time to contact the [tribe name]. The construction supervisor shall invite a tribal representative to voluntarily inspect the project location, including any soil piles, trenches, or other disturbed areas, within the first five days of ground-breaking activity and at reasonable intervals based on the nature of the

ground disturbance and the environmental conditions. Construction activity may be ongoing during this time. Notification of the invitation shall be documented to the City.

The voluntary tribal observer shall have the authority to temporarily pause ground disturbance within 100 feet of the discovery for a duration long enough to examine potential tribal cultural resources that may become unearthed during the activity. If no such resources are identified, then construction activities shall proceed, and no agency notifications are required. In the event that a potential tribal cultural resource is identified by the monitor, the monitor shall flag off the discovery location and notify the City immediately to consult with the tribe's designated cultural resources contact person on appropriate and respectful treatment of the tribal cultural resource pursuant to mitigation measure [cite unanticipated discovery measure here].

8.6 Tribal Access Agreements

In cases where a TCR will be avoided and preserved in place, or where a reburial has occurred, providing access to requesting culturally affiliated tribes will allow for the legal visitation on private property or public property that is not normally accessible to the public. In such circumstances, the City may consider the following provision.

Legal Tribal Access. Prior to the recording of open space that contains tribal cultural resources, the [Tribe] shall be invited by the landowner, in coordination with the City, to execute a tribal access agreement to allow for permitted access to the tribal cultural resource referred to as [name or number] in perpetuity. The Project Proponent shall provide a copy of the executed agreement to the City for retention in a confidential project file as proof of compliance. Any restrictive document containing the site (e.g., deed restriction) and its associated management plan (if applicable) must allow for the implementation of the access agreement. Within 45 days of the invitation, should the tribe decline to negotiate the access agreement, or should the parties fail to come to agreement on the terms of access after a good faith and reasonable effort, management of the resource shall be dictated exclusively by the terms and conditions of the restrictive document and/or project conditions of approval. Such time may be extended by mutual written agreement.

8.7 Clean Fill Requirement

When fill material must be brought into a Project Area during project construction, it is important to the City that such material not be harvested from other archaeological sites, which will create new issues for the Project and disrupt the archaeological record. The City may require documentation that imported fill is not originating from another archaeological site before the import occurs (Option 1). In the event that a Project area contains a known archaeological TCR, the soil from that site may not be exported outside of the project unless determined by the City to not contain TCR (Option 2).

Option 1. Clean Fill. No Cultural Soil from other recorded archaeological sites in the City shall be used on the Project. Lake County is an area that is rich in tribal cultural resources, archaeological resources, and historic resources, any of which may be contained within soil taken from one location to another in the development process. To avoid spreading unanalyzed and unmitigated cultural soils from other development sites that may be culturally sensitive or contain tribal cultural resources, cultural resources, archaeological resources, or historic resources to this site, the contractor shall demonstrate to the satisfaction of the City that the fill material has not been obtained from a recorded archaeological site.

Option 2. Restriction on Export of Cultural Soil. No Cultural Soils from recorded archaeological sites in the Project area shall be removed from the Project area, unless as part of the treatment of a TCR. The recommendation to the City of what is, or is not, Cultural Soil shall be made jointly by the tribe and the Project Archaeologist. The City shall consider the recommendation based on substantial evidence and make the final determination of what constitutes Cultural Soil for the purpose of this measure. . Cultural Soils that have been previously disturbed may be used on site in locations that will be capped with soil or may be returned to excavation locations in the Project area. There is nothing preventing the removal of soil that has been determined to be non-Cultural Soil by the City from the Project area.

8.8 Contractor Awareness Training

Construction personnel do not always have the training or experience necessary to be able to identify TCRs during ground disturbing activities, and the failure to recognize unanticipated discoveries could lead to impacts to TCRs. All projects for which a consulting tribe has identified potential impacts to TCRs that include ground disturbing activities may use the following measure.

Tribal Cultural Awareness Training. The project owner shall retain a tribal representative from a culturally affiliated tribe to provide a one-time paid initial worker awareness and cultural awareness training program on or just prior to the first day of construction, and at any time five (5) or more untrained workers are employed in ground disturbing activities at the site. All supervisors of contractors, subcontractors, project personnel, and workers involved in ground disturbing activities shall be briefed on the requirements for avoidance, preservation in place, and minimization and mitigation measures by receiving cultural awareness training by the consulting tribe, as well as the procedures for addressing unanticipated discovery and respectful treatment of Native American human remains and tribal cultural resources.

8.9 Controlled Grading Procedures

One example of an alternative method is controlled grading to slowly and carefully remove overburden and allow for less destructive exposure of any cultural constituents. This may be implemented during the excavation of soil that is identified as part of a precontact site. When used specifically for precontact archaeological sites or TCRs, this technique would, by definition, require the use of both an archaeological monitor and a tribal monitor from a culturally affiliated tribe. Because a tribal monitor would be required in this scenario, payment for monitoring is appropriate (see Section 6.0 for policies on payment).

Controlled grading would not be required for soil that is identified as non-cultural formational soil or fill dirt imported to the site that is determined to lack cultural constituents. The determination of the transition from cultural soil to formational soil would be made by the City, after consideration of input from the project's archaeological consultant, culturally affiliated tribe(s), and geotechnical professionals.

Controlled Grading. The Construction Manager shall retain a qualified professional archaeologist, subject to the approval of the City, to monitor controlled grading activities. A minimum of seven days prior to beginning ground disturbing activities in the controlled grading of the area shown on confidential map [#], which is on file with the City, the Construction Manager shall notify the City and the [tribe name]of the proposed ground disturbing activities start-date. Under the observation of a tribal monitor and qualified archaeologist, the contractor shall use either a small piece of equipment or observe the removal of soil by a backhoe equipped with a flat-edge bucket to peel

away native soil using shallow cuts made in approximately two- to five-inch-deep layers. The grading equipment will push the shallow cuts of soil to the outside of the cultural deposit area and random samples may be screened to ensure adequate detection of any cultural materials that may be present. In the event that cultural materials or human remains are exposed, the procedures for unanticipated discoveries in Mitigation Measure [XX] shall apply. Controlled grading shall continue to a depth of 30 centimeters below the depth of any recorded artifacts, suggesting an end to the potential for cultural deposits, or when non-cultural formational soils are encountered that predate any human occupation of this location, as determined by the qualified professional archaeologist, in consultation with the tribal monitor. Once the identified depth has been reached, the controlled grading process will be terminated and mass grading may proceed, subject to the review and approval by the City. Controlled grading is not required for non-cultural soil or fill.

8.10 Alternative Treatment Measures

Based on the number and type of resources within a project, or based on the construction timing of the project, there may be a need to develop and negotiate certain types of mitigation that are not provided for above. There may also be requests from consulting tribes for methods of identification that may be considered to be non-traditional in mainstream cultural resources management (hereafter, "alternative"). The City, in consultation with appropriate professionals, experts, and tribes, shall be solely responsible for making the decision about whether or not an alternative method is appropriate for City projects. For private projects, where a project applicant objects to an alternative method, the City may opt to require a suitable substitute. In any case, the City shall not require mitigation when the effects are found under CEQA to be not significant, and any such mitigation must be commensurate with the impact.

However, there are specific types of alternative methods that the City has determined may not be appropriate at this time, including:

- Use of compensatory mitigation (payment of funds in exchange for impacts);
- Any mitigation or treatment that appears to benefit a specific entity, person, or tribe, rather than mitigating for a resource;
- Any method that would create an undue financial burden on the City or applicant (i.e., make a project infeasible); and
- Any other method or treatment that the City deems is not appropriate.

8.11 Unanticipated Discovery Procedures

Any project that includes ground disturbing activity has the potential to unearth archaeological materials, tribal cultural resources, or human remains that could not be seen on the surface and were not known prior to project approval. Both of the following measures will be used for TCRs when a project includes ground disturbance.

Unanticipated Discovery of Tribal Cultural Resources. In the event that a potential tribal cultural resource is identified during project construction, then the construction supervisor shall ensure that all ground disturbance is temporarily paused within 100 feet of the discovery for a duration long enough for a qualified archaeologist (and where appropriate a tribal monitor) to examine the discovery. If no such resources are identified (e.g., false alarm), then construction activities shall proceed, and no agency notifications are required. In the event that a tribal cultural resource is identified, then the supervisor or their designee shall notify the City immediately so that it can

consult with the tribe on appropriate and respectful treatment of the tribal cultural resource. The tribe's designated cultural resources contact person shall be provided 48 hours to make a recommendation for treatment. If avoidance and/or preservation in place is not possible, the City will direct the Contractor or project proponent to consider re-design or other measures to avoid impacting resources consistent with CEQA, subject to City Planning Commission approval and tribal consultation. In the event that City staff disagrees with the recommendations of the tribe, the City Council shall be the final arbiter.

Unanticipated Discovery of Human Remains. If human remains are encountered, no further disturbance shall occur within 150 feet of the vicinity of the find(s) until the Lake County Coroner has made the necessary findings as to origin (California Health and Safety Code Section 7050.5). Further, pursuant to California Public Resources Code Section 5097.98(b) remains and associated cultural items shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. Remains and associated cultural items shall be covered and protected from the elements, and no unauthorized individual may photograph remains or associated cultural items. If the Lake County Coroner determines the remains to be Native American, the Native American Heritage Commission must be contacted within 24 hours. The Native American Heritage Commission must then identify the "most likely descendant(s)" (MLD). The landowner shall engage in consultations with the MLD. The MLD will make recommendations concerning the treatment of the remains within 48 hours as provided in Public Resources Code 5097.98. If the landowner does not agree with the recommendations of the MLD, then the NAHC can mediate (§ 5097.94 of the PRC). If no agreement is reached, the landowner must rebury the remains where they will not be further disturbed (§ 5097.98 of the PRC). This will also include either recording the site with the NAHC or the appropriate Information Center; using an open space or conservation zoning designation or easement; or recording a reinternment document with the county in which the property is located (AB 2641). Work cannot resume within the no-work radius until the lead agencies, through consultation as appropriate, determine that the treatment measures have been completed to their satisfaction.