

ABSTRACT

Title of Thesis: PROTECTING OUR HISTORY UNDERFOOT: FILLING IN THE
REGULATORY GAPS THROUGH LOCAL ARCHAEOLOGICAL REVIEW

Degree Candidate: Nancy L. LiPira

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Thesis directed by: Betsy Bradley, Ph.D.
Welsh Center for Graduate and Professional Studies
Goucher College

This study identifies the regulatory gap created when federal and state cultural resource management laws do not apply to local or private development actions, resulting in the loss of significant archaeological resources in municipalities across the United States. Incorporating archaeological review into the local development process is the most efficient and practical way to ensure impacts to archaeological resources are considered prior to private development activities. Baltimore City, Maryland, is used as a test case to explore existing and potential solutions for protecting archaeological resources from the impacts of this regulatory gap. Effective local archaeological review practices are identified through an examination of a series of municipalities who have prioritized the protection of their archaeological resources through

such a process. Based on this examination, a series of recommendations and next steps is presented for Baltimore City.

Vital to the success of a local regulatory review program is support from public officials and citizens. This is only achievable through public engagement and archaeologists' ability to convey the relevancy of archaeology – using municipal-level archaeology as a tool to connect citizens to their past and to each other and recognizing the power that personal and collective identity has to foster civic pride. As products of municipal government, local regulatory review practices allow for consideration and incorporation of the priorities and contemporary values of local citizens in the archaeological process. With proper and meaningful planning efforts from the city and preservation partners, local regulatory review can successfully fill data gaps in Baltimore's archaeological record while also contributing to the collective identity of its citizens.

Subject Headings: Archaeology, archaeological ordinances, archaeological resource protection, archaeological significance, Baltimore City, collective identity, community engagement, cultural resource management, historic preservation laws, municipal archaeological review, public value of archaeology.

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THROUGH LOCAL ARCHAEOLOGICAL REVIEW

Nancy L. LiPira

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Advisory Committee:

Betsy Bradley, Ph.D., Director

Jane Seiter, Ph.D.

Jennifer Stabler, Ph.D.

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For Mom and Dad, who are not here to see me reach the finish line but have been with me the entire way. And for Jared, whose support, encouragement, and tolerance pulled me through this long journey. Thank you for never letting me give up.

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CHAPTER I DEFINING THE PROBLEM

Introduction

One of the greatest threats to archaeological resources in the United States is land development in its various forms, including the construction of or alterations to infrastructure and buildings. The federal government has acknowledged its role in this problem and has recognized the importance of considering the effects of its development actions on historic properties, including archaeological resources. Through enacting laws and regulations, including the National Historic Preservation Act (NHPA) and its Section 106 review process, the federal government now has mechanisms and procedures to attempt to limit the damaging effects of its actions. As such, each federal agency is mandated to consider the impacts to archaeological resources, known or potential, of any action it carries out, provides assistance to, approves, funds, permits, or licenses.¹ Many states have also enacted historic preservation laws that provide archaeological resource protection from state actions. Unfortunately, such legislation only provides the opportunity of protection from federal and state actions while other types of development, particularly municipal and private development, are negatively affecting both known and unknown resources due to little or no regulation. Local regulatory archaeological

¹ "An Introduction to Section 106," Advisory Council on Historic Preservation, accessed February 20, 2019, <https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106>.

review mandates that the potential for archaeological resources be considered, determined, and investigated before the approval of a development project. In jurisdictions lacking review at the local level, archaeology is, at best, an after-thought.

This regulatory gap between federal and state regulations and private and municipal development is resulting in archaeological resources being overlooked in jurisdictions throughout the United States, leading to their disturbance and even destruction. Apart from the effects on known archaeological resources, the magnitude and importance of how much is being lost is impossible to measure. Significant resources are gone before we are aware of their existence. This destruction of archaeological resources and, consequently, the loss of tangible local history as a result of municipal and private development is the motivation behind this treatise and its hypothesis.

Statement of Hypothesis

Most historic preservation practitioners would agree that the regulatory power of preservation is strongest at the local level. Historic preservation regulations enacted by municipal governments and incorporated into the local development review process often have the most regulatory “teeth.” This regulatory power lies in a local government’s authority to regulate the activities of private individuals and private land use and in the incorporation of historic preservation into the local development review process.² At the federal level, listings in the National Register of Historic Places (National Register) function more as an honorary status

² Douglas R. Appler, “Understanding the Community Benefits of Municipal Archaeology Programs” (Dissertation, Ithaca, New York, Cornell University, 2011), WorldCat, <http://hdl.handle.net/1813/30640>; David W. Cushman, “Public Archeology and Local Land Use Law,” *CRM*, The Power to Preserve: Public Archeology and Local Government, 21, no. 10 (1998): 4.

that requires agencies to take into account their effects on such properties with no mandatory outcome for preservation, whereas local historic preservation ordinances can protect historic properties with the support of a legal framework. However, this benefit of local protection is not equally afforded to our archaeological resources in many local jurisdictions, including those with robust historic preservation ordinances.

Local governments have certain powers at their disposal for the implementation of archaeological review ordinances or similar regulatory tools that can facilitate the protection of these non-renewable resources. Local governments have the authority to regulate land use on private property and, in turn, can develop their own zoning and development regulations; therefore, a municipality with enough supporters of archaeological resource protection can convince their local elected officials to pass regulations that require archaeological review for private development as part of their local development review processes.³

Local land development control mechanisms that incorporate archaeological review or local historic preservation ordinances that require archaeological assessments before the start of development projects are often the most successful means of protecting archaeological resources.⁴ In this framework, the subject of archaeological resources is incorporated into existing processes that are already familiar to developers and local governments.⁵ This treatise takes as a starting point the premise that a predictable regulatory archaeological review

³ Douglas R. Appler, "Municipal Archaeology Programs and the Creation of Community Amenities," *The Public Historian* 34, no. 3 (August 1, 2012): 42–43, <https://doi.org/10.1525/tph.2012.34.3.40>.

⁴ Betsy Kearns and Cece Kirkorian, "Protecting Sites at the Local Level: The Responsibility and the Legal Authority Towns Have to Protect Their Archaeological Resources," in *Protecting the Past*, ed. George S. Smith and John E. Ehrenhard (Boca Raton, Florida: CRC Press, Inc., 1991), 249.

⁵ Shereen Lerner, "Private Property and Archaeology: What's Beneath the Ground," *Forum Journal & Forum Focus*, *National Trust for Historic Preservation* 8, no. 2 (March 1994).

process, like that of local zoning and land development review, is vital to adequate consideration and protection of archaeological resources at the local level. Further, as products of municipal government, local regulatory review practices allow for the consideration and incorporation of the priorities and contemporary values of local citizens in archaeological investigations.

Baltimore City, Maryland, is a local municipality that demonstrates the need for such a predictable review process, one framed by clear criteria that guide its implementation, including which private or local development actions, or “triggers,” require archaeological review. Baltimore will be studied as an example of a city in which the regulatory gap can be identified between archaeological review prompted by federal and state actions and the threat to resources from private or municipal development, even as there have been considerable efforts to protect and promote the importance of archaeology in the city. This treatise will use Baltimore as a test case and explore potential solutions for protecting Baltimore’s archaeological resources from the impacts of this regulatory gap.

The purpose of regulatory archaeological review is not to stop or delay development, public or private. This treatise will not promote a “save (or investigate) it all” mentality. It will instead explore the possibility of a local regulatory framework that affords jurisdictions, such as Baltimore, the opportunity to identify potential archaeological resources and to determine which resources are worth studying or protecting for the benefit of its citizens but does not inhibit necessary growth and development. Integral to the success of a local regulatory program is support from public officials and citizens which is only achievable through public engagement and the ability of archaeologists to convey the relevancy of archaeology – using municipal-level

archaeology as a tool to connect citizens to their past and to each other, recognizing the power that personal and collective identity has to foster civic pride.

Further, it is imperative that local archaeological regulations not put an undue burden on private citizens. For such a local regulation to be considered successful, a balance must be struck between the political, economic, and social needs and resources of the community, and the public value that archaeological investigations have the potential to yield. The weighing of these factors will vary across municipalities. Is it possible for every municipality to achieve this balance? For example, can a city like Baltimore justify the cost of employing a city archaeologist while it also deals with aging infrastructure and continues to battle unrelenting crime? This treatise will not provide a definitive answer to this question, but through evaluating components of existing local archaeology regulations currently employed by a sampling of municipalities, it will attempt to identify effective policies and practices that may be successfully implemented elsewhere, with specific recommendations for Baltimore. Supposing that these effective practices can be identified, this study will also explore the political, economic, and social challenges that can thwart the support and enactment of a well-crafted local archaeological regulation.

The Disconnect Between Archaeology and Historic Preservation

The fields of archaeology and historic preservation share the common fundamental goal of protecting and preserving our tangible and intangible past for public benefit, although they accomplish this goal using very different methods. While archaeologists and historic preservationists seem to be moving in the same direction recently, towards very similar goals, the chasm between the two fields has been deep at times, to the detriment to both. To better

understand the dynamics of the archaeology-historic preservation relationship, and to provide some clarity for this study, a review of some basic terms is warranted.

Archaeology is the study of the ancient and recent human past through the systematic recovery and analysis of material remains. Archaeology analyzes the physical remains of the past to better understand human behavior and culture.⁶ The material remains, the evidence that archaeologists use to study the human past, are most often located below ground and recovered through excavation.

Generally, archaeology in the United States can be classified as either “prehistoric” or “historic.” *Prehistoric archaeology* is the study of the past before written records; specifically, the Native American past before contact with Europeans referred to as the pre-Columbian or precontact period. The term *historical archaeology* is generally used when referring to the study of the human past within periods for which written documents exist. Historical archaeologists use documents such as books, personal diaries, census records, wills, probates, and maps to support their studies.

An *archaeological site* is any place where there are physical remains of past human activities.⁷ Examples of prehistoric archaeological sites include burial mounds, stone quarries mined for the production of stone tools, or camps used for seasonal hunting and gathering activities. Common types of historic archaeological sites include historic roads; military

⁶ “Value of Archaeology,” Pennsylvania and Historical Museum Commission, Pennsylvania Archaeology, September 10, 2015, <http://www.phmc.state.pa.us/portal/communities/archaeology/resources/value-archaeology.html>; “What Is Archaeology?,” Society for American Archaeology, accessed August 25, 2019, <https://www.saa.org/about-archaeology/what-is-archaeology>.

⁷ “What Is Archaeology?”

earthworks and fortifications; military hospitals; residential sites such as plantations, slave quarters, farmsteads, or tenant housing; brick kilns; and many, many others.

Artifacts are objects made, modified, or used by humans. While examples of artifact types recovered from archaeological sites in the United States would likely constitute a never-ending list, common types range from Native American artifacts such as ceramic pots, projectile points, knives, scrapers, or drills to historic period ceramic kitchen wares, glass wine and medicine bottles, buttons, marbles, coins, tobacco pipes, toothbrushes, and chamber pots. Artifacts that are non-portable are called *features* and are usually represented by changes in the soil revealing evidence of storage pits, fire pits or hearths, wells, privies, and structures or fences such as holes for wooden posts. Features can also be more substantial such as building foundations made of brick, stone, or other building material. In a broader view, artifacts, features, and sites are examples of *archaeological resources*. Collectively, the artifacts, features, sites, and anything considered to be an archaeological resource constitute the *archaeological record*. *Archaeological context* refers to the relationship between artifacts and features and their surroundings. Archaeologists record the location of every artifact and feature identified within an archaeological site before it is removed or excavated. Context not only provides an understanding of the relationships between artifacts but also between archaeological sites.⁸

All archaeological resources, whether they be large sites or a small scatter of artifacts, fall under the umbrella of *cultural resources*. Cultural resources also include historic buildings and sites, cemeteries, traditional cultural properties, and historic landscapes, among others.

⁸ "What Is Archaeology?"

The field of historic preservation deals with the preservation of this larger assemblage of cultural resources.

Historic preservation can be defined in a variety of ways. The National Park Service defines it as “a conversation with our past about our future” and sees it as a mechanism for conveying our present understanding of the past to future generations.⁹ In the simplest of terms, historic preservationists aim to preserve and protect buildings, objects, landscapes, and other resources of historical significance. Looking at the two disciplines from the outside, a perceived disconnect stems from oversimplified characterizations of these fields: the assumption that archaeologists are only interested in what is underground and that the focus of historic preservationists is solely on saving old buildings.¹⁰ We know that archaeologists do more than dig up artifacts and historic preservationists do much more than restore old windows, but there is some truth to this sweeping statement, at least in regards to the early development of these two fields when they developed along parallel tracks with very little interaction or mutual interest.

Much of the disconnect, some of which continues today, stems from the beginnings of the historic preservation field as being almost exclusively focused on preserving historically significant buildings and places associated with significant historical figures. This “great men and great houses”¹¹ trend steered the historic preservation field for decades towards a

⁹ “What Is Historic Preservation?,” National Park Service, June 4, 2019, <https://www.nps.gov/subjects/historicpreservation/what-is-historic-preservation.htm>.

¹⁰ Rae Harper, “Disconnect from Definitions: Archaeology and Historic Preservation,” *Experience Archaeology* (blog), June 2, 2011, <http://www.flpublicarchaeology.org/blog/wcrc/2011/06/02/disconnect-from-definitions-archaeology-and-historic-preservation/>.

¹¹ Stephanie Meeks and Kevin C. Murphy, *The Past and Future City: How Historic Preservation Is Reviving America’s Communities* (Washington, D.C.: Island Press, 2016), 184.

buildings-centric focus. In fact, a major role of historical archaeology into the 1960s was to provide information about historic sites for restoration and interpretation purposes.¹² Early practitioners even suggested that the field be called “historic-sites archaeology,” as it was regarded as a “supplemental technique in the service of architecture.”¹³ This echoed the sentiment of the larger historic preservation community that tended to focus on the above-ground aspects of historic sites and the built environment. This provides some context about why many local historic preservation ordinances, many of which were crafted decades ago, are heavily buildings-focused in their implementation.

Fortunately, this separation between the historic preservation and archaeology fields has been narrowing in recent years. The conversation amongst practitioners in these fields seems to be growing, at least. The National Trust for Historic Preservation (NTHP) warns that “archaeology cannot logically be separated from history and historic preservation” if we are concerned with the “totality of cultural history.”¹⁴

The common ground between the two fields is the constant struggle to validate the need for preserving and protecting our historic resources, especially when public funds are involved. It is not an easy sell for preservationists championing for above-ground resources; however, it could be argued that it can be much more challenging for archaeologists to promote the protection of below-ground resources, those which are usually not visible or easy

¹² Nan A. Rothschild and Diana diZerega Wall, *The Archaeology of American Cities: The American Experience in Archaeological Perspective* (Gainesville, Florida: University Press of Florida, 2014), 24.

¹³ Robert Schuyler, *Historical Archaeology: A Guide to Substantive and Theoretical Contributions* (Farmingdale, New York: Baywood, 1978), 1.

¹⁴ Rex Wilson, “Archaeology and Preservation, Information Sheet No. 28” (Washington, D.C.: National Trust for Historic Preservation, 1980).

to showcase. It can be difficult to invoke excitement about archaeological resources, and this presents especially challenging preservation issues.¹⁵ When a building is preserved, the public benefit of its preservation is relatively direct and sometimes even obvious. It is a resource that can be aesthetically appreciated, provide a physical place for site interpretations, or be studied in a physical context, architecturally or structurally.¹⁶

While the principal aim of archaeology is to learn about and understand the past through material culture and protect and preserve that knowledge, archaeologists have widened their aim to use this knowledge as a way to better understand the present. Archaeology can offer the past as a tool to better understand ourselves.¹⁷ The same can be said for the evolving goals of the broader field of historic preservation. In today's increasingly diverse society, historic preservation is moving towards a much more inclusive practice that recognizes, most importantly, that preservation is about people and that the goals of preservation should work towards the benefit of our communities. Archaeology and historic preservation can only benefit from a partnership. While archaeology can help strengthen personal connections to the past by telling stories that contemporary society can identify with as a reflection of their own lives, historic preservation can help place those stories within a broader context.¹⁸ In this way, when archaeology goes beyond the discovery of interesting

¹⁵ Lerner, "Private Property and Archaeology: What's Beneath the Ground."

¹⁶ William D. Lipe, "In Defense of Digging: Archeological Preservation as a Means, Not an End," *CRM*, 1996, 24.

¹⁷ Ian Hodder, *The Archaeological Process: An Introduction* (Malden, Massachusetts: Blackwell, 1999), 14.

¹⁸ Harper, "Disconnect from Definitions: Archaeology and Historic Preservation."

artifacts, its benefits and value, to be explored in Chapter II, can be more easily realized by community members.

Federal and State Historic Preservation Laws and Archaeological Resource Protection

While laws pertaining to historic preservation and archaeological resource protection were enacted as early as 1906, it was not until the 1960s that wide-ranging support for historic preservation and preservation legislation strengthened. A major impetus for this increased support and awareness of the importance of historic resources was urban renewal. The Housing Act of 1949 and the Urban Renewal Act of 1954 provided federal funds for the purchase and demolition of deteriorated urban neighborhoods that were seen as a blight on our cities. Old buildings, because of their deteriorated condition or simply because they were old, were viewed as part of this blight. Large swathes of historic structures were demolished to make room for new redevelopment projects. Unfortunately, this attempt to attract private investment often failed, and cities were left with vast expanses of vacant land. Many people were outraged at the widespread destruction of their older, established communities, and because of this, preservation became extremely powerful as a tool for community revitalization.¹⁹

In addition to urban renewal, the 1950s and 1960s brought the construction of the interstate highway system and other massive public works projects, which also destroyed historic resources in the name of progress. And the public noticed. With this awareness of the

¹⁹ Norman Tyler, Ted Ligibel, and Ilene R. Tyler, *Historic Preservation: An Introduction to Its History, Principles, and Practice*, 2nd ed (New York: W.W. Norton & Co, 2009), 44–45.

problem came some legislative solutions, particularly at the federal level. Along with an increased focus on planning in the 1960s, including urban and land use planning, came the realization that the federal government could start planning their projects in a way that made a meaningful effort to avoid negatively impacting the places and things that people valued concerning their history.²⁰

As many state historic preservation programs, policies, and procedures have been modeled on those at the federal level, local regulatory policies and procedures have also been modeled on those at both the state and federal level. Therefore, it is not only important to examine the federal and state laws in order to identify the regulatory gap, but it is also necessary to have a basic knowledge of the applicable federal and state historic preservation law framework in order to appreciate and examine how those laws may influence archaeological site protection at the local level.

Federal Laws and Archaeological Resource Protection

While there are a number of federal laws, regulations, and executive orders that address cultural resources of various kinds, just a few of the most prominent that tend to have the most impact on archaeological resources will be explored in the following discussion.

The Antiquities Act of 1906

The first U.S. law relating to historic preservation and archaeology, the Antiquities Act of 1906 prohibited the excavation or removal of “antiquities,” including what would be considered artifacts or cultural items today, from federal or tribal land without a permit from the

²⁰ Thomas F. King, *Federal Planning and Historic Places: The Section 106 Process* (Lanham, MD: AltaMira Press, 2000), 16.

appropriate land managing agency.²¹ The Antiquities Act established federal control over the archaeological record on public land and set the stage for later developments in historic preservation law.²²

The Historic Sites Act of 1935

The Historic Sites Act contained the first national policy statement regarding the value of historic heritage and the goal of preservation in the public interest. This law declared “that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.” The Historic Sites Act established programs and procedures that have carried through in subsequent historic preservation laws including surveys of historic and archaeological sites, buildings, and objects; determinations about which of these best illustrate the history of the United States; historical and archaeological research and investigations; and the distribution of information collected about historic and prehistoric sites to the public. The Historic Sites Act also designated the National Park Service (NPS) as the lead federal agency in historic preservation.²³

The Archaeological and Historic Preservation Act (The Moss-Bennett Act)

Also known as the Moss-Bennett Act, the Archaeological and Historic Preservation Act was a 1974 amendment of the Reservoir Salvage Act of 1960, which required the collection and

²¹ Thomas F. King, “United States Domestic Archaeological Heritage Law,” in *Encyclopedia of Global Archaeology*, ed. Claire Smith (New York, NY: Springer New York, 2014), 7478–86, https://doi.org/10.1007/978-1-4419-0465-2_500.

²² Lynne Sebastian, “The Future of CRM Archaeology,” in *Archaeology & Cultural Resource Management: Visions for the Future*, ed. Lynne Sebastian and William D. Lipe (Santa Fe, New Mexico: School for Advanced Research Press, 2009), 7.

²³ Sebastian, 7–8; Hester A. Davis, “Archaeologists Looked to the Future in the Past,” in *Archaeology & Cultural Resource Management: Visions for the Future*, ed. Lynne Sebastian and William D. Lipe, School for Advanced Research, Advanced Seminar Series (Santa Fe, New Mexico: School for Advanced Research Press, 2009), 23.

preservation of historical and archaeological data and materials that would have been destroyed by dam and reservoir construction undertaken with federal involvement. The 1974 expansion of the law widened its jurisdiction to all federal actions. It declared that federal agencies have a responsibility to determine the effects of their actions on archaeological and historic resources and can spend federal funds to mitigate those effects through archaeological excavation. Further, the Moss-Bennett Act explicitly states that the purpose of protecting historic resources is to benefit the public.²⁴

The Archaeological Resources Protection Act of 1979 (ARPA)

This law was enacted after the Antiquities Act was successfully challenged in the legal arena in the 1970s. ARPA augmented the Antiquities Act by specifically referencing “archaeological resources” which are defined in the law as items of “archaeological interest” that are over 100 years old.²⁵ One of the main objectives of passing ARPA was to prohibit artifact looting from federal lands and impose more severe penalties for violations of the law. Public land management agencies that most often enforce ARPA are the Bureau of Land Management, the Forest Service, and the National Park Service.

The Native American Graves Protection and Repatriation Act (NAGPRA)

Passed in 1990, this law prohibits the disturbance of Native American human remains and cultural items located on federal and tribal lands. NAGPRA further established a procedure for repatriating Native American human remains and cultural items that are recovered, as well

²⁴ Sebastian, “The Future of CRM Archaeology,” 8.

²⁵ King, “United States Domestic Archaeological Heritage Law.”

as those already held by federal government agencies and museums, to culturally affiliated tribes and groups.²⁶

The National Environmental Policy Act of 1969 (NEPA)

The National Environmental Policy Act is the general-purpose federal impact assessment law in the United States. NEPA requires that federal agencies consider the effects of their actions on all aspects of the human environment, including air and water quality, threatened and endangered species, environmental justice, and historic and archaeological resources. NEPA requires federal agencies to prepare a “detailed statement,” usually in the form of an Environmental Assessment (EA) or Environmental Impact Statement (EIS), to document the environmental impacts of their actions. Archaeological surveys are often conducted as part of the impact assessment process, along with studies to identify and evaluate historic buildings, structures, neighborhoods, landscapes, and other resources.²⁷ However, NEPA does not mandate any preservation or protection of any aspect of the environment. It merely requires the federal agencies to follow the procedures laid out in the law to help with the assessment of project alternatives and to disclose those results. NEPA only applies to projects with federal government involvement.

Section 4(f) of the U.S. Department of Transportation Act of 1966

This law applies to road, bridge, and other transportation projects funded by the U.S. Department of Transportation (DOT). It is similar to NEPA in that it requires the DOT to analyze the impacts of its projects on a variety of public resources. The DOT is prohibited from using

²⁶ King.

²⁷ King.

any publicly owned parks, recreation areas, and wildlife or waterfowl refuges, or any publicly or privately owned historic or archaeological site listed in or eligible for listing in the National Register for public transportation purposes, unless it is determined that there is no feasible alternative. If no alternative exists, the DOT must develop measures to minimize damage to the resource. Section 4(f) is only triggered for archaeological resources when it has been determined that preservation in place is necessary. The agency is further required to take every possible effort to minimize harm to the resource.²⁸

The National Historic Preservation Act of 1966 (NHPA) and the Section 106 Process

The National Historic Preservation Act, passed by Congress in 1966,²⁹ was created with the goal of minimizing the effects of the federal government's actions on historically significant properties. Some of the major elements of the NHPA include the authorization of the Secretary of the Interior to maintain and expand the National Register of Historic Places (National Register), an inventory "of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture," using specified criteria; the establishment of the Advisory Council on Historic Preservation (ACHP), the independent entity responsible for advising the President of the United States and Congress on historic preservation issues and developing procedures and guidance that facilitate the assessment of federal actions on historic properties; the creation of a federal/state partnership through the

²⁸ "Section 4(f) Policy Paper" (Office of Planning, Environment, and Realty, Project Development and Environmental Review, Washington, D.C., July 20, 2012).

²⁹ The National Historic Preservation Act was codified at Title 16 of the U.S. Code (16 U.S.C. 470 et seq.) until December 2014 when it was moved to Title 54 (54 U.S.C. 300101 et seq.) by Congress. However, per Title 54, "a reference to a source provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding Title 54 provision." The author has chosen to reference the Title 16 regulations.

establishment of, federal assistance to, and oversight of State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices (THPOs); the creation of the Certified Local Government (CLG) program; and the creation of the Section 106 review process,³⁰ the mechanism for ensuring that federal agencies adequately consider the potential effects of their actions on historic properties.³¹

Section 106, the regulatory arm of the NHPA, requires the head of a federal agency, prior to executing an undertaking, to “take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register”³² and to afford the ACHP a reasonable opportunity to comment on the undertaking. The ACHP is given its Section 106 rulemaking authority from Section 211 of the NHPA, meaning that the ACHP can issue regulations governing how agencies must comply with Section 106. Regulations have the force of the law; therefore, agencies are required to follow these regulations in order to be in compliance with the statute.³³ However, Section 106 regulations mandate a process for arriving at an outcome, not a specific outcome.³⁴ The Section 106 process does not mandate preservation; it provides a way to balance the fundamentals of

³⁰ “Section 106” refers to the section within the original public law (16 U.S.C. 470f). The term “Section 106” continues to be used by the ACHP and the historic preservation community to refer to this section of the NHPA.

³¹ “National Historic Preservation Act of 1966,” 16 U.S.C. 470 (1992); John M. Fowler, “The Federal Preservation Program,” in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, ed. Robert E. Stipe (Chapel Hill: The University of North Carolina Press, 2003), 45.

³² “Section 106, National Historic Preservation Act of 1966,” 16 U.S.C. 470f (1992).

³³ King, *Federal Planning and Historic Places*, 14.

³⁴ Pat Barker, “The Process Made Me Do It,” in *Archaeology & Cultural Resource Management: Visions for the Future*, ed. Lynne Sebastian and William D. Lipe, School for Advanced Research, Advanced Seminar Series (Santa Fe, New Mexico: School for Advanced Research Press, 2009), 67.

historic preservation with other public interests through accommodation and compromise.³⁵

The process established by the ACHP for complying with Section 106 can generally be summarized in four steps: (1) determine if there is a federal undertaking; (2) identify historic properties that may be affected by the federal action; (3) assess the action's effects on historic properties; and (4) resolve any adverse effects on historic properties through consultation with the federal agency and other consulting parties.³⁶

A project or action must meet the criteria of an *undertaking* under the law in order for NHPA and Section 106 to apply. If a project is located on federal land, it is considered a federal undertaking. However, if a project involves funding or financial assistance from a federal agency or requires a federal permit, license, or approval, NHPA and Section 106 still apply regardless of land ownership.³⁷

The second step of the Section 106 process is to identify historic properties that may be affected by the undertaking. A *historic property* is defined in the regulations as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register..." Under Section 106, equal consideration is given to resources that are already included in the National Register and to those that simply meet the criteria for inclusion.³⁸

³⁵ Thomas F. King, *Cultural Resource Laws & Practice*, Fourth Edition (Lanham, Maryland: AltaMira Press, 2013), 109.

³⁶ Fowler, "The Federal Preservation Program," 45.

³⁷ King, "United States Domestic Archaeological Heritage Law."

³⁸ King.

The *National Register of Historic Places*, maintained by the National Park Service, is used to identify historically significant resources according to the National Register Criteria for Evaluation. In order for a historic property to be considered eligible for listing in the National Register, at least one of the following criteria must be met: (1) the property is associated with significant events in America's history (Criterion A); (2) the property is associated with a significant person in American history (Criterion B); (3) the property exemplifies a distinctive type, period, method of construction, or high artistic values in regard to architectural features (Criterion C); and (4) the property and its site yield or have the potential to yield important information about history or prehistory (Criterion D).³⁹ If an archaeological site is found to be eligible for listing in the National Register, it is often under Criterion D. While a National Register designation does provide for the review of federal undertakings, it does not inherently provide for review of state, local, or privately funded projects, nor does it automatically stop federal, state, local, or private projects. However, some states and local governments have linked National Register designations to environmental and historic preservation reviews.⁴⁰

If during the Section 106 process no historic properties are identified, any agency can determine that there will be "no historic properties affected," and the Section 106 process can be concluded through consultation with the SHPO and/or THPO. If a historic property is identified, the federal agency must determine if the proposed project will have "no adverse effect" or "adverse effect." A "no adverse effect" determination will also lead to the conclusion of the review process. However, in the event that an "adverse effect" is predicted, the agency is

³⁹ Tyler, Ligibel, and Tyler, *Historic Preservation*, 136–37.

⁴⁰ Tyler, Ligibel, and Tyler, 47–49.

required to resolve the adverse effect by coming up with ways to avoid, minimize, or mitigate the effects.⁴¹ This is done through consultation with the SHPO and/or THPO and other interested parties.

The States and Archaeological Resource Protection

The NHPA authorized the establishment of SHPOs, the state agencies responsible for the identification and protection of cultural resources.⁴² Among their many roles, SHPOs are responsible for conducting statewide surveys of historic properties and archaeological sites with the goal of establishing a local list of historically significant resources referred to as State Registers of Historic Places. Some state, as well as local, preservation laws only consider historic resources included in the National Register, or a state or local equivalent, during their review process. States, as well as local governments with historic preservation ordinances, often adopt the National Register inclusion criteria to guide protective measures.⁴³

Another responsibility of the SHPOs is to administer the Certified Local Government (CLG) programs. The CLG program was created with the intent of bringing together the federal, state, and local governments into a preservation partnership. In order to achieve CLG status, local communities must have a preservation commission, maintain an inventory of cultural resources, and have a historic preservation ordinance. CLGs have access to grants and technical assistance from SHPOs. These grants can be used to fund a variety of preservation programs or

⁴¹ King, *Cultural Resource Laws & Practice*, 165.

⁴² "State Preservation Laws," National Trust for Historic Preservation, Preservation Leadership Forum, 2019, <http://forum.savingplaces.org/learn/fundamentals/preservation-law/state-laws>.

⁴³ John H. Sprinkle, *Crafting Preservation Criteria: The National Register of Historic Places and American Historic Preservation* (New York: Routledge, 2014), 1.

projects, including archaeological investigations, documentation, and protection; however, most CLG grant funding is funneled into projects involving the built environment.⁴⁴

In the late 1960s and early 1970s, many states began enacting laws promoting historic and archaeological resource protection by requiring state agencies to consider the effects of their actions on historic and archaeological resources.⁴⁵ Generally, these mirror federal laws, particularly the NHPA. As with the federal regulations, these state laws are procedural and only require that impacts to historic resources be considered; they do not guarantee that resources will be protected.⁴⁶ While they do not mandate preservation, they require state agencies to go through a process, in consultation with the SHPO, to address state actions on public or private land that may threaten or harm historic resources. State preservation laws can vary in what types of state agency actions will be subject to review under the law, the types of properties protected, the level of protection provided, and how the law will be enforced.⁴⁷

Some states have adopted state equivalents of the NHPA's Section 106 process with very similar review procedures. The purpose of these "state 106" laws is to ensure that state agencies consider the effects of their actions and activities on historic properties. Some state

⁴⁴ Douglas Deur and Virginia L. Butler, "Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice," *Journal of the American Planning Association* 82, no. 2 (2016): 199, <https://doi.org/10.1080/01944363.2015.1137222>.

⁴⁵ George S. Smith and John E. Ehrenhard, "Protecting the Past to Benefit the Public," in *Public Benefits of Archaeology*, ed. Barbara J. Little (Gainesville, Florida: University Press of Florida, 2002), 124.

⁴⁶ Constance Epton Beaumont, *Smart States, Better Communities: How State Governments Can Help Citizens Preserve Their Communities* (Washington, D.C.: National Trust for Historic Preservation, 1996), 45.

⁴⁷ "State Historic Preservation Acts," National Trust for Historic Preservation, Preservation Leadership Forum, 2019, <http://forum.savingplaces.org/learn/fundamentals/preservation-law/state-laws/state-acts>.

106 regulations only apply to properties owned by the state or to state-sponsored projects, while in other states, state 106 compliance is required for state-issued permits as well.⁴⁸

Similarly, some states have also enacted state environmental policy acts referred to as SEPAs or “State NEPAs,” modeled after the federal NEPA law. SEPAs apply in similar situations as the federal law. Under SEPA, a state agency with involvement in a project either through a loan, permit, or license must determine whether the project will affect the environment and whether the effect is significant or minor.

Maryland State Historic Preservation Laws and Framework

Because Baltimore City will be used as a test case in this treatise, an overview of the historic preservation laws and regulations of the State of Maryland is needed in order to place Baltimore within its larger regulatory framework. The Maryland Historical Trust (MHT) serves as the State Historic Preservation Office (SHPO). The MHT was established in 1961, before the passage of the National Historic Preservation Act, with the goal of assisting the citizens of Maryland in identifying, evaluating, interpreting, and preserving the state’s significant historic resources. In 1960, a gubernatorial commission led by the Society for the Preservation of Maryland Antiquities (now Preservation Maryland) recommended the creation of a quasi-public historic preservation commission, which led to the creation of the MHT the following year.⁴⁹

The Jefferson Patterson Park Museum (JPPM), located in Calvert County, Maryland, functions as the State Museum of Archaeology and operates as part of the MHT. The JPPM also

⁴⁸ Beaumont, *Smart States, Better Communities*, 48.

⁴⁹ “Celebrating 80 Years of Protecting the Irreplaceable, Preservation Maryland Annual Report 2011” (Baltimore, Maryland: Preservation Maryland, 2011), 2, http://www.preservationmaryland.org/wp-content/uploads/2015/09/pres_md_annual_report-2011.pdf.

houses the Maryland Archaeological Conservation Laboratory (MAC Lab), the state archaeological conservation and research laboratory and curation facility for archaeological collections recovered throughout Maryland. The JPPM hosts a multitude of educational programs and events year-round, including a Public Archaeology Program.

The MHT's Office of Research, Survey, and Registration is responsible for maintaining the Maryland Inventory of Historic Properties (MIHP) – the state's inventory of historic properties of known or potential value to the prehistory and history of Maryland. It includes information on over 13,000 archaeological sites and 40,000 historic and architectural resources. Maryland's nomination form and survey standards for the MIHP are based on the National Register. *Medusa*, Maryland's Cultural Resource Information System, is an online database of the state's architectural and archaeological resources. The architectural data is available to the public; however, because the locational information of known archaeological resources is often confidential, the archaeological data is only available to those who meet the *Secretary of the Interior's Professional Qualification Standards for Archeology*. While inclusion in the MIHP does not necessarily come with restrictions, Maryland state law does provide mechanisms that allow the State and local jurisdictions the authority to regulate designated historic properties.⁵⁰

The Maryland Historical Trust Act of 1985, as amended, applies to state-funded capital projects. In line with the NHPA and Section 106, the state agency must consult with the MHT to determine if the project will have an adverse effect on any property, including archaeological resources, listed in or eligible for listing in the MIHP. This requirement includes the

⁵⁰ "Overview of the Maryland Inventory of Historic Properties (MIHP)," Maryland Historical Trust, accessed September 11, 2019, https://mht.maryland.gov/research_mihp_overview.shtml.

responsibility of the agency to identify historic resources that may be eligible and then make a determination on whether it is eligible, in consultation with the MHT. The law specifies that consultation with the MHT should occur before the agency proposes the capital project to the Department of Budget and Management or as early on in the process as possible if nonbudgeted money is used. If the proposed project is determined to have a significant adverse effect on a listed or eligible property, further consultation between the agency and the MHT is necessary to explore alternative plans to avoid, mitigate, or reduce the effect.⁵¹ Every year, the MHT reviews over 6,000 projects that have some level of state or federal involvement.⁵² One project to which Maryland's state 106 law was applied and resulted in archaeological investigations was the development of Camden Yards, the city's major league baseball park. The project, undertaken by the Maryland Stadium Authority, successfully preserved and integrated historic buildings into the new ballpark design. Archaeological investigations were conducted from late 1989 to early 1990 and resulted in the identification of thirteen archaeological sites, including a range of late-eighteenth to mid-twentieth century domestic, industrial, and commercial buildings, a number of which evidenced very little disturbance.⁵³

The MHT has developed documents outlining the standards and guidelines for both architectural and historic investigations and archaeological investigations. The state's

⁵¹ "Maryland Historical Trust Act of 1985 as Amended," Annotated Code of Maryland, § 5A-325 and 5A-326.

⁵² "Historic Preservation Review for State and Federal Projects," Maryland Historical Trust, accessed September 3, 2019, <https://mht.maryland.gov/projectreview.shtml>.

⁵³ R. Christopher Goodwin et al., "Archeological and Architectural Investigations at Camden Yards, Baltimore: Volume I" (Frederick, Maryland: R. Christopher Goodwin & Associates, Inc., April 1992).

architectural and historical investigations guidelines were revised in 2019.⁵⁴ The archaeological guidelines were last updated in 1994 and are in major need of revision.⁵⁵ A major statewide objective in *PreserveMaryland II*, Maryland’s current preservation plan, is to “ensure that data and technical resources related to research, survey and documentation are as up-to-date and accessible as possible.” Revising the “Standards and Guidelines for Archaeological Investigations in Maryland” was identified as an immediate strategy to accomplish this objective.⁵⁶ While the archaeological collections and conservation standards section was updated in 2018 by MAC Lab staff, the main standards and guidelines document is over twenty-five years old and does not reflect the most up-to-date information and guidance regarding field methods and technologies such as geomorphology (using the study of soil and landform development to determine if soil deposits are of an appropriate age to yield archaeological material), remote sensing techniques including ground-penetrating radar and metal detecting, and construction monitoring. References and additional sources of technical information provided are also outdated.

Many states have enacted laws to prevent the excavation of unmarked human burials on private property, which often have archaeological resources associated with them, but this protection does not often extend to archaeological sites in general. Maryland state law

⁵⁴ “Standards and Guidelines for Architectural and Historical Investigations in Maryland” (Crownsville, Maryland: Maryland Historical Trust, Maryland Department of Planning, 2019), https://mht.maryland.gov/documents/PDF/research/Survey_standards_architecture_web.pdf.

⁵⁵ Gary D. Shaffer and Elizabeth J. Cole, “Standards and Guidelines for Archeological Investigations in Maryland” (Crownsville, Maryland: Maryland Historical Trust, Office of Archeology & Office of Preservation Services, Maryland Department of Planning, 1994), https://mht.maryland.gov/documents/PDF/archeology/Archeology_standards_investigations.pdf.

⁵⁶ “PreserveMaryland II, The Statewide Preservation Plan (2019-2023)” (Crownsville, Maryland: Maryland Historical Trust, 2019), 50, https://mht.maryland.gov/documents/PDF/plan/PreserveMaryland%20II_11-8-2019_small.pdf.

provides protection against the disturbance of burial sites and human remains, requiring notification of the county State's Attorney if human remains are discovered accidentally.⁵⁷ The Maryland Cemetery Preservation Act of 2018 also provides additional legal protections to burial sites across the state. It enables counties or municipalities to provide a local property tax credit related to cemeteries as a way to promote preservation. This act also makes it easier for descendants to visit burial sites located on private property and establishes their access as a basic right. The original bill presented to the General Assembly included stricter penalties for the vandalism, damage, or removal of human remains. It also proposed that the location of burial sites be placed on tax maps and that anyone wishing to remove human remains or sell a burial ground must conduct historical and genealogical research.⁵⁸ Unfortunately, those components were removed before the bill was passed.

The Rise of Cultural Resource Management

Archaeology that is carried out under the various preservation laws and regulations is referred to as *cultural resource management* (CRM) and constitutes as much as ninety percent of the archaeology done in the United States.⁵⁹ Funded directly or indirectly by the public, CRM archaeology is public archaeology at its core.⁶⁰ The management of archaeological resources involves protecting these resources from destruction by man-made threats such as development or by natural threats such as erosion. But management also revolves around

⁵⁷ "Title 10. Crimes Against Public Health, Conduct, and Sensibilities; Subtitle 4. Crimes Relating to Human Remains," Annotated Code of Maryland: Criminal Law.

⁵⁸ "Maryland Cemetery Preservation Act of 2018 - House Bill 877," 2018, <https://www.montgomerypreservation.org/wp-content/uploads/2018/02/Maryland-Cemetery-Preservation-Act-of-2018.pdf>.

⁵⁹ Sebastian, "The Future of CRM Archaeology," 7.

⁶⁰ Sebastian, 7.

making decisions about which resources to preserve and save, which to excavate and interpret, and which to allow to be destroyed. In CRM, the protection of archaeological resources does not necessarily equate to preservation.⁶¹ Not all archaeological resources can be preserved or even excavated.

The pre-cursor to CRM archaeology in the United States was the salvage archaeology that occurred since the passing of the Historic Sites Act of 1935 and subsequent laws such as the Reservoir Salvage Act of 1960. The purpose of salvage archaeology was just that: to salvage any archaeological materials and data threatened by destruction through proposed development. Because archaeologists are usually called in after construction has begun, there is usually a severe time and financial restraint and functions more like crisis management than actual resource management.⁶² It is a frustrating situation for all involved, primarily the archaeologists and the developers. Incorporating regulatory archaeological review into federal, state, and local planning processes has helped decrease the prevalence of such archaeological disasters.

In the 1970s, federally-mandated archaeology was increasing, mainly due to the recently passed NHPA and its regulations.⁶³ The demand for archaeologists to meet these regulatory needs also began to increase. Federal agencies, state agencies, and municipalities responding to these federal regulations needed qualified archaeologists to conduct

⁶¹ Jordan E Kerber, "Introduction," in *Cultural Resource Management: Archaeological Research, Preservation Planning, and Public Education in the Northeastern United States*, ed. Jordan E Kerber (Westport, Conn.: Bergin & Garvey, 1994), 3–4, <http://ebooks.abc-clio.com/?isbn=9780313029509>.

⁶² William J. Murtagh, *Keeping Time: The History and Theory of Preservation in America*, 3rd ed (Hoboken, New Jersey: John Wiley, 2006), 134; Sebastian, "The Future of CRM Archaeology," 11.

⁶³ Sebastian, "The Future of CRM Archaeology," 11.

archaeological surveys and comply with other archaeological review requirements. Much of this demand was met by the formation of private, for-profit companies employing archaeologists that could contract with agencies or with entities working under federal permits or using federal funding. Existing environmental and engineering firms that had already been working on NEPA compliance projects also needed archaeologists to comply with NHPA.⁶⁴ CRM became standardized in the 1970s and 1980s when the ACHP, NPS, and other agencies developed regulations and guidance documents on how to perform federally-mandated archaeology.⁶⁵ Contract archaeology, the work that is done on a contractual basis with an agency or a private firm, represents only one aspect of CRM. Contract archaeologists are involved in identifying significant resources, evaluating significance, and recommending ways to mitigate adverse effects on significant archaeological resources through avoidance or excavation.⁶⁶

Identifying the Regulatory Gap

The destruction of potentially significant archaeological resources as a result of private and municipal development is a widespread issue affecting local jurisdictions across the United States. This loss occurs when existing federal and state cultural resource management laws do not apply to certain local development actions such as those involving private property or undertaken by a local government. This chapter has helped to define the limits of the archaeological resource protection that major federal laws provide through an examination of when they are applied and how they are implemented. While federal regulations effectively

⁶⁴ Davis, "Archaeologists Looked to the Future in the Past," 30–32.

⁶⁵ Sebastian, "The Future of CRM Archaeology," 12.

⁶⁶ Kerber, "Introduction," 6.

consider the potential impacts to both known and unknown archaeological resources from federal actions, they do not guarantee that those resources will be protected.

Regarding state-level regulations, many states have enacted statutes that provide resource protection from specific actions funded or permitted by state agencies, including those occurring on private land. However, because the United States does not have a comprehensive or coordinated national cultural resource law, consideration of the effect of development on archaeological resources is inconsistent and varies significantly from state to state and municipality to municipality.⁶⁷ As with federal regulations, state regulations do not mandate the preservation or protection of significant archaeological resources.

While federal and state agencies are generally responsible for considering archaeological resources before undertaking their actions, much of the development in the United States occurs in the private sector or at the local level, where the consideration of archaeological resources is not guaranteed. With a few exceptions, archaeological sites located on private property are afforded no protection in their own right.⁶⁸ The roots of private property rights run deep. The United States government was structured to protect the rights of private property owners. The Fifth Amendment to the U.S. Constitution provides that “private property [shall not] be taken for public use, without just compensation,” and the Fourteenth Amendment binds all states to this provision. This action is referred to as a “taking.” Fundamentally, the rights of private property owners to use their land as they wish very often

⁶⁷ King, *Cultural Resource Laws & Practice*, 4.

⁶⁸ Lerner, “Private Property and Archaeology: What’s Beneath the Ground.”

prevail over the government's right to protect archaeological resources.⁶⁹ But it is important to note that not all regulation of private land use constitutes a "taking" and it is often through local land-use regulations and ordinances that archaeological resource protection is achieved.

As of 2017, more than 2,300 local historic preservation ordinances, laws designed to protect historic resources through a permitting process requiring the advance review of proposed projects by a preservation commission, review board, or other authority, had been enacted across the country.⁷⁰ However, these ordinances often fail to protect unknown archaeological resources. Why do local historic preservation ordinances, which are known to have the most regulatory power, fall short of adequately considering archaeological resources?

Many local ordinances mention archaeological resources; however, in practice, these tend to only offer protection to known archaeological sites, or previously identified resources. Local historic preservation ordinances rarely provide the legislative authority to require an archaeological review be conducted before the approval of a project. The archaeological review process mandates that the potential for unidentified resources be considered and determined before the start of a project. It is because of this lack of archaeological review that the regulatory gap exists and from which the threat to unknown below-ground resources from private and municipal development originates.

Because many historic preservation ordinances excluded strong regulatory protection for archaeological resources when they were initially enacted, revising the ordinances to add

⁶⁹ Pamela D'Innocenzo, "'Not in My Backyard!' Protecting Archaeological Sites on Private Lands," *American Indian Law Review* 21, no. 1 (1997): 140–41, <https://doi.org/10.2307/20068817>.

⁷⁰ "Local Preservation Laws," National Trust for Historic Preservation, Preservation Leadership Forum, 2017, <https://forum.savingplaces.org/learn/fundamentals/preservation-law/local-laws>.

this protection years or decades after the fact is challenging. If not approached cautiously, such significant revisions could reopen the ordinance to public and political scrutiny, putting other historic resources at risk. Many states provide model local historic preservation ordinances that can be adopted by local municipalities with little modification. However, a very cursory review of a sample of these standardized ordinances – from Ohio, Texas, Michigan, Indiana, and Georgia – reveals that meaningful consideration of unknown archaeological resources continues to be lacking.⁷¹

The Power of Local Regulations

The Tenth Amendment to the U.S. Constitution, intended to define the balance of power between the federal government and the states, provides that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁷² Land use falls into this category. The Constitution does not expressly grant the federal government jurisdiction over the issue of land use; therefore, it is delegated to the states. State governments can then delegate some of these powers to local municipalities who, in turn, have the authority to do what the state has

⁷¹ “Sample Language for Historic Preservation Ordinance [Ohio],” accessed September 5, 2019, https://www.ohiohistory.org/OHC/media/OHC-Media/Documents/Sample_Model_HistoricPreservation_Ordinance.pdf; “Proposed Ordinance, Historic Landmark Preservation Ordinance [Texas],” accessed September 5, 2019, <https://www.thc.texas.gov/public/upload/forms/Sample%20Historic%20Preservation%20Ordinance.pdf>; “Model Historic District Ordinance [Michigan],” accessed September 5, 2019, https://www.michigan.gov/documents/mshda/mshda_shpo_20120628_local_district_model_ordinance_390791_7.pdf; “Model Ordinance for Historic Preservation, State of Indiana,” accessed September 5, 2019, <https://www.balancedgrowth.ohio.gov/Portals/0/BLLUP/Toolkit/historic1.pdf>; “Model Historic Preservation Ordinance for Georgia Cities & Counties,” accessed September 5, 2019, <http://www.crc.ga.gov/publications/planning/Model/Historic%20Preservation%20Model%20Ord%20-%20HPD.pdf>.

⁷² “U.S. Constitution,” Amendment X (1992).

permitted them to do, but only in the ways that they prescribe.⁷³ Land use regulations and historic preservation ordinances are usually delegated to local municipalities through enabling legislation, described in more detail in the following section.

State Enabling Laws

All states have planning and zoning enabling laws, allowing local governments to pass ordinances that protect historic and archaeological resources, whether they are zoning ordinances or specific historic preservation ordinances. Enabling legislation is a mechanism by which a state delegates its inherent police power to local government. Police power is the authority for a government to regulate in order to protect public health, safety, and welfare and includes the power to regulate land use through planning and zoning. Enabling legislation allows local governments to do particular things, but they must be done in certain ways or through certain mechanisms. In some cases, state constitutions will delegate this power directly to local governments, known as a municipal home rule provision, or through a statutory grant of power by the state legislature, known as statutory or legislative home rule.⁷⁴ When regulating private property, it is critical that both state and local governments comply with certain legal requirements. For example, regulations must promote a valid public purpose, such as health, safety, or general welfare, and leave property owners with reasonable economic use of their property.⁷⁵

⁷³ Cory Kegerise, “3 Things to Know About Local Preservation Programs in Pennsylvania – Part 1,” *Pennsylvania Historic Preservation* (blog), January 22, 2014, <https://pahistoricpreservation.com/3-things-know-local-preservation-programs-pennsylvania-part-1/>.

⁷⁴ Stuart Meck, “Model Planning and Zoning Enabling Legislation: A Short History,” *Modernizing State Planning Statutes: The Growing Smart Working Papers* 1 (March 1996): 1.

⁷⁵ Beaumont, *Smart States, Better Communities*, 20.

State enabling laws and the specific powers granted by them vary greatly. They can be detailed or more general. A general approach to state enabling laws allows local governments more freedom to tailor their ordinance to their own unique circumstances. This approach recognizes that all communities are different and should decide precisely what they want to regulate in their historic preservation ordinance. This also allows for creativity in the regulations. The detailed approach is meant to ensure that local governments draft preservation ordinances that are as effective as possible and can withstand legal challenges. Detailed laws also ensure that specific issues are not ignored. These laws can be most useful for states with many small towns and municipalities that may not have the staff to prepare tailored local ordinances.⁷⁶ In general, state enabling laws do allow for archaeological resource protection in municipal historic preservation ordinances and, in fact, it is common for state enabling laws to mention archaeological significance specifically. However, this does not often translate to protection of unknown archaeological resources because local historic preservation ordinances rarely provide the statutory authority to require that archaeological resources be considered before the approval of a municipal-level project.

Maryland is an example of a state with a detailed enabling law. The Maryland General Assembly has delegated to local jurisdictions the power to plan and zone through the Land Use Article of the Annotated Code of Maryland. Specifically, Land Use Code Title 8 – Historic Preservation provides local jurisdictions the authority to craft local regulations or procedures designed to protect historic and archaeological resources. This state statute provides the

⁷⁶ Beaumont, 24–26.

parameters in which local governments can operate when regulating land use and zoning for the purpose of historic and archaeological protection. One feature of Maryland’s enabling law that some states ignore is the importance of environmental settings for historic structures. The environmental setting includes features such as landscaping, trees, pastures, waterways, walkways, and driveways.⁷⁷ This is especially relevant and beneficial to the protection of archaeological resources associated with those historic structures, or with earlier human occupation, that could be located within the greater environmental setting. Maryland’s enabling law also authorizes local governments to obtain and hold easements on historic properties as a protection mechanism.

Support Through Litigation

In 1978, the constitutionality of local historic preservation regulations was tested in the U.S. Supreme Court with the *Penn Central Transportation Co. v. City of New York* case. Penn Central Transportation Co. proposed to construct a fifty-five-story office tower above the historic Grand Central Terminal in Manhattan. The New York City Landmarks Preservation Commission opposed, stating that the tower would overwhelm the Beaux Arts building as it was four times its height and not at all compatible in scale or mass. Penn Central countered that New York City’s landmark ordinance was unconstitutional. However, the Supreme Court ruled that the city’s ordinance, and comparable ordinances in other municipalities, was constitutional and recognized that preserving historic resources is an acceptable government goal.⁷⁸ Further, the decision found that the ordinance met the “public purpose” requirement regarding the

⁷⁷ Beaumont, 26.

⁷⁸ Tyler, Ligibel, and Tyler, *Historic Preservation*, 123–26.

restriction of private property because the imposed land use restrictions were linked to the promotion of the general welfare of the city.⁷⁹

Analytical Framework and Scope of Study

In this study, the topic of effective local archaeological review practices was researched and analyzed using a critical topic approach. This approach uses a number of critical questions, topics, or themes that are investigated using a defined set of illuminators, or examples. Examples of municipalities that have enacted local archaeological review regulations, acting as the illuminators, were examined in order to determine what policy or practice characteristics, acting as critical topics, are successful in those particular places and why and, conversely, which ones are not as successful. This examination will help determine what practices and policies can be successfully implemented in municipalities lacking local archaeological resource protection, like Baltimore City, by presenting the illuminators as evidence of successful local archaeological review. This will provide the basis for recommending next steps for Baltimore in the final chapter of these treatise.

A review of current literature on the topic of local archaeological regulations provided the historic preservation context for this study. While the importance of archaeological resource regulation at the local level and the awareness of the regulatory gap has been part of the conversation for at least two decades, interest in the topic appears to have been rekindled in the last decade by Dr. Douglas Appler, beginning with his dissertation, *Understanding the*

⁷⁹ Beaumont, *Smart States, Better Communities*, 20.

Community Benefits of Municipal Archaeology Programs.⁸⁰ Appler has since presented at a number of conferences, written a number of articles, and co-edited a book highlighting different aspects of local archaeological review and programs, many of which have been reviewed for this study.⁸¹ These sources delve into the power of municipal archaeology programs to create community amenities, the connection between community archaeology and local government, the role of triggers in the local archaeological review process, and specific regulatory programs in municipalities such as Alexandria, Virginia, and St. Augustine, Florida. The public benefits of archaeology being carried out at the local government level is central to Appler's perspective on the topic. Additional scholars and practitioners have contributed to this topic. For example, Ellen Chapman of Richmond, Virginia focused her dissertation work on the protection of Richmond's archaeological resources from local development. At the core of her research is the value of using local archaeological investigations as a tool for restorative justice.⁸²

⁸⁰ Appler, "Understanding the Community Benefits of Municipal Archaeology Programs" (Dissertation, Ithaca, New York, Cornell University, 2011), WorldCat, <http://hdl.handle.net/1813/30640>.

⁸¹ Appler, "Municipal Archaeology Programs and the Creation of Community Amenities"; Douglas R. Appler, "Making the Community Archaeology/Local Government Connection" (Society for Historical Archaeology Conference, Baltimore, Maryland, January 2012); Douglas R. Appler, "Tracing the Roots of Municipal Archaeology in St Augustine, Florida: The Story of How 'The Oldest City' Connected Archaeology, Local Government, and the Public," *Public Archaeology*, 2013; Douglas R. Appler, "Setting the Machine in Motion: What Triggers Archaeological Review at the Local Level?" (Presented at Society for Historical Archaeology, Summary, Society for Historical Archaeology, Quebec City, Quebec, Canada, 2014); Douglas R. Appler, "The Formation of the Alexandria Archaeological Commission: Connecting Citizen Activism, Archaeology, and Local Government in Alexandria, Virginia," *Journal of Community Archaeology & Heritage* 2, no. 1 (February 2015): 22–39, <https://doi.org/10.1179/2051819614Z.00000000024>; Sherene Baugher, Douglas R. Appler, and William Moss, eds., *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States* (Cham, Switzerland: Springer International Publishing, 2017).

⁸² Ellen L. Chapman, "Buried Beneath the River City: Investigating an Archaeological Landscape and Its Community Value in Richmond, Virginia" (Dissertation, Williamsburg, Virginia, The College of William & Mary, 2018).

The current chapter, Chapter I, provides an introduction to the relationship between archaeology and historic preservation and how the building-centric historic preservation program has impacted the protection of archaeological resources, specifically at the local level. An overview of the major federal and state historic preservation laws and state enabling laws provides the regulatory context for the study and, most importantly, helps define the regulatory gap in regard to archaeological resource protection for private and local development actions. The real protective power of historic preservation, and, in turn, archaeological resource protection, is at the local level where historic and archaeological resources can truly be regulated and protected through legal means,⁸³ not just simply considered.

Chapter II will describe local archaeological review and explain why it is needed. As a starting point, the benefits of archaeology and archaeological research will be discussed with emphasis on what value it can provide and how it may increase public engagement within a community. Support for local archaeological review can only be gained through effective conveyance of these benefits. An overview of common archaeological procedures and practices at the federal, state, and local levels will clarify the processes that are taken, or not taken, to protect archaeological resources at each level of regulatory review. A number of examples of archaeological losses from four East Coast cities will further illuminate the regulatory gap and reinforce the need for archaeological review at the local level. Lastly, there are many groups of people that would be affected by the enactment of regulatory archaeological review in any

⁸³ Tyler, Ligibel, and Tyler, *Historic Preservation*, 59.

particular municipality, and they each have their own perspectives and interests, particularly private developers.

To identify the effective practices to be evaluated, the specific local archaeological regulations from each illuminator municipality will be analyzed in Chapter III. This includes all relevant regulatory policies and practices, such as local historic preservation ordinances, land development review regulations, and zoning codes. While the focus of this chapter will mainly be on identifying effective policies and practices, those that appear to fall short of meeting the specific municipality's archaeological resource protection needs will be examined to determine why they may have failed.

To provide solutions and recommendations for protecting Baltimore's archaeological resources from the impacts of local development, Baltimore will be used in a test scenario wherein the factors and forces at play regarding the protection of its archaeological resources are identified. Chapter IV will examine the past and present status and role of historic preservation in Baltimore, the existing historic preservation regulations, and the current political organization and climate. Solutions and recommendations will be suggested based on factors of success, or effective practices, that have been identified in municipalities under similar circumstances in Chapter III. This scenario-building approach will be used to demonstrate how the recommended solutions may better protect and manage Baltimore's archaeological resources compared to its current situation.

The concluding chapter will examine a number of recent efforts by East Coast cities to enact local archaeological review regulations, providing lessons learned to Baltimore and other municipalities pursuing local regulatory avenues. Evaluating these efforts against the

archaeological review practices explored in Chapter III, conclusions will be made regarding why an attempt may have failed or, if regulations were enacted, whether they are likely to be successful long-term. Chapter V will also review the findings of this study, specifically in regard to possible next steps for Baltimore. Known local archaeological review policies and practices that have been determined effective will be recommended as possible solutions for Baltimore if they meet the specific needs of the city. While Baltimore will be used as a test case in this study, the over-arching goal of this treatise is to provide key factors and recommendations that may guide other municipalities pursuing local archaeological resource protection.

CHAPTER II LOCAL ARCHAEOLOGICAL REVIEW: WHAT IS IT AND WHY IS IT NEEDED?

Introduction

Chapter I defined the issue plaguing many municipalities across the United States – the continued loss of significant archaeological resources as a result of the regulatory gap created when federal and state historic preservation laws do not apply to private and local-level development. This chapter attempts to make a case for local regulatory archaeological review through an exploration of the benefits that archaeology can provide to local communities and where its value can be found. Examples of significant archaeological losses from prominent East Coast cities provide indisputable proof of the impacts of the regulatory gap. A general overview of the common procedures of archaeological review at the federal and state levels helps to provide a baseline for the search for effective local review policies and practices that follows in Chapter III. Lastly, this chapter explores some of the differing perspectives in the conversation and the various players involved in the archaeological review process.

Benefits of Archaeology and Archaeological Research: Where is the Value?

Archaeology and historic preservation primarily revolve around the tangible things that people used, manipulated, created, built, occupied – the artifacts, buildings, monuments,

landscapes – but at its core, archaeology is about people.⁸⁴ What value can people find in archaeology? Various publications by Barbara J. Little have addressed this very question and greatly contributed to this section’s exploration of the benefits of archaeology. A primary research interest of Little’s is public archaeology – how archaeology can be relevant to and serve the public. Her works also explore the ways that we value and interpret heritage and how we can use archaeology and heritage to promote civic engagement and achieve social justice.⁸⁵

The most significant benefits of archaeological research are evident when archaeology is used as a lens to see the people who came before, by giving a voice to those who may have been silenced or disregarded in the historical record. Archaeology also benefits contemporary society by enriching our current lives and cultivating civic pride for the benefit of future generations. If archaeology can expand our view of the past to include the struggles, achievements, successes, and failures of all those who preceded us, Little asserts, we can

⁸⁴ “Preservation for People: A Vision for the Future” (National Trust for Historic Preservation, May 2017), <https://forum.savingplaces.org/viewdocument/preservation-for-the-people-a-visi>.

⁸⁵ Barbara J. Little, “Archaeology, History, and Material Culture: Grounding Abstractions and Other Imponderables,” *International Journal of Historical Archaeology* 1, no. 2 (June 1997): 179–87, <https://doi.org/10.1023/A:1027312007296>; Barbara J. Little, ed., *Public Benefits of Archaeology* (Gainesville, Florida: University Press of Florida, 2002); Barbara J. Little and Paul A. Shackel, ed., *Archaeology as a Tool of Civic Engagement* (Lanham, Maryland: AltaMira Press, 2007); Barbara J. Little, “What Are We Learning? Who Are We Serving? Publicly Funded Historical Archaeology and Public Scholarship,” *Historical Archaeology* 41, no. 2 (2007): 72–79, <https://www.jstor.org/stable/25617443>; Barbara J. Little and Nathaniel Amdur-Clark, “Brief 23: Archeology and Civic Engagement” (Department of the Interior Departmental Consulting Archeologist/National Park Service Archeology Program, National Park Service, November 2008); Barbara J. Little, “Forum: What Can Archaeology Do for Justice, Peace, Community and the Earth?,” *Historical Archaeology* 43, no. 4 (2009): 115–19; Barbara J. Little and Larry J. Zimmerman, “In The Public Interest: Creating a More Activist, Civically Engaged Archaeology,” in *Voices in American Archaeology*, ed. Wendy Ashmore, Dorothy Thompson Lippert, and Barbara J. Mills (Washington, D.C.: Society for American Archaeology, 2010), 131–59; Barbara J. Little, “Heritage, Resilience, and Peace,” *Heritage & Society* 4, no. 2 (2011): 187–98; Barbara J. Little, “Envisioning Engaged and Useful Archaeologies,” in *Archaeology in Society: Its Relevance in the Modern World*, ed. Marcy Rockman and Joseph Flatman (New York: Springer, 2012), 277–89; Barbara J. Little and Paul A. Shackel, *Archaeology, Heritage, and Civic Engagement: Working Toward the Public Good* (Walnut Creek: Left Coast Press, Inc., 2014).

expect our wisdom and compassion for others to equally expand.⁸⁶ Archaeology, in partnership with historic preservation, public history, and education, can play a part in raising awareness about contemporary issues surrounding topics such as gender and sexuality, race and white privilege, class, and religion.⁸⁷

Giving a Voice to the Voiceless Through Material Culture

Because archaeology uses the material culture left behind by humans to shed light on the past, it can give a voice to the voiceless. Archaeological research can tell the stories of those who have been underrepresented within the traditional limits of historic preservation such as enslaved African Americans, women, ethnic and racial minority groups, immigrants, the poor and underprivileged, and other marginalized groups.⁸⁸

If present at all in the historical record, the voices of the disenfranchised can be misrepresented in written documents as these accounts were so often written from the perspective of those who held power. For example, enslaved African Americans were portrayed by the white slaveholding class as inherently evil, violent, or unintelligent. These negative portrayals, usually strategic and intentional, were an attempt to justify and sustain support for the institution of slavery.

⁸⁶ Little, "Archaeology as a Shared Vision," 16.

⁸⁷ Little and Zimmerman, "In the Public Interest: Creating a More Activist, Civically Engaged Archaeology," 138.

⁸⁸ David E. Kyvig and Myron A. Marty, *Nearby History: Exploring the Past Around You*, 3rd ed, American Association for State and Local History Book Series (Lanham, Md: Rowman & Littlefield Publishers, 2010), 159; Stephanie K. Meeks, "A More Perfect Union: Towards a More Inclusive History, and a Preservation Movement That Looks Like America" (March 30, 2015), <https://savingplaces.org/press-center/media-resources/a-more-perfect-union-towards-a-more-inclusive-history-and-a-preservation-movement-that-looks-like-america>.

The information recovered through archaeological investigations is invaluable to correcting silences in the historical record.⁸⁹ Most importantly, if archaeology can give a voice to those silenced, power to those disenfranchised, and recognition to those ignored in the past, it has the power to do the same for their living descendants by helping to define their identity and heritage, to create a more plural and accepting society at large. Groups or whole communities that were silenced or disenfranchised in the past may continue to be so in the present through an unbroken continuity of marginalization. In this sense, history can be viewed as political action.⁹⁰ Archaeological research focused on these communities can strengthen the connection with past struggles and empower current movements towards social equality.

While historical records can be biased towards those in power, the artifacts recovered during archaeological investigations have the potential to reveal an impartial reality and tell a more complete and accurate story. Archaeological evidence can act as a fact-checker against what we thought we knew about history and can negate popular belief about a particular person or group of people or even provide evidence to support or debunk oral and published histories. When saving and preserving places within the broader historical preservation context, it is essential to expand the focus so that those places reflect the stories and perspectives of all those who helped shape them.⁹¹ Archaeology can help paint a more complete picture.

The field of historic preservation as a whole has been making strides to “broaden and diversify the physical landmarks of the past” and “confront undesirable aspects of the

⁸⁹ Little, “Archaeology, History, and Material Culture: Grounding Abstractions and Other Imponderables.”

⁹⁰ Mark P. Leone et al., “Can an African-American Historical Archaeology Be an Alternative Voice?,” in *Interpreting Archaeology: Finding Meaning in the Past*, by Ian Hodder et al. (New York: Routledge, 2008), 126–27.

⁹¹ Meeks and Murphy, *The Past and Future City*, 183.

movement's own history – in perpetuating limited notions of American identity.” Archaeology can provide the information needed to achieve this diversity and contribute to this “reevaluation of American history.”⁹² Historically, the preservation movement has favored properties built and used by wealthy white men, channeling resources and effort into maintaining these buildings while slave cabins, tenant houses, or tenements of the working class have been left to ruin.⁹³ Archaeology can fill in this data gap and help to recover information lost as a result of the ruin and destruction of the physical structures themselves. The exact locations of slave quarters, tenant houses, and even small burial grounds were not often recorded on maps or in other historical documents. Consequently, one of the only available methods for locating these resources is through archaeological investigation.

The recent discovery of a slave quarter through archaeological investigation on the Belvoir plantation outside of Annapolis, Maryland was a feat in its own right as the quarter was in ruin by the 1870s and by the twenty-first century, above-ground evidence of the 32-foot by 32-foot stone structure was no longer visible. While the excavations of intact nineteenth-century floor surfaces and sub-floor pit features within the structure yielded a plethora of information about the enslaved laborers who were housed at Belvoir, the most astounding discovery was achieved through the DNA testing of a single clay tobacco pipe stem fragment recovered from the site. Archaeologists and scientists extracted DNA that attributed the pipe's use to a woman most closely genetically related to the Mende people of present-day Sierra

⁹² Max Page and Randall Mason, “Rethinking the Roots of the Historic Preservation Movement,” in *Giving Preservation a History: Histories of Historic Preservation in the United States*, ed. Max Page and Randall Mason (New York: Routledge, 2004), 15.

⁹³ Meeks and Murphy, 169-170.

Leone, West Africa. The process of extracting DNA from prehistoric and historic artifacts for use in archaeological research is still a new technology and more study and testing are needed. But if it proves to be a successful research method, not only can such discoveries give a voice to the enslaved African Americans so very often silenced in the historical record, they can also improve or help initiate engagement with descendant communities by offering a connection to their African ancestors, a task that proves extremely difficult, if not impossible, through scant historical written records.⁹⁴

Material culture can also reveal information about the mundane, day-to-day activities that were not thought to be significant enough to intentionally document but can provide us with invaluable data and insight. Further, for groups who did not have a written history at all, particularly Native Americans who have passed down their history orally from generation to generation, archaeology is very often the only practical way of studying this history. For archaeologists, all of their discoveries, “the humble and the grand, the fragmented and the whole, have meaning because their creation, use, and disposal were deeply embedded in the social, economic, and symbolic worlds of the people whose ways of lives they are studying.”⁹⁵

Public Value and Civic Engagement

The notion that archaeology and archaeological material can enrich our lives by providing a tangible link between the present and the past may be cliché, but it is this physical

⁹⁴ Julie M. Schablitsky et al., “Ancient DNA Analysis of a Nineteenth Century Tobacco Pipe from a Maryland Slave Quarter,” *Journal of Archaeological Science* 105 (May 2019): 11-12,17, <https://doi.org/10.1016/j.jas.2019.02.006>.

⁹⁵ Anne-Marie E Cantwell and Diana diZerega Wall, *Unearthing Gotham: The Archaeology of New York City* (New Haven, Conn.; London: Yale University Press, 2001), 7.

connection that is often the most successful way to spur interest from the public. In this way, archaeology can be a useful tool to engage with the public regarding the rich historical and cultural heritage of their communities. The public value of archaeology comes from its ability to provide a sense of connection with time and place and to provide “common ground” among many groups within diverse communities.⁹⁶ Through this greater sense of place and ownership, archaeological investigations can help to assure that new development in contemporary society is seen within the historical context of the place in which it exists.⁹⁷

A far-reaching benefit to the public that archaeology can afford to local communities is civic engagement. While there are many definitions of civic engagement, the idea can be boiled down to involvement and participation in one’s local community. Civic engagement means “building communities by creating or reinforcing relationships between people and promoting a healthy dialogue about, and active participation in, civic life.”⁹⁸ Building upon archaeology’s ability to give a voice to the voiceless, a statement from historian John Hope Franklin as chair of the National Park System Advisory Board describes how this inclusivity relates to civic pride and citizenship: “Explaining history from a variety of angles makes it not only more interesting, but also more true. When it is more true, more people come to feel that they have a part in it. That is where patriotism and loyalty intersect with truth.”⁹⁹

⁹⁶ Barbara J. Little, “Public Benefits of Archaeology,” *CRM*, 1996, 35.

⁹⁷ John Howell MP and Lord Redesdale, “The Future of Local Government Archaeology Services: An Exploratory Report Commissioned by Ed Vaizey, Minister for Culture, Communications and Creative Industries,” May 2014, 5.

⁹⁸ Barbara J. Little and Nathaniel Amdur-Clark, “Brief 23: Archeology and Civic Engagement” (Department of the Interior Departmental Consulting Archeologist/National Park Service Archeology Program, National Park Service, Washington, D.C., November 2008).

⁹⁹ John Hope Franklin in Little and Amdur-Clark.

Archaeology can play a pivotal role in civic engagement because of its fundamental purpose of creating knowledge from the archaeological record, a resource that is very often held in the public trust.¹⁰⁰ This is especially significant for municipalities with a robust public component to their local archaeological review process. When archaeologists look beyond the regulatory requirements of a municipality and work to make archaeological resources and knowledge part of local pride, this can create excitement and build support for archaeology as well as connect community members through their shared history.¹⁰¹ This connection with the past and to fellow citizens helps build and define both personal and collective identities. Municipalities that employ effective public involvement strategies that strengthen civic engagement within their communities will be exemplified in Chapter III.

One path to making a connection with and stimulating and maintaining interest from local communities is through a values-centered approach to preservation as promoted by historic preservationist Randall Mason. Mason's approach is a solution to the changing paradigm in preservation as it shifts from inward-looking to outward-looking by bringing contemporary values, such as social and economic, together with heritage values in the preservation process.¹⁰² Building on the idea of the multiplicity of values in cultural heritage and that value comes from many different sources, this approach requires the involvement of a variety of stakeholders, including the public. It puts preservation, and archaeological

¹⁰⁰ Little and Amdur-Clark.

¹⁰¹ Little and Amdur-Clark.

¹⁰² Randall Mason, "Theoretical and Practical Arguments for Values-Centered Preservation," *CRM: The Journal of Heritage Stewardship* 3, no. 2 (Summer 2006): 36, 44.

investigations, “in context and positions us best to make our work relevant to the rest of society.”¹⁰³

Along the same line and especially relevant to urban areas like Baltimore is the ability of archaeology, particularly municipal-level archaeology programs, to empower disenfranchised groups.¹⁰⁴ A community-based archaeology project on the campus of Indiana University-Purdue University Indianapolis (IUPUI) is an example of how archaeology can make an ambiguous social process such as racism visible to the community through material culture.¹⁰⁵ The university campus was created during the urban renewal of the 1960s in what was a predominantly African American neighborhood. Within two decades, this community was completely displaced and was largely forgotten by the time this archaeology project began in 1999. Archaeologists partnered with descendants of this almost-forgotten African American community who became the primary voice that defined research questions and directed the long-term interpretations of the project. The descendant community perceived archaeology as a public way to reveal and document “African Americans’ rich lives in spite of (and perhaps even made possible by) racial segregation.”¹⁰⁶

The IUPUI project helps define and identify what race and racism can look like in the archaeological record. One of the best examples is the recovery of what appeared to be insignificant foil milk caps, the meaning of which went far beyond evidence that past residents

¹⁰³ Mason, 44–45.

¹⁰⁴ Suzie Thomas, “Community Archaeology,” in *Key Concepts in Public Archaeology*, ed. Gabriel Moshenska (London: UCL Press, 2017), 17, www.jstor.org/stable/j.ctt1vxm8r7.6.

¹⁰⁵ Paul R. Mullins, “Racializing the Commonplace Landscape: An Archaeology of Urban Renewal along the Color Line,” *World Archaeology* 38, no. 1 (2006): 60–71, <https://doi.org/10.1080/00438240500509884>.

¹⁰⁶ Mullins, 64.

of this neighborhood simply liked to drink milk. A nearby park, the Riverside Amusement Park, was restricted to access by whites only with the exception of one day each year when African Americans were admitted, known by whites as “Colored Frolic” day. The price of admission was a milk cap, and to African Americans, this event was referred to as “Milk Cap Day.”¹⁰⁷ This fact, which was not known until an elder who had once resided in the community shared their story with the project archaeologists, transformed these milk caps into artifacts of great significance to both the descendant and contemporary communities. The discovery of the milk caps and their story demonstrated the ability of archaeology to identify color privilege not only across time but also in contemporary society, to “compel us to confront how race has profoundly shaped our lives,” and to initiate conversations about race and other cultural and social differences that may not have happened otherwise.¹⁰⁸ Further, archaeology of race and racism can not only explore how blacks and other racially marginalized groups were disempowered by racism, but it should also identify how whites gained from these particular racial discourses.¹⁰⁹ This prevents us from distancing ourselves from the past, making the past ever so relevant to our contemporary lives. Further research on the topic of civic engagement would benefit from a deep dive into *Archaeology as a Tool of Civic Engagement*, edited by Barbara Little and Paul Shackel.¹¹⁰ This comprehensive work provides several examples of how archaeology is being

¹⁰⁷ Mullins, 68.

¹⁰⁸ Mullins, 63, 69.

¹⁰⁹ Mullins, 62.

¹¹⁰ Barbara J. Little and Paul A. Shackel, eds., *Archaeology as a Tool of Civic Engagement* (Lanham, Maryland: AltaMira Press, 2007).

used to promote civic engagement and to work towards social justice in communities across the country.

Archaeological Review Procedures

The fundamental goal of regulatory archaeological review is to determine if there are known archaeological resources that could be impacted by a proposed project or to determine the potential for unknown archaeological resources to be present. While there is no universal requirement dictating what archaeological review at the local level must entail and how it must be structured, there is a general process that guides most local procedures. In the United States, the overall archaeological review process is similar regardless of whether the project is subject to federal, state, or local regulatory review. As such, an overview of the archaeological review process and common procedures will be presented, highlighting the differences between the federal, state, and local processes.

Chapter I of this treatise introduces the major federal and state historic preservation laws and defines their role in the protection of archaeological resources from federal and state activities. Because many municipalities have modeled their local archaeological review regulations after federal and state preservation laws, the overview of the standard procedures and practices followed under these federal and state laws provides the background needed to place common local archaeological review procedures within their regulatory context.

A more in-depth exploration into the different aspects of local archaeological review, including the variety of triggers, who is responsible for paying for the required archaeology, and the execution of the review process, follows in Chapter III with specific examples from several municipalities, or illuminators, that have enacted archaeological review regulations.

What Triggers Archaeological Review?

At every level – federal, state, and local – there must be an action that ‘triggers’ the archaeological review requirement. For a federally-mandated archaeological review to apply, most often required under the NHPA through the Section 106 process, the trigger is federal involvement. As Chapter I explains, there must be a federal undertaking in order for the NHPA to apply. The project must be located on federal property, involve funding or financial assistance from a federal agency, or require a federal permit, license, or similar approval. Irrespective of land ownership, federal agency involvement constitutes a federal undertaking. Some examples of archaeological review triggers at the federal level include a pipeline requiring a U.S. Army Corps of Engineers permit for stream crossings, the construction of a private health care center using funding granted by the U.S. Health Resources and Services Administration, or proposed trail improvements and construction of a visitor’s center in a national park.

Similarly, for state-level review to be triggered, there must be involvement of a state agency. Archaeological review regulations vary from state to state; however, common triggers include projects located on state land and those involving funds, permits, or licenses from state agencies. Some examples include the expansion of a state highway, erosion control and drainage improvements on state land as part of forestland conservation work, or the construction of a private commercial development requiring a permit from a state agency.

Regulatory triggers vary at the local level where the flexibility of local regulations lends to their ability to meet the specific archaeological and political needs of the community.¹¹¹ The

¹¹¹ Appler, “Setting the Machine in Motion: What Triggers Archaeological Review at the Local Level?”

level of archaeological review required in a particular municipality can also vary based on the type of project reviewed. A few general examples of common actions that trigger local archaeological review include residential or commercial subdivision development on private property, with or without a size threshold; projects involving ground-disturbance within a locally designated historic district or that may affect an individual historic property; or projects located on city-, county-, or other municipality-owned property such as schools and parks.

It could be argued that any ground-disturbing action – no matter the size and no matter who is undertaking the action – has the potential to impact archaeological resources. However, a local regulation that requires archaeological review for every development project in which ground disturbance is involved would be unreasonable and unsustainable, not only for those bearing the financial brunt such as developers and private landowners but also for the local government itself, both financially and politically. Determining the types of development actions that will trigger an archaeological review cannot be solely based on the potential that action has to impact archaeological resources. This decision requires a compromise between what may seem the most rational to an archaeologist and what is politically pragmatic enough to be supported by the local officials and community.¹¹²

Who is Financially Responsible for Archaeological Review?

When federal- and state-level archaeological review is required, it is generally the agency undertaking the project that is responsible for complying with the regulation and for paying for any required archaeological investigations. If non-federal or non-state entities,

¹¹² Appler, "Understanding the Community Benefits of Municipal Archaeology Programs," 255.

public or private, are receiving funding or requesting permits or licenses from the agency, those entities are often financially responsible. While it is ultimately the federal agency who is responsible for complying with Section 106 regulations, the agency can delegate some responsibilities to its grant, permit, or license applicant.

When federal or state laws require archaeological investigations, the agency or its applicant will typically hire professional contract archaeologists employed by private consulting firms to conduct the archaeological research, excavations, reporting, public outreach, and any other tasks required to comply with the regulations. Some agencies also employ their own archaeologists to assist with carrying out federally- or state-mandated archaeology. For example, the Maryland State Highway Administration employs a team of archaeologists and architectural historians to evaluate the impacts of its projects on historic resources and to conduct archaeological investigations when warranted. Many federal agencies also employ staff archaeologists; however, their responsibilities tend to be more overarching such as overseeing and managing archaeological sites and other historic resources located on land owned or managed by the agency.

In municipalities with local archaeological review requirements, the specific regulations mandate where the financial onus falls. Generally, local governments either employ municipal staff archaeologists to conduct all archaeological investigations or employ archaeological staff to review the required work done by contract CRM archaeologists. In the former arrangement, the local government must foot the entire bill for conducting the archaeological review, from start to finish. The duties of these staff archaeologists, of which many municipalities employ only one or two, include preliminary administrative reviews and archaeological assessments,

background research, work plans, archaeological excavations, reporting, artifact processing and curation, and more. While municipalities with this arrangement may benefit from the help of volunteers, this places an enormous amount of work and responsibility on just one or two staff archaeologists and severely limits the number of projects they can review under the local regulations. St. Augustine, Florida, is an example of a city that implements its local regulations in this way.¹¹³

Where local review regulations employ staff archaeologists that function predominantly as the regulatory reviewers in the process, which is a much more common arrangement, developers or other entities undertaking a project on private property are required to hire contract archaeologists to conduct all investigations and associated tasks. Taxpayer dollars are required to pay for staff archaeologists' salaries in both arrangements, but multiple projects can be reviewed at once, and much more can be accomplished when much of the archaeological investigation tasks are taken on by CRM archaeologists.

The Archaeological Review Process and Phases of Archaeological Investigation

In the federal Section 106 and state 106 review processes, the federal and state agencies are ultimately responsible for conducting the review and all associated tasks. The applicant that is requesting assistance, funding, approval, a license, or a permit from a federal or state agency works closely with that agency throughout the process. Applicants can range from private landowners to real estate developers to large corporations. The agency often delegates some review responsibilities to the applicant. The SHPOs provide oversight for

¹¹³ Appler, 269.

managing archaeological concerns in both federal and state regulatory reviews. In the Section 106 process, the SHPO is the federal agency's primary partner, providing guidance and assistance to the agency.

Once it has been determined that a proposed action triggers applicable federal and/or state historic preservation laws, the remaining steps of the Section 106 process can be generalized as 1) identify potential historic resources through archival research and field inventory; 2) evaluate the significance of the resources by applying the eligibility criteria of the National or State Register; and 3) treat significant resources to reduce or eliminate damage."¹¹⁴ Like many SHPOs, the MHT follows the procedures set forth in the Section 106 regulations when reviewing projects with state involvement or assistance. This ensures consistency in the review process for projects that have both federal and state involvement.¹¹⁵

The first step requires that the agency or applicant identify resources that may be impacted by the project. This involves defining the *area of potential effect (APE)*, or the area that may be directly or indirectly impacted by the project. The Section 106 regulations provide guidance and procedures on how the APE should be appropriately defined in consultation with the SHPO. In order to determine if potential historic resources are present within the APE, archival research including information on previous cultural resource surveys must be gathered. Although the Section 106 process considers effects to all historic resources, including the built

¹¹⁴ Barker, "The Process Made Me Do It," 69.

¹¹⁵ "Applicable Laws & Regulations," Maryland Historical Trust, accessed January 25, 2019, https://mht.maryland.gov/projectreview_lawsandregulations.shtml.

environment, the remainder of this discussion will be limited to the treatment of archaeological resources.

In order to identify potential archaeological resources, it may be necessary to conduct a *Phase I* archaeological survey which involves archival and background research and field survey. Some states break up the identification phase into *Phase IA* and *Phase IB*. A *Phase IA* investigation is the collection of archival and background research in order to assess the potential for known or unknown archaeological resources and to determine if field survey is warranted. A *Phase IB* investigation involves preliminary field-testing methods such as pedestrian survey, or a walkover inspection of the ground, and the systematic excavation of shovel test pits when field conditions are favorable. In urban areas, however, alternative methods may be utilized, including machine-excavated trenching. The *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* provides a baseline for archaeological investigations undertaken at the federal and state level. Building on these federal recommendations, all SHPOs have developed state guidelines that all archaeological work must follow.

If potentially significant archaeological resources are identified, a *Phase II* investigation involving additional and more substantial excavation techniques, as prescribed by state guidelines, will be required. This often includes the excavation of test units strategically placed to determine the physical extent of the resource, to assess its integrity in terms of whether its archaeological context is intact, and to recover enough data needed to make an eligibility determination. The purpose of this phase is to evaluate the resource for inclusion in the

National Register or the State Register of Historic Places, employing the National Register criteria.

A *Phase III* archaeological investigation, or data recovery, may be required when the Phase II evaluation determines that an archaeological resource is eligible for listing in the National and/or State Register. However, Phase III investigations should ideally be the last treatment option. Avoidance of the archaeological site is the ideal outcome that protects the resource for the benefit of future generations. The adverse effects can be eliminated through consultation, for example, by revising the project design to avoid the resource altogether. When avoidance is not a feasible option, data recovery excavations are conducted, the intent of which is to retrieve as much information as possible about the resource before the proposed development action impacts it and likely destroys it.

It cannot be stressed enough that local regulatory archaeological review procedures vary greatly in municipalities across the United States, particularly regarding the regulatory triggers and where the regulations are situated within the local regulatory framework. However, when phased archaeological investigations are required under local regulations, they very often follow the Phase I, II, and III progression that guides the federal and state review process. For example, in Maryland, the phased investigation procedures are generally similar in all municipalities as most base their guidelines on the *Standards and Guidelines for Archeological Investigations in Maryland*.¹¹⁶ While this section addresses some differences in

¹¹⁶ Shaffer and Cole, "Standards and Guidelines for Archeological Investigations in Maryland."

the process at the local level, Chapter III takes a deeper dive into specific local regulatory review policies and procedures from a number of illuminator municipalities.

The initial step of local archaeological review is to determine if there are previously recorded historic sites or archaeological resources in the project area. This step requires consulting various archival sources, including historical maps and known historical contexts as well as archaeological site inventory databases. This data also helps to determine the potential for previously unknown archaeological resources, or other resources such as cemeteries, in the project area. Many aspects are considered including topographic and environmental settings; for example, Native American archaeological sites are often encountered within 500 feet of a potable water source.¹¹⁷ This step is either conducted by a qualified professional archaeologist at the expense of the applicant or by the local historic preservation department staff, ideally by a professional archaeologist employed either as a full-time staff member or contracted on an as-needed basis.

This initial review may determine that there is little or no potential for archaeological resources; thus, no additional investigations would be required in most cases. If a known archaeological site is present and it is not feasible to avoid impacting the site, further investigations would likely be required, and the local archaeology staff would work with the developer or permit applicant on crafting a work plan for managing the archaeological resource. If it is determined that there is the potential for archaeological resources, a Phase I archaeological survey would be required, and the phased investigation process would continue

¹¹⁷ "Archaeological Sites," Anne Arundel County, Maryland, accessed March 5, 2019, <http://www.aacounty.org/departments/planning-and-zoning/cultural-resources/archaeological-sites/>.

in a very similar manner as federal- and state-level review. However, local archaeological review has the opportunity to guide each of these phases through tailored regulations. For example, data recovery should be guided by specific research questions with the goal of focusing the investigations on topics determined to be most significant to the municipality and therefore contributing to local history in a more meaningful way.

Determining Significance

Generally speaking, the significance of historic properties, including archaeological sites, under federal regulations such as the NHPA and the Section 106 process, is determined by the National Register criteria introduced in Chapter I. Only properties listed in or eligible for listing in the National Register are considered under those federal regulations. Similarly, state historic preservation regulations often adopt criteria similar, if not identical, to the National Register criteria to determine eligibility for listing in State Registers of Historic Places, guiding protective measures at the state level. For example, the core criteria for inclusion in the Maryland Inventory of Historic Places are nearly identical to the National Register.¹¹⁸ Further, local historic preservation regulations, so often modeled after state and federal regulations, commonly use the National Register criteria as a basis for determining eligibility for listing in local registers and for determining the significance of local historic resources. However, the way that archaeology approaches the preservation or protection of historic resources is fundamentally different from other preservation professions. The greater field of historic

¹¹⁸ “Code of Maryland Regulations, Title 34. Department of Planning, Subtitle 04. Historical and Cultural Programs, Chapter 34.04.05. Maryland Register of Historic Properties” (2019), <http://mdrules.elaws.us/comar/34.04.05.07>.

preservation focuses on the preservation, rehabilitation, or restoration of past places and landscapes while archaeology frequently requires the destruction of the past through excavation, analysis, and interpretation.¹¹⁹

The origins of Criterion D, the National Register criterion referring to a property's potential to yield important information about history or prehistory, began during the Great Depression when the federal government supported large-scale archaeological projects as a way to provide employment for unskilled laborers, mainly through the Works Progress Administration (WPA).¹²⁰ The National Park System Advisory Board was formed with the goal of defining how archaeological sites could be classified as nationally significant, which laid the foundation for how archaeologists understand which sites were worthy of excavation and/or preservation.¹²¹ The way archaeologists currently view significance has not changed much since the early 1940s. Fundamentally, National Register eligibility continues to guide archaeologists when deciding what constitutes important information in history or prehistory.¹²² However, this reliance on criteria designed for determining eligibility to the National Register becomes problematic when applied to resources in the local archaeological review process.

The use of National Register criteria has become the standard for determining the value or significance of archaeological sites and has become the basis for practically all decision-

¹¹⁹ John H. Sprinkle, "Uncertain Destiny, The Changing Role of Archaeology in Historic Preservation," in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, ed. Robert E. Stipe, The Richard Hampton Jenrette Series in Architecture and the Decorative Arts (Chapel Hill: The University of North Carolina Press, 2003), 253.

¹²⁰ Sprinkle, *Crafting Preservation Criteria*, 88.

¹²¹ Sprinkle, 91–92.

¹²² Sprinkle, 104.

making in CRM.¹²³ These criteria were designed as a tool to evaluate the significance of historic buildings but are adapted for the evaluation of archaeological sites and other non-structural historic places. This adaptation is often awkward and incompatible. Criterion D evaluates archaeological sites for their ability to yield “important” information; however, some argue that there is no important or non-important information in archaeology – information is information. The definition of important depends on current data gaps and what archaeologists and the community are looking for at the moment; therefore, information that may be deemed unimportant under National Register criteria may be of interest to later generations.¹²⁴

This narrow focus on National Register criteria impedes our ability to consider other values of archaeological resources beyond their information potential. Archaeologist Lynne Sebastian suggests that the definition of significance should be broader and encompass not just eligibility for listing in the National Register, not just the “important” information that may be recovered, but also the long-term research potential and other values.¹²⁵ Significance criteria modeled after the National Register is not conducive to evaluating the ability of an archaeological resource to strengthen a community’s sense of place and ownership, or its ability to bolster local pride and strengthen civic engagement. Fortunately, local municipalities that adopt local archaeological review regulations have the opportunity to craft such meaningful criteria for determining significance. In Chapter III, two examples of municipalities

¹²³ Lynne Sebastian, “Deciding What Matters: Archaeology, Eligibility, and Significance,” in *Archaeology & Cultural Resource Management: Visions for the Future*, ed. Lynne Sebastian and William D. Lipe, School for Advanced Research, Advanced Seminar Series (Santa Fe, New Mexico: School for Advanced Research Press, 2009), 93.

¹²⁴ Sebastian, 93–95.

¹²⁵ Sebastian, 97.

demonstrate how to go beyond the confines of the National Register criteria, even if just slightly, to consider the resource's potential to yield public value.

The Importance of Local Archaeological Review

Even the partial disturbance of an archaeological resource can be detrimental to its potential to yield valuable information. For instance, if during a construction project a backhoe obliterates an intact archaeological deposit or feature, such as a privy, but still recovers all the associated artifacts, some may view that as a victory. However, while the artifacts themselves are essential to archaeological research, it is their context from which archaeologists derive the most meaning. The significance of an artifact comes from its position in the soil, its relationship with other artifacts and other archaeological features within the site, and, at a broader scale, the relationships between sites. An artifact removed from a site without its precise location recorded may well be an exciting object to admire, but it has lost most of its research value. Its context is lost forever.¹²⁶ Therefore, it is imperative to consider vulnerable and potentially significant archaeological resources prior to development activities that will undoubtedly impact their integrity and context, if not obliterate them.

Archaeological resources are finite and non-renewable. Once destroyed, the information that could be mined is lost indefinitely. While natural processes such as erosion and natural disasters can damage archaeological resources, the effects of human-based actions on archaeological resources can be legislatively mitigated.¹²⁷ Increased development in rural,

¹²⁶ "What is Archaeology?"

¹²⁷ Paul R. Nickens, "The Destruction of Archaeological Sites and Data," in *Protecting the Past*, ed. George S. Smith and John E. Ehrenhard (Boca Raton, Florida: CRC Press, Inc., 1991), 76–77.

suburban, and urban areas across the United States is putting more and more archaeological resources at risk. At the same time, political pressure aimed at weakening legal protections for our historical, cultural, and environmental resources is building. Consequently, the need for archaeological review at all levels of government is becoming more and more apparent in an increasingly pro-development, anti-regulatory political climate. Moreover, the need for archaeologists to participate in the political process is as important as ever. Archaeologists are not always successful at conveying to the public and to local officials why archaeology matters, where the value is in archaeological investigations, and what has been and can be learned from archaeological data. This is unfortunate since support for local archaeological review regulations cannot be attainable unless there is a greater understanding of what benefits archaeological research can provide not only to the archaeologists and their research but to the community as a whole. If archaeologists are not meeting with elected officials and sharing the importance of archaeological resource protection, it is almost certain that someone set out to weaken those protections *is* taking the initiative to meet with them.¹²⁸ The value of archaeology – the power it holds to connect citizens to each other and to the past and to create stronger personal and collective identity and civic pride – must be effectively relayed and demonstrated to public officials and, most importantly, to their constituents.

¹²⁸ Barbara Clark, "There Is Power in Numbers: If Archaeologists Don't Meet with Elected Officials, Someone Else Will!," *Society for Historical Archaeology Blog* (blog), April 3, 2019, <https://sha.org/blog/2019/04/there-is-power-in-numbers-if-archaeologists-dont-meet-with-elected-officials-someone-else-will/>.

Realizing the Loss

While some cities, counties, and other municipalities across the United States have identified the regulatory gap and enacted local archaeological review regulations in response, several of which are analyzed in Chapter III, there is a seemingly infinite number that shares the challenge of protecting archaeological resources from local and private development actions. The following cases of recent and devastating archaeological losses from a sampling of these municipalities serve as examples of the irreversible effects of the lack of local archaeological review. These examples come from cities located on the East Coast with extensive histories: Philadelphia, Pennsylvania; Savannah, Georgia; and Charleston, South Carolina. The discernible regulatory gap in the local archaeological review process of the test case for this study, Baltimore, will be analyzed in Chapters IV and V of this treatise including examples of known archaeological losses or potential losses resulting from this gap.

Philadelphia, Pennsylvania

The City of Philadelphia is struggling with a local ordinance that does not adequately protect the city's archaeological resources. While the current ordinance, last updated in 1985, does provide protection of some archaeological resources, it only applies to those that are listed on the local register of historic places, the Philadelphia Register. Further to the detriment of archaeological resources, if archaeological significance is not included in the nomination for the local register, then archaeology is not considered under any future pre-development review.¹²⁹ This disregards any unknown or potential archaeological resources. Philadelphia employed a City Archaeologist from 1985 to 1989 but the position has remained vacant ever

¹²⁹ Doug Mooney, telephone conversation with the author, October 15, 2019.

since. There is also no archaeologist serving on the Philadelphia Historical Commission (PHC), although not required by the ordinance. In the absence of a City Archaeologist or an archaeologist PHC member, the nonprofit group Philadelphia Archaeological Forum has been advising the PHC on an ad-hoc basis.¹³⁰ It is worth noting some of the city's issues as well as a recent effort that may be a step towards positive change.

Unmarked historic cemeteries and burials are a major concern in Philadelphia. In the past few years, historic cemeteries have been discovered during construction activities in the Queen Village, West Philadelphia, and Old City neighborhoods, among others – most of which are African American burial grounds.¹³¹ The 2017 discovery of burials at a housing development project site on Arch Street in Old City exposed the inadequacies of Philadelphia's regulations (Figure 1). While the Philadelphia Code identifies the preservation of archaeological resources as a public necessity, there is no legal backing or enforceable practice. With insufficient consideration of the potential for archaeological resources or historic burials prior to the start of construction, the discovery was a surprise to the developer. Fortunately, the developer allowed archaeologists to remove the burials – albeit a limited amount of time to do so.¹³² Without local regulations to guide the handling of these kinds of discoveries, or ideally to identify them before construction begins, the fate of these resources lies in the hands of the

¹³⁰ "Final Report: Key Recommendations of the Philadelphia Historic Preservation Task Force" (Philadelphia, March 2019), 44, https://d54eda26-8f5e-47ee-9acc-49e0a8a92415.filesusr.com/ugd/c0d485_4b1083963b1344c9aa60986bb0acf2d4.pdf.

¹³¹ Michaela Winberg, "Philly's Black Burial Grounds and the Battle for Preservation," *Billy Penn* (blog), March 28, 2019, <https://billypenn.com/2019/03/24/phillys-black-burial-grounds-and-the-battle-for-preservation/>.

¹³² Stephan Salisbury, "Race to Dig at Historic Cemetery a Mere Hint of What Ails Philadelphia's Oversight of Buried Treasures," *Philly.Com*, March 13, 2017, <http://www.philly.com/philly/news/Race-to-dig-at-historic-cemetery-a-mere-hint-of-what-ails-Philadelphias-oversight-of-buried-treasures.html>.

developers with the hopes they will do the right thing. In this case, the PHC stated it had no jurisdiction despite the site's location in the Old City Historic District. The state agency, the Pennsylvania Historical and Museum Commission (PHMC), also cited a lack of jurisdiction over the remains.¹³³



Figure 1: Historic burials being removed from a construction site in Philadelphia, 2017. [Source: Photo by Matt Slocum, Associated Press, in Kristen De Groot, "Construction Unearths Centuries-Old Coffins in Philadelphia," *York Daily Record*, March 13, 2017.]

¹³³ Stephan Salisbury, "More Bones Reported at Arch Street Site; City Declines to Halt Construction," *The Philadelphia Inquirer*, June 28, 2017, <https://www.inquirer.com/philly/news/pennsylvania/philadelphia/more-bones-reported-at-arch-street-site-city-declines-call-to-halt-construction-20170629.html>.

Although the developer in this particular case agreed to allow the excavation and removal of human remains and other associated cultural materials from the site, this situation is far from being considered a successful outcome. The excavations were extremely rushed; the remains of more than 100 individuals initially buried in the First Baptist Church Burial Ground, established in 1707, were excavated in just a number of days. In the summer of 2017, an eyewitness reported that additional burials had been uncovered during the continued construction activities. City officials responded to requests to halt work at the site by stating that they did not have a legal basis to take action. Eventually, an Orphans' Court judge declared its authority over the remains which will be analyzed by a forensic anthropologist at Rutgers University and reinterred at a court-approved cemetery by 2020.¹³⁴

Because it appears that the City of Philadelphia is unwilling to acknowledge state laws regarding historic burials, the nonprofit Philadelphia Archaeological Forum has taken steps in recent years to help avoid the disturbance of unknown cemeteries. The Forum is in the process of mapping historic cemeteries and burial grounds across the city utilizing historic maps, city directories, archived newspapers, and past research. This information has been made available to the public, city officials, and developers through an online mapping tool.¹³⁵

In May 2016, the Pennsylvania State Historic Preservation Office (SHPO) released the report of its Certified Local Government (CLG) Program Evaluation of Philadelphia. Input from

¹³⁴ Salisbury, " More Bones Reported at Arch Street Site; City Declines to Halt Construction"; Stephan Salisbury, "City Judge Asserts Authority over Arch Street Bones," *The Philadelphia Inquirer*, August 16, 2017, <https://www.inquirer.com/philly/news/city-judge-asserts-authority-over-arch-street-bones-20170816.html>.

¹³⁵ "Historic Philadelphia Burial Places Map," Philadelphia Archaeological Forum, 2019, <https://www.phillyarchaeology.net/paf-activities/burial-places-forum/historic-philadelphia-burial-places-map/>.

various nonprofit organizations was used to prepare the report in which archaeological resource protection issues were raised. The first issue stems from the lack of staff and budgetary resources at the PHC, the body responsible for reviewing building permit applications, designating historic properties, among other responsibilities. The PHC ideally functions as the official steward of historic resources, including archaeological remains, within Philadelphia. The PHC reviews a large number of permit applications and its limited resources are directed towards above-ground structures while archaeological resources receive only cursory attention in the permit review process.¹³⁶ In general, the report found that the permit review process does not adequately protect archaeological resources as there are no clearly defined requirements for phased archaeological investigations on properties where there are known or potential archaeological resources. In cases where PHC requires archaeological investigations, it is a condition of the permit approval and not part of the permit application process. This creates many problems, specifically with timing and potential project delays.¹³⁷

The SHPO's evaluation report pointed to recent archaeological investigations along the I-95 corridor to demonstrate that significant archaeological resources do still exist in Philadelphia despite 350 years of urban development. The report also recommended that the city appoint a qualified archaeologist to the PHC either as a full staff member or as an on-call consulting archaeologist who can provide professional guidance. Further, the report suggested

¹³⁶ "Certified Local Government Program, Periodic Evaluation Report, City of Philadelphia" (Harrisburg, Pennsylvania: Pennsylvania State Historic Preservation Office, Pennsylvania Historical and Museum Commission, May 3, 2016), 12, <http://www.phillyarchaeology.net/wp-content/uploads/2016/05/Phila.-Certified-Local-Government-Evaluation-Report-2015.pdf>.

¹³⁷ "Certified Local Government Program, Periodic Evaluation Report, City of Philadelphia," 14.

that the PHC's Rules and Regulations be amended to encourage, or better yet, require archaeological investigation during the planning or preliminary review of development projects rather than as a condition of permit approval.¹³⁸ The evaluation report was sent to the mayor of Philadelphia, Jim Kenney.

In 2017, likely in response to the SHPO's evaluation report, Philadelphia made some critical steps in reevaluating its historic preservation priorities and practices. Mayor Kenney announced the formation of the Historic Preservation Task Force to help reassess how the city preserves its historic resources. The task force, funded by a grant from the William Penn Foundation, received technical assistance from the National Trust for Historic Preservation.¹³⁹ Members of the task force include stakeholders representing many different fields such as historic preservationists, developers, architects, community representatives, and an archaeologist.¹⁴⁰

The task force released its final recommendations in March 2019. Regarding archaeological resources, the main recommendations include adding an archaeologist to the city staff, adding a professional archaeologist to the PHC, creating a committee to draft an ordinance to present to the City Council, and creating predictive models of archaeological sensitivity for the city. As of October 2019, progress had been made to implement some of the

¹³⁸ "Certified Local Government Program, Periodic Evaluation Report, City of Philadelphia," 18.

¹³⁹ "City Launches Historic Preservation Task Force" (Press release published by the Officer of the Mayor, Philadelphia, Pennsylvania, April 20, 2017), <https://beta.phila.gov/press-releases/mayor/city-launches-historic-preservation-task-force/>.

¹⁴⁰ Ashley Hahn, "Kenney Launches Historic Preservation Task Force," *Plan Philly*, April 20, 2017, <http://planphilly.com/articles/2017/04/20/kenney-launches-historic-preservation-task-force>.

recommendations, but none relating to archaeological resources.¹⁴¹ According to Doug Mooney, a professional archaeologist and president of the Philadelphia Archaeology Forum, hiring a City Archaeologist should be the first step. A staff archaeologist could at least work within the existing ordinance to protect some archaeological resources.¹⁴²

While the future of local regulatory archaeological review in Philadelphia is uncertain, Mayor Kenney's push to encourage the public to see preservation and development as partners in urban growth is a powerful and necessary step towards determining what preservation policies and practices will meet Philadelphia's specific needs. Hopefully, the political will of Mayor Kenney and Philadelphia will set a precedent for other municipalities to reevaluate their policies and practices for dealing with historic preservation and archaeological issues in an ever-changing and growing environment.

Philadelphia and the state of Pennsylvania as a whole face an added problem stemming from inadequate archaeological regulation at the state level. While the basis for this treatise is predicated on the assumption that most state and federal actions in many states require the consideration of their impacts on archaeological resources, the current situation in Pennsylvania is a reminder that the political will of its people can very quickly change and have lasting negative impacts. In 1995, a change was made to Pennsylvania's History Code. Known as Act 70, the change shifted the financial burden of archaeological investigation for projects requiring a state permit to the state government and away from developers. Pressure from

¹⁴¹ "Implementation Update," Philadelphia Historic Preservation Task Force, October 7, 2019, <https://www.phlpreservation.org/single-post/2019/10/07/Implementation-Update>.

¹⁴² Mooney, telephone conversation with the author.

developers who felt that archaeological surveys were becoming too costly and creating a financial burden fueled this change.¹⁴³ Most regulatory archaeological investigations in Pennsylvania are conducted only for federal projects in compliance with Section 106 regulations, elevating the need for local protection of archaeological resources in Philadelphia and elsewhere across the state.

Savannah, Georgia

The need for archaeological resource protection at the local level has been on the minds of many Savannahians for at least three decades, but the recent rise in construction activities has reignited support for regulation in the city. The Georgia Trust for Historic Preservation included Savannah's underground resources on its 2018 list of "Places of Peril" and has urged the city to incorporate archaeological review into its local regulations.¹⁴⁴ While its zoning ordinance mentions archaeology, it offers no real protection. The destruction of archaeological resources goes unquestioned while paint color and window types on historic structures are strictly regulated within its ordinances.¹⁴⁵ Artifacts are regularly discovered throughout the city including instances when thousands of nineteenth-century bricks hand-made by enslaved African Americans were uncovered during the construction of a hotel, and an almost complete early-nineteenth-century stoneware jug was recovered from a ferry shelter construction site (Figure 2). Fortunately, Savannah's Library and Archives Director at the time was made aware of

¹⁴³ Kaitlin Volanski, "Marketing Archaeology to the Public" (Master's Thesis, Goucher College, 2016), 14–15.

¹⁴⁴ Mary Landers, "Georgia Trust: Savannah's Underground History in Peril," *Savannah Now, Savannah Morning News*, November 15, 2017, <https://www.savannahnow.com/news/2017-11-15/georgia-trust-savannah-s-underground-history-peril>.

¹⁴⁵ Rita Elliott, "Where Is the Archaeology in the Unified Zoning Ordinance for Savannah-Chatham County?," *Savannah Under Fire* (blog), September 4, 2011, <http://savannahunderfire.blogspot.com/>.

the stoneware jug discovery and recovered the artifact.¹⁴⁶ However, the context of this single artifact was lost, along with much of its ability to contribute to a greater understanding of this particular location and the whole of Savannah. The extent of information and knowledge lost from these sites will never be known.



Figure 2: Almost complete early-nineteenth-century stoneware jug recovered from a construction site in Savannah, Georgia. [Source: WJCL 22 News, Savannah, Georgia, 2015.]

The Drayton Street hotel project, a private development project undertaken without any mandatory pre-construction archaeological review, was a particularly motivating factor for Savannah archaeologist Phillip Ashlock to create an online petition in 2016 urging the city to

¹⁴⁶ Eric Curl, "Petition Urges Protection of Savannah's Buried Past," *Savannah Morning News*, June 18, 2016, <https://www.savannahnow.com/news/2016-06-18/petition-urges-protection-savannah-s-buried-past>.

adopt an archaeological ordinance or similar form of legal protection.¹⁴⁷ Support from this petition urged the Savannah Archaeological Alliance to push for a reconsideration of a local archaeological ordinance in 2017;¹⁴⁸ however, no significant gains were immediately made. The City of Savannah has unsuccessfully attempted to develop an archaeological review ordinance at least twice since the 1980s.¹⁴⁹ The last time an archaeological ordinance was approved by the planning commission was in 1987, but it was rejected by the Savannah City Council.¹⁵⁰ However, during the writing of this treatise, significant progress was made. An archaeological ordinance was introduced to the planning commission in November of 2019 and was subsequently approved by the City Council in December. Chapter V will explore this most recent and successful effort undertaken to enact municipal-level archaeological resource protection in Savannah.

Charleston, South Carolina

Perhaps the most astonishing example of a city without a mechanism in place for the protection of archaeological resources at the local level is Charleston, South Carolina. Despite being touted as the first city to establish a historic district with regulatory control through a zoning ordinance in 1931, Charleston's archaeological resources are at risk from private and local development actions as a consequence of having a preservation ordinance that favors the

¹⁴⁷ Curl.

¹⁴⁸ "For Government Officials: How Savannah Can Start Benefitting from an Archaeology Ordinance," Savannah Archaeological Alliance, accessed August 25, 2019, <https://savarchaeoalliance.org/resources/for-government-officials/>.

¹⁴⁹ Curl, "Petition Urges Protection of Savannah's Buried Past."

¹⁵⁰ Sean Evans, "Push for Savannah Archaeological Ordinance," *WTOC*, June 25, 2016, <https://www.wtoc.com/story/32304955/push-for-savannah-archaeological-ordinance/>.

protection of above-ground resources.¹⁵¹ This exemplifies the unfortunate reality that in practice, local historic preservation ordinances can prove inadequate at successfully protecting archaeological resources. There is no legal basis at the local level for requiring archaeological investigations before private development activities, and even city agencies like the Commission of Public Works can construct projects without archaeological review.¹⁵²

A recent controversy surrounding the construction of a new hotel on King Street, Hotel Bennett, was an unfortunate archaeological loss for the city. The property had great potential to yield a wealth of new information about the Siege of Charleston, the key Revolutionary War battle in which the British captured Charleston in 1780, which was centered just to the north of the hotel site. However, because the local ordinance does not mandate the consideration of archaeological resources before private development, and preservationists were also battling against the proposed height of the hotel and its impact on surrounding historic properties, there was no leverage with the developer to conduct any archaeological investigations.¹⁵³ The underground parking garage undoubtedly destroyed most of the archaeological evidence of the Siege or any archaeological resource related to subsequent periods for that matter. Developers proposing another construction project in the vicinity of the Hotel Bennett site did consider conducting limited archaeological investigations. But since those investigations were voluntary,

¹⁵¹ Norman Tyler, Ted Ligibel, and Ilene R. Tyler, *Historic Preservation: An Introduction to Its History, Principles, and Practice*, 2nd ed (New York: W.W. Norton & Co, 2009), 38; “HCF Pushes for Archaeology Ordinance,” *Archaeology: Uncover Historic Through Artifacts Left Behind (Historic Charleston Foundation)* (blog), October 23, 2017, <https://www.historiccharleston.org/blog/hcf-pushes-archaeological-ordinance/>.

¹⁵² Kathryn Joseph, “The Missing Link: Archaeological Resource Protection in Charleston, South Carolina” (Master’s Thesis, Clemson University, 2007), 59–60, https://tigerprints.clemson.edu/all_theses/138.

¹⁵³ Robert Behre, “Charleston Preservationists Have Few Reservations about Their Hotel Bennett Fight,” *The Post and Courier*, January 20, 2019, https://www.postandcourier.com/news/charleston-preservationists-have-few-reservations-about-their-hotel-bennett-fight/article_911e8f4a-1a71-11e9-b453-8fa89ecb0b18.html.

the property owners did not follow through despite there being the potential for remnants of the 1780 British siege lines. Even though the owner's decision led to an unfortunate loss and a missed opportunity to learn more about a significant Revolutionary War battle, without local regulations in place mandating archaeological review, the responsibility to avoid these losses cannot be placed squarely on the owners or developers.¹⁵⁴ In the end, the local government is responsible for demonstrating that the need for pre-development archaeological resource consideration is a priority. The city must articulate this priority by providing the regulatory framework needed to guide archaeological review.

What could be considered a partial victory recently occurred at the site of another proposed hotel at 235 East Bay Street. The property slated for construction was once the location of the Pinckney Mansion, one of the city's grandest homes when constructed in 1746. The Pinckney family was one of colonial Charleston's most prominent families and played a very active role in the early political and agricultural development of the city. The mansion unfortunately burned in 1861. Initial proposals for the new hotel raised questions and concerns from local archaeologists and citizens regarding the potential archaeological resources present on the site, including evidence of slave quarters. Despite the absence of regulation, the developer quelled those concerns by announcing that, out of respect for the city's rich history, they hired a consultant to conduct an archaeological investigation before starting construction. The developer expressed excitement in the possibility of incorporating the findings into the

¹⁵⁴ Robert Behre, "Will Secrets of Charleston's Past Remain Buried Forever?," *The Post and Courier*, June 3, 2016, https://www.postandcourier.com/archives/will-secrets-of-charleston-s-past-remain-buriedforever/article_43c99b08-da1b-5f30-b691-d7a4e61e0953.html.

new hotel in some manner as to “give it a true and tangible tie to its beginnings.”¹⁵⁵ The archaeological investigations were mostly completed in late 2018. Foundation remnants of the Pinckney Mansion as well as a late-nineteenth-century building and early- to mid-twentieth-century buildings were identified. But, unfortunately, beyond these features, very few intact archaeological deposits associated with these various occupations remained. However, there is additional fieldwork planned for another part of the property that is currently paved and being used as a parking lot. These investigations will be undertaken when construction activities begin. Construction activities will also be monitored by an archaeologist in the event that intact archaeological deposits are discovered.¹⁵⁶

Another fortunate instance when one of Charleston’s archaeological resources was barely saved occurred in early 2019. The property located at 194 East Bay Street was known to have the high potential to contain the early eighteenth-century wharf wall, originally constructed for defensive reasons and to stabilize the city’s waterfront. Construction commenced for a private development project, one that did not trigger any level of regulatory archaeological review. Aware of the property’s archaeological potential, Katherine Pemberton with the Historic Charleston Foundation regularly walked past the site to see if any bricks were unearthed. In February 2019, a city tour guide noticed some bricks and alerted the Historic Charleston Foundation. The property owner and developer allowed Pemberton and the

¹⁵⁵ Robert Behre, “Some Secrets May Soon Be Unearthed at a Very Historic Charleston Home Site,” *The Post and Courier*, October 31, 2018, https://www.postandcourier.com/news/some-secrets-may-soon-be-unearthed-at-a-veryhistoric/article_09ad0af0-dc78-11e8-8001-6f7a10a60d4b.html.

¹⁵⁶ Eric Poplin, Senior Archaeologist, Vice President, Brockington and Associates, Charleston, e-mail to the author, December 30, 2019.

Charleston Museum archaeologist, Martha Zierden, access to the site to investigate and document the wall. Fortunately, the owner was very interested in the history of the site and the importance of the wall and mentioned that he hoped to work with the city to investigate other areas of the site in later phases of construction.¹⁵⁷ As with other municipalities lacking local archaeological regulations, the fate of potential underground resources in these instances relies solely on the developer's desire to follow through with their commitment.

These known archaeological losses and those narrowly avoided have spurred historic preservationists, archaeologists, and concerned citizens of Charleston to push for a local archaeological ordinance. A draft archaeological ordinance has been in the works for years but had not made it to the City Council for debate¹⁵⁸ – that is, until very recently. In the fall of 2019, an amendment to Charleston's zoning ordinance that would incorporate archaeological resource protection into the land development process was presented to the city's planning commission. The ordinance amendment is currently under review.

Details on the most recent attempts of municipalities – including Charleston and Savannah – to enact local archaeological review, the challenges these cities faced, and whether their attempts failed or succeeded are presented in Chapter V of this treatise. This discussion can serve as lessons to be learned from other municipalities in their pursuits to protect archaeological resources.

¹⁵⁷ Robert Behre, "Hotel Construction Unearths Piece of Wall That Surrounded Charleston in the Early 1700s," *The Post and Courier*, February 22, 2019, https://www.postandcourier.com/news/hotel-construction-unearths-piece-of-wall-that-surrounded-charleston-in/article_dd9dac08-3613-11e9-a877-e3dec3039f8a.html.

¹⁵⁸ Behre, "Will Secrets of Charleston's Past Remain Buried Forever?"

African Burial Ground, New York City

While not a case of a total archaeological loss, the African Burial Ground project is one of the most publicized instances of how the NEPA environmental review and NHPA Section 106 process can fall terribly short, leading to a public relations nightmare. In the early 1990s, the U.S. General Services Administration (GSA) planned the fast-tracked construction of a thirty-four-story federal office building at Foley Square in New York City's lower Manhattan. The GSA hired consultants to conduct routine archaeological review procedures and investigations during the project planning phase. Historical maps were consulted, indicating that an eighteenth-century African American – free and enslaved – burial ground covered about five acres of land at this location. However, the consultants assumed that the basements of subsequent buildings on the site destroyed any evidence of the burials. This assumption did not consider the landscape change that had occurred on the site since the eighteenth-century – the area had seen a significant amount of filling that actually protected most of the burials from the subsequent development.¹⁵⁹

When construction activities began in 1991, more than four hundred burials and assorted personal artifacts were encountered under thirteen to twenty-eight feet of fill.¹⁶⁰ During the planning phase of the project, GSA and its consultants did not consult with the surrounding African American community. So, when the burials were uncovered, and GSA

¹⁵⁹ Thomas F. King, "Disaster on Broadway: The African Burial Ground," in *Avoiding Archaeological Disasters: Risk Management for Heritage Professionals*, by Darby C. Stapp and Julia Longenecker, Techniques & Issues in Cultural Resource Management (Walnut Creek: Left Coast Press, Inc., 2010), 94–96.

¹⁶⁰ Little and Amdur-Clark, "Brief 23: Archeology and Civic Engagement."

continued construction, the surrounding community including local politicians, archaeologists, and black activists raised their voices in opposition.¹⁶¹

The most significant lesson to be learned from the African Burial Ground case is the importance of public involvement and engagement. Not only were the African Americans at rest in the burial ground left voiceless, forgotten, and mistreated during these construction activities, but the government's act of ignoring the contemporary community during the pre-development review process effectively seized control of the descendant community's history.¹⁶² Mayor at the time of the discovery, David Dinkins, the city's first African American mayor, conveyed the cultural importance of the African Burial Ground:

Millions of Americans celebrate Ellis Island as the symbol of their communal identity in this land. Others celebrate Plymouth Rock. Until a few years ago, African American New Yorkers had no site to call our own. There was no place which said, we were here, we contributed, we played a significant role in New York's history right from the beginning... Now we—their descendants—have the symbol of our heritage embodied in the lower Manhattan's African Burial Ground. The African Burial Ground is the irrefutable testimony to the contributions and suffering of our ancestors.¹⁶³

Unfortunately, as controlled development and growth are vital to building a robust local economy, such losses may occur far more often than we may know. However, the exposure of the problem and the gaining of public support for local regulations can be the silver lining to the loss of an archaeological resource if municipalities take advantage of the opportunity to examine the possible benefits of local archaeological regulations. It is important to remember

¹⁶¹ Ned Kaufman, *Place, Race, and Story: Essays on the Past and Future of Historic Preservation* (New York: Routledge, 2009).

¹⁶² Cheryl J. La Roche and Michael L. Blakey, "Seizing Intellectual Power: The Dialogue at the New York African Burial Ground," *Historical Archaeology* 31, no. 3 (1997): 84–106, <http://www.jstor.org/goucher.idm.oclc.org/stable/25616551>.

¹⁶³ Little and Amdur-Clark, "Brief 23: Archeology and Civic Engagement."

that the past does not belong to any single person or group. If these losses convince or remind our municipal governments, private developers, and private citizens that they are the stewards of their own past and have a responsibility to protect these resources, perhaps they will not have been lost in vain.

Differing Perspectives

Even if a perfect world were to exist, one where the benefits and value of archaeology are undeniable and appreciated by a particular community, regulatory archaeological review would likely not be supported by all. For as many different players typically involved in or affected by the local archaeological review process, there are as many varying views and perspectives that must be understood by any archaeologist, local official, or citizen advocating for the passage of local archaeological regulations.

These players can include local historic preservation department staff, municipal staff archaeologists, local government staff, local historic preservation or archaeology advocacy groups, archaeologists working in CRM, private developers, and most importantly, members of the local community. As with the passing of any legislation, the concerns of all those potentially impacted, whether that be positively or negatively, must be considered. Archaeologists and historic preservationists, whether part of the local government, local advocacy groups, or the private sector CRM field, would likely cite the benefits of archaeological research presented earlier in this chapter as support for archaeological review.

Opponents to regulatory archaeological review may base their opposition on the false premise that densely developed urban or suburban areas have been stripped of any archaeological value due to perceived past disturbances from centuries of development. Local

archaeological review may be viewed as a fool's errand by some, particularly in urban areas. However, many examples have revealed the opposite to be true. One of the first noteworthy examples of this was seen in New York City at the Stadt Huys Block excavation in Lower Manhattan in 1979-1980. Excavations identified the Lovelace Tavern constructed in 1670 and produced one of the largest collections of seventeenth-century artifacts recovered in the city.¹⁶⁴ This project demonstrated that significant archaeological resources could survive in areas with extensive subsequent development.¹⁶⁵ Similar examples can be found in almost every urban area in the United States. Landscape and land use change can even protect archaeological resources in areas of previous development, revealing surprisingly intact archaeological evidence, such as when a property is paved to be used as a parking lot.¹⁶⁶

A few surveys have been recently conducted to gather data regarding the perspectives of private developers and the public on archaeology and archaeological regulations. Empirical research on how developers experience regulatory archaeology is generally lacking. One such study surveyed thirty-four land developers in Finland and Sweden in 2015.¹⁶⁷ Despite country-specific differences between regulatory archaeological review practices and legislation in the United States and other developed countries, the fundamental basis is very similar: when regulations apply, private developers apply for approval from relevant authorities which often requires them to provide funding and time for archaeological investigations. Therefore, a

¹⁶⁴ Cantwell and Wall, *Unearthing Gotham*, 16–18.

¹⁶⁵ Cantwell and Wall, 28–30.

¹⁶⁶ "Visit Urban Archaeology," National Park Service, accessed March 1, 2019, <https://www.nps.gov/articles/visit-urban-archeology.htm>.

¹⁶⁷ Isto Huvila, "Land Developers and Archaeological Information," *Open Information Science*, no. 1 (July 13, 2017): 71–90, <https://doi.org/10.1515/opis-2017-0006>.

survey of developers in Europe can provide insight into how developers perceive the review process and how they view the value of archaeological research. For example, almost half of the respondents believed that getting permission to continue with a development project is the most valuable part of the compliance archaeology process. Some respondents viewed archaeological review as no more than a legal requirement – not as an important part of the land development process.¹⁶⁸

Public opinion may be one of the most critical pieces to any cause, especially at the local level. An understanding of the public’s knowledge, attitudes, and perceptions of archaeology is vital to successful public engagement. The Society for American Archaeology has conducted two polls over the last two decades to gain insight into how the American public views and understands archaeology. The results of the first poll were published in 2000 by Harris Interactive and the second poll was conducted in 2018 by Ipsos.¹⁶⁹

The 2000 Harris poll contacted a random sample of 1,016 adults across the United States. Of utmost relevance to this study are the questions posed regarding the regulatory protection of archaeological sites. This poll found that “most Americans support the goals and practice of archaeology, endorse laws protecting archaeological sites and artifacts, and think archaeology is important to today’s society.”¹⁷⁰ In fact, 96 percent of those polled felt there should be laws to protect historic and prehistoric archaeological sites. Further, of those

¹⁶⁸ Huvila.

¹⁶⁹ Maria Ramos and David Duganne, “Exploring Public Perceptions and Attitudes about Archaeology” (Harris Interactive for the Society for American Archaeology, February 2000); “American Perceptions of Archaeology” (Ipsos for the Society for American Archaeology, 2018).

¹⁷⁰ “Public Perception Studies,” Society for American Archaeology, 2018, <https://www.saa.org/education-outreach/public-outreach/public-perceptions-studies>.

respondents, a majority (85 percent) said there should be laws to prevent the general public from constructing a house or business on the site of a prehistoric Native American village, while 73 percent said there should be laws to prevent the general public from constructing on the site of a former Revolutionary or Civil War Battle. Members of the public who did not feel that historic sites merit legal protection further clarified that they “think there are already too many laws” or that “government does not have the right to take over private property.” It was clear that the public held different views about laws protecting archaeological resources on private property as opposed to public property. The public was much less sure of laws pertaining to resources found on private land.¹⁷¹

The more recent 2018 poll contacted a random sample of 1,024 adults across the United States and focused on the public’s interest in archaeology and views on its importance. The results of this poll revealed that most Americans value the work of archaeologists. In fact, 93 percent of Americans believed that the work that archaeologists do is important, and more than half believed that the United States should increase funding for archaeology and enact stronger laws to protect sites and artifacts.¹⁷²

In general, these polls reveal that the public has more interest in archaeology than knowledge about archaeology.¹⁷³ While the figures show that Americans may see the need for laws protecting archaeological resources, like many ideas, it may seem better on paper than it is in reality. We can see the uncertainty creeping into the public’s minds and lowering the

¹⁷¹ Ramos and Duganne, “Exploring Public Perceptions and Attitudes about Archaeology,” 26–28.

¹⁷² “Public Perception Studies.”

¹⁷³ Little, “What Are We Learning? Who Are We Serving? Publicly Funded Historical Archaeology and Public Scholarship,” 73–74.

figures when the possibility of those laws impeding on private property is introduced. It is not uncommon to support an issue until it threatens to impact one's own life. Therefore, it is imperative that the public benefits of archaeology be accessible, transparent, and indisputable.

In addition to the potential infringement on private property rights, a prominent counter-argument likely to come from developers or private citizens stems from concerns for the potentially high costs of mandatory archaeological investigations, the financial burden of which generally falls to the property owner, whether that be a private citizen, large developer, or the local government itself. There is always a cost to the local government for implementing a local regulatory archaeology program, and with many other municipal programs reaching into the communal pot, programs in place to battle issues such as high crime rates, poor quality education, lack of affordable housing, and other demanding socioeconomic issues, how can the cost of archaeology be justified? The answer could be that the cost can never be justified in a city like Baltimore. But this conclusion should not be made prematurely before a strong public engagement effort is undertaken – one that effectively conveys to citizens and public officials the immense value that can result from an engaging local archaeology program including a stronger sense of civic pride. The review to follow in Chapter III will open the door to some solutions that can help to justify the cost of archaeology through effective practices and procedures that promote a practical, strategic, and targeted program – one that limits unnecessary costs.

When archaeological review is incorporated into the existing planning and zoning regulation framework, developers can incorporate the potential costs associated with archaeology into their project budgets and construction bids, and developers may be less likely

to oppose the ordinance in the long run. Understandably, it may be hard to predict the extent of an archaeological investigation that may be warranted for a particular project site, but extra reserves could be included in a project's contingency fund. As Francine Bromberg, former City Archaeologist in Alexandria, Virginia, a city with a robust and deep-rooted local regulatory and public archaeology program, explains, "It's simply the cost of doing business in Alexandria."¹⁷⁴ There are also examples of projects where, despite having required costly data recovery excavations, the developer took advantage of the excavations as a means of advertising their development project and recouping some of the costs. This also helps developers earn goodwill and develop good public relations with the community.¹⁷⁵

If an archaeological investigation is required for a development project, these surveys and investigations can be conducted early on in the planning process along with other required reports, such as traffic studies, ensuring that the archaeological investigations do not delay the project.¹⁷⁶ Integrating archaeological site protection and regulatory archaeological review into land-use control mechanisms is a way of protecting resources without significantly adding to the existing bureaucratic load.¹⁷⁷

Local government officials may also be concerned that the financial strain of additional project costs will deter developers from investing in the municipality, impacting overall

¹⁷⁴ Jolee Edmondson, "Archaeologists Are Worried About Savannah's Building Boom," *CityLab*, January 27, 2017, <https://www.citylab.com/equity/2017/01/archaeologists-are-worried-about-savannahs-building-boom/514499/>.

¹⁷⁵ Lerner, "Private Property and Archaeology: What's Beneath the Ground."

¹⁷⁶ Kearns and Kirkorian, "Protecting Sites at the Local Level."

¹⁷⁷ "Strategies for Protecting Archeological Sites on Private Lands" (Office of Archeology and Historic Preservation, Colorado Historical Society, Publication #1617 [extended version]), accessed February 18, 2019, http://legacy.historycolorado.org/sites/default/files/files/OAHP/crforms_edumat/pdfs/1617.pdf.

development and the local economy. However, that does not seem to be the case in general. Just taking a broad look at Maryland counties with local archaeology regulations such as Prince George's County reveals that subdivision development activities, residential and commercial, were not negatively affected by the ordinances. In fact, of the 16 counties with a population of more than 65,000, Prince George's saw the most growth from 2013 to 2014.¹⁷⁸

While the economic benefits of historic preservation have been proven, specifically of the built environment,¹⁷⁹ it can be much more challenging to convincingly present the many values of below-ground archaeological resources to developers and the general public. Buildings and other above-ground resources are highly visible while what lies beneath the ground is much more abstract. Local officials and politicians are far less willing to allocate funds for something they cannot even see.¹⁸⁰ Simply put, "people don't care about what they can't see."¹⁸¹

Nevertheless, as we caught a glimpse of in Charleston, some developers are beginning to see at least enough value in archaeology to conduct investigations before construction despite the absence of applicable regulations. The expressed interest and excitement from some developers may be a harbinger of a greater understanding and acceptance of archaeology on behalf of the development community as a whole. While that may be overly optimistic, for

¹⁷⁸ U.S. Census Bureau, "American Community Survey, 1-Year Estimates," 2014.

¹⁷⁹ Donovan Rypkema, Caroline Cheong, and Randall Mason, "Measuring Economic Impacts of Historic Preservation: A Report to the Advisory Council on Historic Preservation" (Washington, D.C.: PlaceEconomics and the University of Pennsylvania, November 2011).

¹⁸⁰ Sherene Baugher, Douglas R. Appler, and William Moss, "Introduction: Thinking Globally and Acting Locally—Exploring the Relationships Between Community, Archaeological Heritage, and Local Government," in *Urban Archaeology, Municipal Government and Local Planning*, ed. Sherene Baugher, Douglas R. Appler, and William Moss (Cham, Switzerland: Springer International Publishing, 2017), 11.

¹⁸¹ Rita Elliott quoted in Edmondson, "Archaeologists Are Worried About Savannah's Building Boom."

some developers incorporating aspects of the archaeological research and the history of their site into new construction is an opportunity for them to distinguish themselves and their projects from competitors.¹⁸² If archaeologists can carefully nurture the changing perception of some developers that archaeology can be an added value and not an obstacle, significant strides can be made in building diverse support for local archaeological regulation.

In historic preservation and archaeology, there has always been opposition to developers and their goals. While preservationists fight for the public good, they have accused developers of only seeking private gain. However, the preservationists' pendulum has been shifting in the opposite direction; some say too far. Preservationists and archaeologists fear that standing up to developers, business interests, or government officials will cause them to be marginalized, and they will lose their seats at the table. However, some believe that preservationists have been trying too hard not to be against development. This unresolved relationship between preservation and development is a continuing issue that often defines the politics of preservation.¹⁸³ Many preservationists and archaeologists can recognize the benefits of healthy growth and development as it has led to social mobility and opportunities in the past; however, growth is happening, but social mobility appears to be slowing. While social mobility and opportunities associated with growth and development are not guaranteed, the destruction of our historic and archaeological resources is.¹⁸⁴ Finding the sweet spot amidst the

¹⁸² Baugher, Appler, and Moss, "Introduction: Thinking Globally and Acting Locally—Exploring the Relationships Between Community, Archaeological Heritage, and Local Government," 3.

¹⁸³ Page and Mason, "Rethinking the Roots of the Historic Preservation Movement," 16.

¹⁸⁴ Ned Kaufman, "Moving Forward: Futures for a Preservation Movement," in *Giving Preservation a History: Histories of Historic Preservation in the United States*, ed. Max Page and Randall Mason (New York: Routledge, 2004), 315–17.

many different perspectives is one of preservationists' and archaeologists' most significant challenges when it comes to advocating for the protection of historic resources.

Summary

Local archaeology regulations and procedures, as products of municipal government, have the opportunity to be guided by the priorities and values of its local citizens. Federal regulations, particularly the NHPA and the Section 106 process, were not developed to meet the needs of any specific local municipality.¹⁸⁵ These regulations were crafted to be applicable to federal undertakings all across the country. Local archaeological regulations fill in the regulatory gap created by the limitations of federal and state cultural resource laws, and these local regulations have the opportunity to be crafted in a manner most appropriate for the citizens, particular archaeological resource types, and political climate of the municipality.¹⁸⁶

There will always be those in opposition to these regulations and promoters of local archaeological review must listen to and understand all perspectives. A common perception of the protection of archaeological resources and historic properties overall is that it must inherently be in opposition to the needs of contemporary society and economic development. As long as archaeology is viewed as a hindrance to progress, there will always be a value struggle over physical space: "the archaeological knowledge of buried or exposed remains, versus the economic value of the space for reuse."¹⁸⁷ To gain support for local archaeological

¹⁸⁵ Appler, "Municipal Archaeology Programs and the Creation of Community Amenities."

¹⁸⁶ Baugher, Appler, and Moss, "Introduction: Thinking Globally and Acting Locally—Exploring the Relationships Between Community, Archaeological Heritage, and Local Government," 9.

¹⁸⁷ Charles E. Orser, "Review of Public Benefits of Archaeology by Barbara J. Little," *Journal of Field Archaeology* 28, no. 3/4 (Autumn - Winter 2001): 464, <https://www.jstor.org/stable/3181450>.

review regulations, advocates must be able to successfully convey the many benefits that archaeology and archaeological research can bring to their communities, particularly when it provides a sense of connection with the past and with fellow citizens through the development of a collective identity. Advocates for local regulatory archaeological review need to frame archaeology as an investment to the local community.¹⁸⁸ Certainly, archaeology can augment the information provided through historical records and the built environment, and it can bring a voice to the voiceless of the past, but most importantly, it can enrich the lives of contemporary citizens and promote civic engagement when guided by a values-centered approach.

¹⁸⁸ Baugher, Appler, and Moss, "Introduction: Thinking Globally and Acting Locally—Exploring the Relationships Between Community, Archaeological Heritage, and Local Government," 11.

CHAPTER III THE SEARCH FOR EFFECTIVE LOCAL ARCHAEOLOGICAL REVIEW PRACTICES

Introduction

In regard to archaeological resource protection at the local level, the types of regulatory practices that can be enacted are wide-ranging in terms of the triggers for archaeological review, how the archaeological review process should be undertaken and by whom, and other factors. The goal of this chapter is to highlight various archaeological review practices employed by a selection of municipalities, referred to as illuminators, and explore similarities and differences, ending with a discussion of some practices that fall short and other key issues to consider when pursuing local archaeological review regulations.

During the initial phase of this treatise research, several criteria were considered when attempting to choose cities and other municipalities that would be the most appropriate illuminators to compare with Baltimore. Characteristics considered include population density, demographics, legacy city designation, organization of local government, and others. After much deliberation, no definitive criteria were used. Instead, this study rests upon the supposition that local archaeological review regulations should be crafted around the specific needs and circumstances of each municipality. These circumstances result from the characteristics mentioned above in totality, not in isolation. Therefore, the pool of potential illuminators for this study was generally boundless, that is, within the confines of the United

States. The illuminator municipalities chosen for this study are presented in the following section. An examination of local level archaeological review regulations in other nations – Canada, the United Kingdom, or Australia, for example – would contribute a great deal to this discussion; however, that is beyond the scope of this study.

A systematic study of local-level archaeological resource protection mechanisms was conducted between 2008 and 2015 by two members of Portland State University’s Department of Anthropology, Douglas Deur and Virginia L. Butler.¹⁸⁹ The National Park Service funded the study to understand the archaeological resource protection policies of local governments located along several NPS-managed historic trails. To determine what tools and strategies local governments use to manage and protect archaeological resources and to evaluate which ones are most effective, Deur and Butler gathered information from local government staff, THPOs, and SHPOs in sixty-nine jurisdictions in twenty-four states.¹⁹⁰ While Deur and Butler did not limit their study by choosing municipalities with specified characteristics, it is by no means exhaustive; however, it is uncertain how many total municipalities in the United States employ local archaeological review procedures. Nonetheless, Deur and Butler’s study does point to how uncommon local archaeological resource protection is in the United States, with its more than 19,000 municipal governments.¹⁹¹ The study found that the municipalities with the most robust regulatory programs employ a combination of practices including the use of special

¹⁸⁹ Deur and Butler, “Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice.”

¹⁹⁰ Of the 24 states included in the study, SHPOs in Montana, Nebraska, and North Dakota were not aware of any municipal-level archaeological review regulations in these states.; Deur and Butler, 189–90, 192–94.

¹⁹¹ “Number of Municipal Governments & Population Distribution,” National League of Cities, accessed September 25, 2019, <https://www.nlc.org/number-of-municipal-governments-population-distribution>.

archaeological districts or zoning overlays, review guidelines based on archaeological predictive models, the retainment of one or more staff archaeologists, and many strong partnerships outside of local government that can help support archaeological protection programs.¹⁹² This chapter uses Deur and Butler’s study as a starting point, exploring these practices and more.

The Illuminators: Background and Impetuses of Local Archaeological Review

This chapter draws from multiple sources of Douglas Appler’s work¹⁹³ on the relationship between municipal archaeology and local government and his examination of specific municipal regulatory programs, particularly Alexandria, Virginia, and St. Augustine, Florida, used as illuminators in this study. A recently-published volume titled *Urban Archaeology, Municipal Government and Local Planning*, co-edited by Appler with Sherene Baugher and William Moss, was particularly rich with data on a multitude of potential illuminators within the United States – New York City, Boston, Phoenix, Albuquerque, and others – some of which are used as supplementary illuminators in this study, as well as within other nations – the United Kingdom, Canada, Australia, and India.¹⁹⁴

The following municipalities were some of the first to be chosen as illuminators in this study: Alexandria, Virginia; Anne Arundel County, Maryland; Prince George’s County, Maryland;

¹⁹² Deur and Butler, “Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice,” 190.

¹⁹³ Appler, “Making the Community Archaeology/Local Government Connection”; Appler, “Setting the Machine in Motion: What Triggers Archaeological Review at the Local Level?”; Appler, “The Formation of the Alexandria Archaeological Commission”; Douglas R. Appler, “Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology’s New Best Friend,” in *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States*, ed. Sherene Baugher, Douglas R. Appler, and William Moss (Cham, Switzerland: Springer International Publishing, 2017), 183–201.

¹⁹⁴ Baugher, Appler, and Moss, *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States*.

and St. Augustine, Florida. However, because local archaeological review regulations vary to such an extent across municipalities, a number of supplementary illuminators are also brought in to the following review of effective practices. These include Washington, D.C., Portland, Oregon; New York City, New York; Albany, New York; Santa Fe, New Mexico; Albuquerque, New Mexico; Phoenix, Arizona; and Wichita, Kansas.

This section provides necessary background information for the selection of illuminators focusing on the development of archaeological protection in each. This discussion will also identify the motivations of some illuminators for enacting their local regulations. This examination may be able to answer the following questions. Does there need to be a high-profile or controversial project that spurs public support of local regulatory action to protect archaeological resources? Is it possible to make the case – without a controversial development project or without a very visible threat – that there is value in archaeological resources that local governments should take action and spend public resources on protecting?

Alexandria, Virginia

The development, longevity, and overall success of the local archaeology program in Alexandria, Virginia, has been studied and praised by many. In 2012, Alexandria Archaeology, and its long-time director, Pamela J. Cressey, were honored with an award for excellence in public historical archaeology by the Society for Historical Archaeology.¹⁹⁵ Advice and guidance from Alexandria's program directors have been and continue to be sought after by other municipalities across the country wishing to pursue local archaeological regulations that

¹⁹⁵ Appler, "The Formation of the Alexandria Archaeological Commission," 23.

successfully incorporate community engagement. In fact, according to Alexandria’s current City Archaeologist, Eleanor Breen, the municipalities of Savannah, Georgia; Charleston, South Carolina; and Richmond and Fredericksburg, Virginia have recently contacted Alexandria about forming local archaeological regulations.¹⁹⁶ Why is Alexandria’s local archaeology program considered the “gold standard” by many? Following a brief history of its development in this section, a review of effective practices utilized by the city will help answer this question.

The effects of urban renewal activities in the 1960s and 1970s in Old Town incited a response from local citizens wanting to protect the archaeological resources in the historic urban core of the city. When buildings were demolished, privies and other archaeological features were uncovered and subsequently destroyed. The community demanded that the city take action. The Smithsonian funded the hiring of an archaeological technician to conduct salvage excavations between 1965 and 1971. The multitude of discoveries resulting from this salvage work helped bring archaeology out of the shadows, and the public’s appreciation for below-ground resources was cultivated. The city took over funding of the excavations in 1973.¹⁹⁷ Concerned citizens lobbied the City Council, and in 1975 a resolution was passed that created the Alexandria Archaeological Commission (AAC), the first local advisory board in the country for archaeological issues, and led to the hiring of professionals for a city-wide archaeology program.¹⁹⁸ The AAC is a non-regulatory board of fourteen citizen members

¹⁹⁶ Eleanor Breen, email message to author, February 6, 2019.

¹⁹⁷ “The History of Alexandria Archaeology,” City of Alexandria, Virginia, August 25, 2017, <https://www.alexandriava.gov/historic/archaeology/default.aspx?id=39146>.

¹⁹⁸ Francine Bromberg and Pamela Cressey, “Digging the Past for Fifty Years: A Model for Community Archaeology” (Fifty Years of Community Archaeology on the Potomac: Lessons from Alexandria Session presented at the Society for Historical Archaeology Conference, Baltimore, Maryland, January 2012).

appointed by the City Council. It has an advisory role in which it makes recommendations to the City Council on archaeology-related policy while also representing the interests of the local community.¹⁹⁹ The AAC provides a platform for local residents to collaborate with the city's professional archaeologists to decide how Alexandria's resources can be best protected and used for the public good.²⁰⁰

Concerned with the effects of rapid development on archaeological resources in its city, the AAC determined that a local regulatory ordinance was needed that provided real protection to archaeological resources. Members of the AAC worked with developers, the developers' lawyers, and the chamber of commerce to craft an ordinance that was mutually acceptable by those who would be expected to bear the financial brunt of the regulations. The City Council passed the ordinance in 1989 which amended the city code to provide for the consideration and protection of archaeological sites. The archaeological ordinance, known as the Archaeological Protection Code, was incorporated into the zoning ordinance and was one of the first local archaeology-specific ordinances in the United States.²⁰¹ Alexandria not only has a strong local ordinance for archaeological review, but it also boasts an engaging municipal-level community archaeology program, for instance, one that goes beyond "participation by the public" to incorporate "partnership with the public."²⁰² Alexandria's archaeology program, named Alexandria Archaeology, is an example of how municipal archaeology can help foster a strong relationship with the public and will be discussed in more detail in the following section.

¹⁹⁹ Bromberg and Cressey.

²⁰⁰ Appler, "Making the Community Archaeology/Local Government Connection."

²⁰¹ Bromberg and Cressey, "Digging the Past for Fifty Years: A Model for Community Archaeology."

²⁰² Bromberg and Cressey, "Digging the Past for Fifty Years: A Model for Community Archaeology."

The advantages of Alexandria – geographical, historical, and economic – have all played a significant role in the formation and success of Alexandria Archaeology. With its unique location in northern Virginia and proximity to Washington, D.C. paired with its mixture of historic architecture, Alexandria is one of the region’s most affluent communities.²⁰³ This affluence and fairly stable local economy may lead to less pushback from the public and developers against costs associated with the regulations.

Prince George’s County, Maryland

Archaeological review is required in Prince George’s County in order to “protect the county’s cultural heritage.”²⁰⁴ A major increase in development in the 1990s caught the attention of residents and local officials who became increasingly concerned about impacts to the county’s archaeological resources, particularly those relating to African American history. By the early 2000s, the population of the county was majority African American for the first time since before the Civil War.²⁰⁵ In February 2004, the Prince George’s County Planning Board introduced an archaeology review initiative with the goal of identifying and investigating archaeological sites in the subdivision review process. Particular focus was given to locating possible slave quarters and graves and archaeological evidence of Native American peoples.²⁰⁶

²⁰³ Appler, “The Formation of the Alexandria Archaeological Commission,” 25.

²⁰⁴ “Guidelines for Archeological Review” (The Maryland-National Capital Park and Planning Commission, Prince George’s County Planning Board, May 12, 2005).

²⁰⁵ Jennifer Stabler, e-mail to the author, January 1, 2020.

²⁰⁶ “Overview of Archeology Review Procedures in Prince George’s County” (Prince George’s County, Maryland Planning Department), accessed September 24, 2019, <http://www.pgplanningboard.org/DocumentCenter/View/422/Archeology-Review-Procedures-PDF>.

However, this initiative was not yet supported by legislation and developers began challenging the Planning Board's authority to request these archaeological investigations.²⁰⁷

This focus on resources associated with the voiceless groups in Prince George's County's past gained much public support. One particular development project raised major concerns with the local community and pushed the Planning Board and County Council to draft specific archaeological regulations. A housing development in Fort Washington, the Tent Landing project, was proposed on a property with a known historic cemetery dating to the nineteenth century. There were local rumors suggesting that slave burials were also located on the property, but that was eventually proved to be incorrect. However, because the project area was located along the Potomac River, the community also had concerns regarding impacts to potential Native American resources. To aggravate matters, the developer hired an archaeological consultant to excavate the known historic burials using a mechanized backhoe on a Sunday morning to try, though unsuccessfully, to avoid detection – a fairly traumatic scene for some local observers. While the remains were relocated to a nearby historic church, the developer failed to obtain any approval or permit from the county or state Health Departments nor did they conduct the exhumations in consultation with a funeral home.²⁰⁸ The controversy surrounding this project pushed the County Council to adopt legislation in November 2005

²⁰⁷ Jennifer Stabler, "Ten Years of Archaeology at the Local Level in Prince George's County, Maryland" (Presented at the Annual Meeting of the Society for Historical Archaeology, Washington, D.C., January 7, 2016).

²⁰⁸ Jennifer Stabler, January 7, 2020; "Phase II and Phase III Archeological Database and Inventory, Site 18PR319, Ford / Tent Landing Historic Site" (Maryland Historical Trust), <https://mht.maryland.gov/secure/synthesis/pdf/18PR319.pdf>.

requiring the consideration of potential archaeological resources during the review of subdivision applications.²⁰⁹

St. Augustine, Florida

Appler describes the adoption of St. Augustine’s Archaeological Preservation Ordinance (APO) in 1986 as the “perfect storm” of people and events coming together. An avocational group, the St. Augustine Archaeological Association (SAAA), was newly formed. It provided labor for field investigations and helped form a group of activists that advocated for the ordinance. There was cooperation between the city and the Historic St. Augustine Preservation Board (HSAPB), a local state agency. The mayor led a descendant Menorcan community who could trace its ancestry in St. Augustine and other parts of Florida to the eighteenth-century when their ancestors migrated from Spain. This descendant community became advocates for the protection of the city’s archaeological resources as an avenue to promote Menorcan heritage. Lastly, a controversial development project planned within the colonial downtown part of the city dating to the late sixteenth century sparked local interest in the potential archaeological resources, and city history, that could be destroyed.²¹⁰ This combination of new grassroots advocacy and threats from a high-profile development project resulted in the public

²⁰⁹ “Approved Historic Sites and Districts Plan for Prince George’s County” (The Maryland-National Capital Park and Planning Commission, Prince George’s County Planning Department, June 2010), 55.

²¹⁰ Carl D. Halbirt and Sarah E. Miller, “Municipal Archaeology Policies as a Vector in Public Outreach Programs: Digging Up Dirt for the Masses in St. Augustine, Florida,” in *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States*, ed. Sherene Baugher, Douglas R. Appler, and William Moss (Cham, Switzerland: Springer International Publishing, 2017), 300–301.

support needed to pass the ordinance. Between 1987 and 2017, over 800 archaeological reviews occurred under the APO.²¹¹

New York, New York

In New York City, the Stadt Huys Block excavation in Lower Manhattan in 1979-1980, which was only undertaken because of a deal made between the Landmarks Preservation Commission and the developer, produced one of the largest collections of seventeenth-century artifacts recovered in the city. After these excavations demonstrated that significant archaeological resources could survive in developed, highly urban areas, the Landmarks Preservation Commission understood that important archaeological sites could survive elsewhere. The Commission negotiated with the City to create a City Archaeological position in 1980, and in 1981, the Commission established the City Archaeology Program.²¹²

Santa Fe, New Mexico

The impetus for Santa Fe, New Mexico, passing its Archaeological Review Districts Ordinance in 1987 was downtown growth and increased construction activities. Before the ordinance, salvage archaeology was how most sites were being investigated.²¹³ Similarly in Phoenix, Arizona, fast-paced development beginning in 1990 threatened the city's archaeological resources. The archaeology section of the City's Historic Preservation Ordinance

²¹¹ Halbirt and Miller, 301.

²¹² Sherene Baugher, "Reflections on the New York City Archaeology Program (1980-2016)," in *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States*, ed. Sherene Baugher, Douglas R. Appler, and William Moss (Cham, Switzerland: Springer International Publishing, 2017), 230.

²¹³ Mary Grzeskowiak Ragins, "Archaeology in Santa Fe: A Public-Private Balancing Act," in *Public Benefits of Archaeology*, ed. Barbara J. Little (Gainesville, Florida: University Press of Florida, 2002), 202.

was vague and unenforceable. This combination led to the creation of a compliance archaeology program in 1990.²¹⁴

The above examples show that, more often than not, there is some level of threat to or loss of archaeological resources that spur support and subsequent adoption of local archaeological review regulations. The remainder of this chapter takes a deeper dive into the illuminator municipalities and the variety of archaeological review practices they employ.

Archaeological Review: Effective Practices

The following section highlights various archaeological review practices employed by the above illuminator municipalities. The goal of this exercise is to examine practices that collectively provide protection to archaeological resources against private and municipal development, compare and contrast those practices, and determine the efficacy of those practices in relation to the municipality in which they are implemented.

Position within the Local Regulatory Framework

A municipality can develop archaeological review practices, individually tailored to its local needs, that successfully identify and protect archaeological resources when these practices are integrated into the overall planning process. Because the regulation of private land use is a power left to local governments, one of the most effective ways to protect archaeological resources on private property is by incorporating the regulatory practices into

²¹⁴ Todd W. Bostwick, "Phoenix Rising: The Development of a Municipal Archaeology Program in Arizona, USA," in *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States*, ed. Sherene Baugher, Douglas R. Appler, and William Moss (Cham, Switzerland: Springer International Publishing, 2017), 277–97.

the existing framework of local land development regulations. The states give authority to local governments to enact ordinances that protect public health, safety, and welfare, and these ordinances are typically expressed in a unified city or county code. Building codes, subdivision regulations, zoning ordinances, and other regulations are part of the municipal code. The most common avenue taken by municipalities is to incorporate archaeological regulations into zoning ordinances; more specifically, many municipalities link archaeological review regulations to the building permit application process because projects that require these permits are most likely to involve ground-disturbing activities and have the most potential to impact archaeological resources.²¹⁵

Alternatively, archaeological review regulations can also be incorporated into the workings of local historic preservation commissions (HPCs). HPC members are often appointed by elected city officials and provide recommendations to local governments regarding various historic preservation decisions. Most HPCs focus on above-ground historic structures and, if an archaeologist is represented on the commission, it is usually to meet legal mandates to have various specialists serve as members.²¹⁶ Appler identifies one advantage of the local government commission model – it provides a familiar form, one that elected officials inherently understand.²¹⁷ However, Anne Arundel County’s Chief of Cultural Resources, Jane Cox, believes that the most robust archaeological protections tend to not be through HPCs, but

²¹⁵ Appler, “Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology’s New Best Friend,” 192.

²¹⁶ Deur and Butler, “Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice,” 199.

²¹⁷ Appler, “The Formation of the Alexandria Archaeological Commission,” 32.

are more effective when they are part of the development process,²¹⁸ and she is likely not alone in this belief.

In Alexandria, archaeology is integrated into the planning and permitting process of the city. Francine Bromberg, former City Archaeologist, refers to using the building permit as the “carrot” to guide developers through the archaeological review process.²¹⁹ With the implementation of the Archaeological Protection Code, private developers, planners, and citizens have become more aware of preservation needs and how the integration of archaeological finds can enhance development projects and benefit the community.²²⁰ Similarly, Anne Arundel County’s regulations are within the subdivision and development code, Article 17 of the County Code, and the Cultural Resources Division operates within the County’s Office of Planning and Zoning. Article 17 was first passed approximately twenty years ago, and the original article was very vague. In 2005, the code was amended resulting in more regulatory teeth. Compared to when the regulations were first enacted, there is no longer much pushback from developers, and it has proven quite effective.²²¹

St. Augustine relied on the Preservation Board to take care of daily operations associated with the ordinance after the Archaeological Preservation Ordinance passed in 1986,

²¹⁸ Jane Cox, telephone conversation with the author, March 13, 2019.

²¹⁹ Francine Bromberg et al., “We Dig Alexandria: A Reflection on More Than Fifty Years of Community Archaeology,” in *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage within the Commonwealth of Nations and the United States*, ed. Sherene Baugher, Douglas R. Appler, and William Moss (Cham, Switzerland: Springer International Publishing, 2017), 203–25.

²²⁰ Bromberg and Cressey, “Digging the Past for Fifty Years: A Model for Community Archaeology.”

²²¹ Cox, March 13, 2019.

but this partnership soon dissolved. Since 1990, the implementation of the ordinance is under the purview of the Archaeology Division within the Planning and Building Department.²²²

Staff Archaeologists

To help implement local archaeological regulations, many local governments have archaeologists on staff. Some municipalities employ archaeologists as paid staff, very often one archaeologist, such as Prince George's County, while others have one or more archeologists available by contract either regularly or intermittently. The roles of staff archaeologists can vary by municipality, as this section will explore through the illuminators below. However, there are typical responsibilities shared by many municipal archaeologists. For example, they must oversee the documentation and management of archaeological resources; review permit applications for development that could affect archaeological resources, as mandated by the local regulations; manage CRM archaeologists contracted by the local government or private landowners or developers; and develop public outreach programs.²²³

Alexandria hired a full-time staff archaeologist in 1977. Today, the City Archaeologist, or Director of Alexandria Archaeology, leads a small team of staff archaeologists, directs the Alexandria Archaeology Museum, and works with developers and their archaeological consultants to protect archaeological resources under the Archaeological Preservation Ordinance. The City Archaeologist also serves as staff liaison to the Alexandria Archaeological

²²² Halbirt and Miller, "Municipal Archaeology Policies as a Vector in Public Outreach Programs: Digging Up Dirt for the Masses in St. Augustine, Florida," 301.

²²³ Deur and Butler, "Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice," 198.

Commission and the local non-profit group, Friends of Alexandria Archaeology.²²⁴ Alexandria's staff archaeologists review hundreds of site plans, rezoning applications, and building permits, and of these projects, about 20 percent have the potential to affect archaeological resources. City archaeologists are responsible for overseeing and enforcing the review process, providing scopes of work for required investigations, and reviewing the resulting technical reports.²²⁵

Since the creation of St. Augustine's Archaeology Division in 1990, the archaeology staff has generally consisted of just one full-time archaeologist, with the support of part-time assistants or consultants, when funding allows.²²⁶ Carl Halbirt has served as City Archaeologist since 1988. As of 2019, the City of St. Augustine's website states that two full-time archaeologists are employed. Some of the duties assigned to the city archaeologists as defined in the ordinance include reviewing all applicable building, utility, and right-of-way permit applications; conducting required testing or monitoring; preparing or overseeing the preparation of site reports; conducting archaeological site surveys within the city; and carrying out public and educational archaeology programs.²²⁷

Anne Arundel County employs the Chief of Cultural Resources, along with two additional staff archaeologists who manage the program and conduct the site development review

²²⁴ "Eleanor E. Breen Named Alexandria's City Archaeologist," April 23, 2018, https://www.alexandriava.gov/news_display.aspx?id=103616.

²²⁵ Bromberg and Cressey, "Digging the Past for Fifty Years: A Model for Community Archaeology"; Pamela J. Cressey, Ruth Reeder, and Jared Bryson, "Held in Trust: Community Archaeology in Alexandria, Virginia," in *Archaeologists and Local Communities: Partners in Exploring the Past*, ed. Linda Derry and Maureen Malloy (Washington, D.C.: Society for American Archaeology, 2003), 1–17.

²²⁶ Halbirt and Miller, "Municipal Archaeology Policies as a Vector in Public Outreach Programs: Digging Up Dirt for the Masses in St. Augustine, Florida," 301.

²²⁷ "The Code of the City of St. Augustine, Florida," Chapter 6 - Archaeological Preservation (1992), https://library.municode.com/fl/st._augustine/codes/code_of_ordinances?nodeld=THCOSTAUFL.

process. Prince George's County employs one staff archaeologist within its historic preservation staff to oversee its review process. When the archaeological review legislation was first passed, the county hired part-time consultant archaeologists to conduct the archaeological review tasks before creating a permanent County Archaeologist position in 2006.

Wichita, Kansas, is an example of a city that has created a partnership with a local university to fulfill the position of city archaeologist.²²⁸ The position is managed by Wichita State University to give graduate students practical experience. It began as a paid fellowship position for an archaeology graduate student with most serving for one academic year. The role of the city archaeologist was initially to survey city-owned property prior to construction activities. Based on the structure of the archaeology regulations, this was limited to non-developed property, mainly parks. Because there are now very few of these areas that require a survey, the city archaeologist generally serves as a contact for archaeological questions and attends city and county meetings, such as the Historic Preservation Board, and offers advice and recommendations as needed. The city archaeologist also manages public outreach and education. Unfortunately, the city did not provide funding for the position for the 2019-2020 academic year, but the university's Department of Anthropology is using department funds to pay an advanced undergraduate student to serve as the Assistant to the City Archaeologist, with the official responsibilities of the city archaeologist falling to Assistant Professor, Crystal Dozier.²²⁹ Although the duties of Wichita's city archaeologist are not as extensive as that of

²²⁸ Deur and Butler, "Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice," 198.

²²⁹ Crystal Dozier, e-mail to the author, October 2, 2019

Alexandria, for example, due to the scope of its local regulations, the practice of partnering with a local university to help fulfill positions to accomplish various program tasks could prove effective in any municipality.

Predictive Modeling Tools

Archaeological predictive modeling is a tool used to indicate the likelihood of archaeological sites to be present in a specific location or across a region or other locality based on environmental attributes, observed patterns, or assumptions about human behavior.²³⁰

Archaeological sensitivity maps are often the product of these models. These maps show locations that are more sensitive than others in regard to potential archaeological resources, or where the potential is highest. Sensitivity is usually expressed by using the categories of low, moderate, and high.

Archaeological predictive models have been prepared for a wide range of geographical areas as well as for a wide array of planning purposes. States like Minnesota and Pennsylvania have predictive models to be used by the states' departments of transportation as planning tools in the Section 106 and Section 4(f) review processes.²³¹ The Washington state SHPO office, the Department of Archaeology and Historic Preservation, prepared a statewide predictive

²³⁰ Kenneth L. Kvamme, "There and Back Again: Revisiting Archaeological Locational Modeling," in *GIS and Archaeological Site Location Modeling*, ed. Mark Mehrer and Konnie Wescott, GIS and Archaeological Predictive Modeling Conference (Boca Raton, Florida: Taylor & Francis, 2006), 2; Hans Kamermans, "The Application of Predictive Modelling in Archaeology: Problems and Possibilities," in *Beyond the Artifact, Digital Interpretation of the Past.*, ed. F. Nicolucci and S. Hermon, Proceedings of CAA 2004, Prato 13-17 April 2004 (Budapest: Archaeolingua, 2010), 273.

²³¹ Matthew D. Harris, "Pennsylvania Department of Transportation Archaeological Predictive Model Set" (Burlington, New Jersey: URS Corporation, October 2013), <https://www.paprojectpath.org/docs/default-source/penndot-crm---general-documents/statewide-archaeological-predictive-model-volume-1.pdf?sfvrsn=4>; "MnModel: Minnesota Statewide Archaeological Predictive Model," MN Department of Transportation, n.d., <http://www.dot.state.mn.us/mnmodel/index.html>.

model in 2009.²³² Similarly, a statewide model was created for Illinois by the Illinois State Archaeological Survey, part of the Prairie Research Institute at the University of Illinois at Urbana-Champaign (Figure 3).²³³ Predictive models have also been prepared for specific industries, for example, as a planning tool during the development and use of oil and gas fields in New Mexico and Wyoming.²³⁴ Models have also been created for property owned by the Bureau of Land Management and the National Park Service, for example, at Death Valley National Park.²³⁵

The use of predictive locational models provides a reasonable and scientific approach to determining what projects have the highest potential to impact unknown archaeological resources. The information they provide is useful when scoping out the appropriate level of field efforts needed for a particular project and can help with project budgeting.²³⁶ Survey resources can be directed to areas of highest archaeological potential, resulting in a much more efficient and economical cultural resource management approach. For example, an archaeological sensitivity map for a specific project can show if particular portions of a property

²³² “Washington Statewide Archaeology Predictive Model Report” (GeoEngineers, June 30, 2009), <https://dahp.wa.gov/sites/default/files/predictive%20model%20report%202009.pdf>.

²³³ “Illinois Archaeological Predictive Model,” Illinois State Archaeological Survey, Prairie Research Institute, 2019, https://www.isas.illinois.edu/office_of_the_illinois_state_archaeologist/illinois_archaeological_predictive_model.

²³⁴ Eric Ingbar et al., “Adaptive Management and Planning Models for Cultural Resources in Oil and Gas Fields in New Mexico and Wyoming” (Carson City, Nevada: Gnomon, Inc., December 2005).

²³⁵ Jennifer Cochran, “Predictive Modeling for Death Valley National Park,” *National Center for Preservation Technology and Training, National Park Service* (blog), August 8, 2014, <https://www.ncptt.nps.gov/blog/predictive-modeling-for-death-valley-national-park/>.

²³⁶ Claire Boardman, The University of York, quoted in Matthew D. Harris, “Archaeological Predictive Modeling Points of Discussion,” *Quantitative Archaeology* (blog), November 23, 2016, <https://matthewdharris.com/2016/11/23/archaeological-predictive-modeling-points-of-discussion/>.

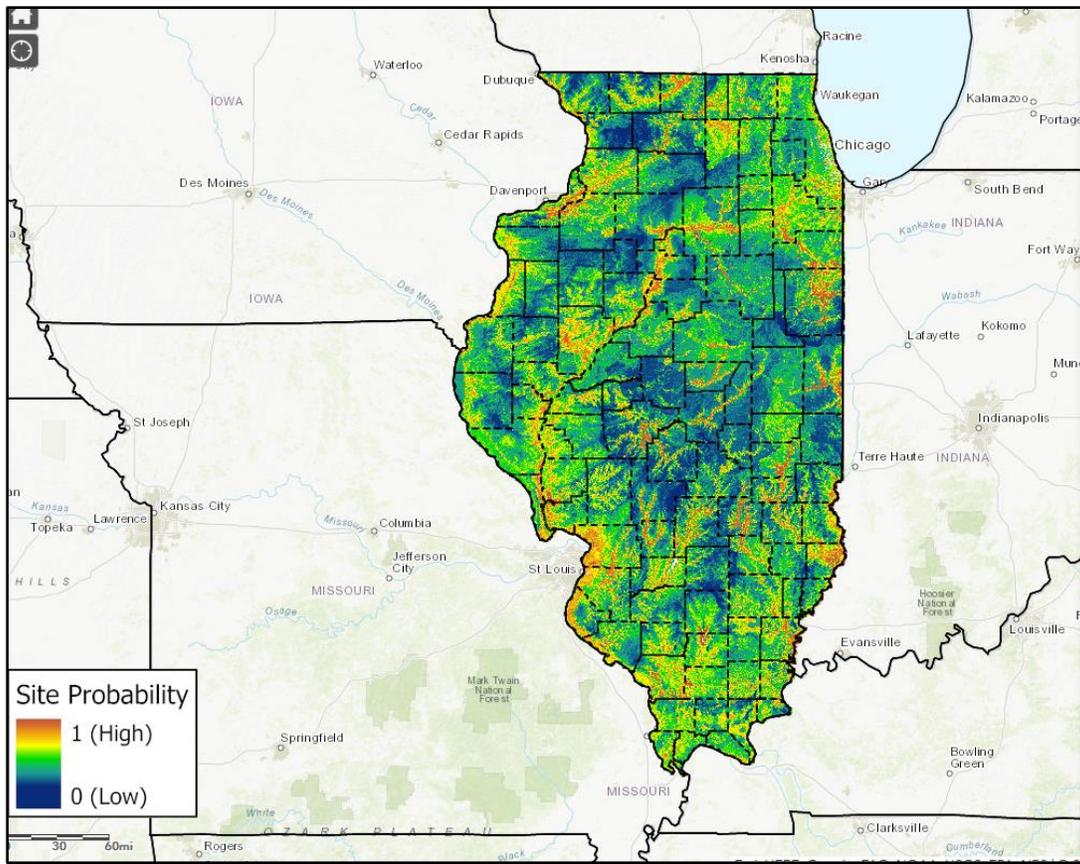


Figure 3: Illinois Archaeological Predictive Model. [Source: Illinois State Archaeological Survey, Prairie Research Institute, 2019.]

have a higher likelihood to contain archaeological resources; therefore, more testing – and the time and money associated with that testing – can be concentrated in these areas.

Predictive models based on specific data points, including but not limited to environmental characteristics and past land use and development, provide a rational way to incorporate archaeological resource protection into land management planning. For example, the use of predictive models is a much more logical approach compared to using designated historic districts as the main factor used to determine which projects warrant local archaeological review. Whether these are National Register-listed historic districts or locally

designated, the presence of potentially significant archaeological resources may have no correlation with or dependence on their locations within modern political or historic district boundaries. Further, many local historic preservation regulations do not consider potential archaeological resources located outside of these contrived boundaries and, as such, they often do not receive protection.²³⁷

To support her dissertation research on the community value of the archaeological landscape of Richmond, Virginia, Ellen Chapman developed predictive models for both prehistoric and historic resources in order to conduct archaeological sensitivity assessments in Richmond (a city that will be discussed in Chapter V of this treatise in regard to a recent push for enacting local archaeological regulations). These models use historical maps and documents to create the historic sensitivity map and specific predictive environmental data to create the prehistoric sensitivity map. Earlier predictive models in Virginia and the Mid-Atlantic region were studied to determine three variables most useful in determining prehistoric sensitivity: slope, distance from water, and soil classification. In both models, an archaeological preservation assessment is also employed that analyzes elements that would be likely to contribute to the preservation of archaeological sites including data relating to the extent of past development. The goal is to allow for the quick examination and assessment of specific locations within the city regarding prehistoric and historic archaeological sensitivity and to determine the potential for intact archaeological deposits. Tools in ArcMap, a commonly used geospatial processing program, are used to run the predictive models, creating a distribution

²³⁷ Barker, "The Process Made Me Do It," 73, 83.

map that shows areas most likely to contain both prehistoric and historic archaeological resources.²³⁸ Chapman’s site preservation model for Richmond is presented in Figure 4. The model ranges from green, areas with a high likelihood of site preservation, to red, areas with low likelihood.

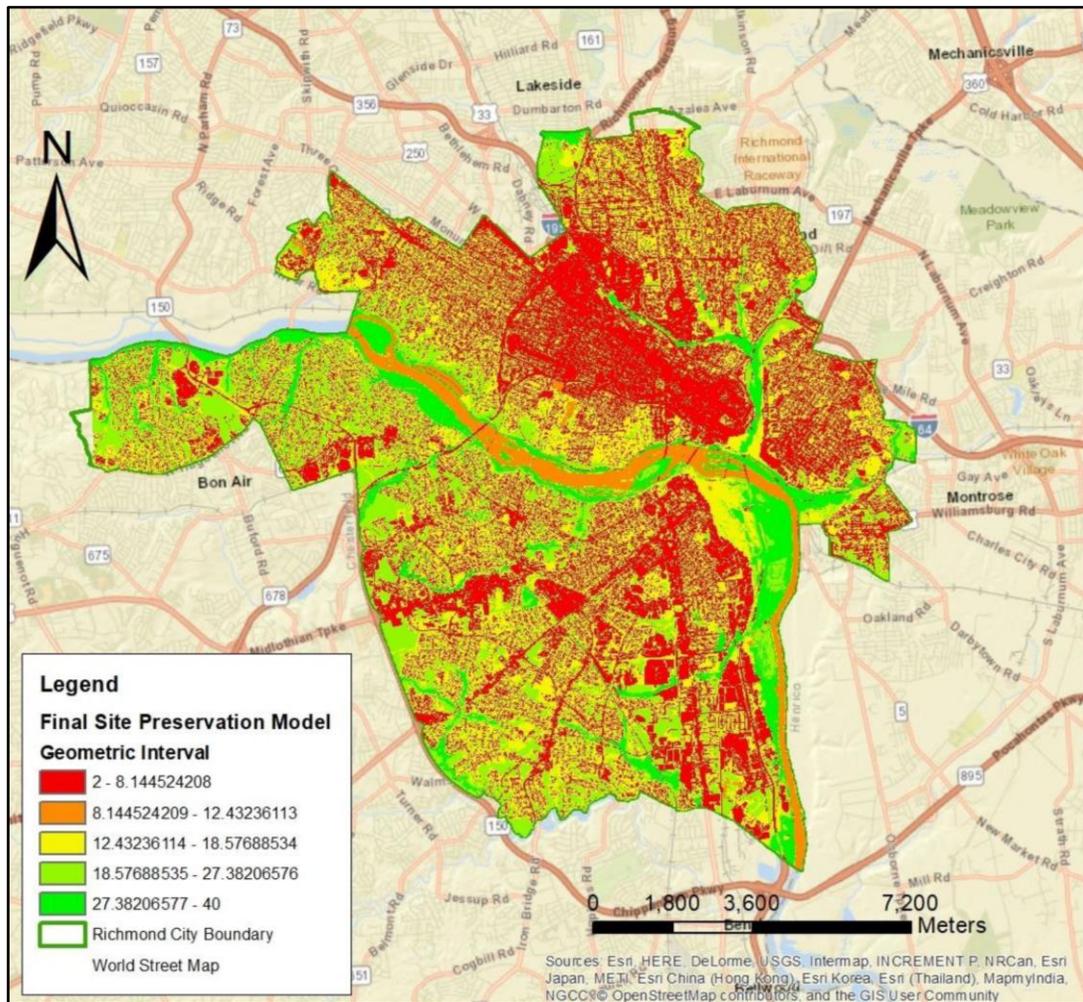


Figure 4: Archaeological Preservation Assessment Model created for the City of Richmond. [Source: Ellen Chapman, 2018.]

²³⁸ Chapman, “Buried Beneath the River City: Investigating an Archaeological Landscape and Its Community Value in Richmond, Virginia,” 327–30, 340.

While many elements of predictive models can be applied to a number of municipalities, especially those within similar geographic regions, some features are very location-specific. For example, one data type identified by Chapman and used in the archaeological preservation assessment model is the extent of the Richmond Evacuation Fire of 1865. In many pre-twentieth-century cities, fire was usually a very destructive process. However, this fire was unusual in that the rubble fill produced capped pre-fire deposits in many areas. Its extent was also very well documented through the preparation of a map just a few days after the fire, and this data is especially useful in the preservation assessment model.²³⁹

Another GIS-based tool that can be used to guide archaeological review procedures is the elevation change analysis or cut-and-fill analysis. The District of Columbia Historic Preservation Office requires that this analysis, which estimates the changes in landscape elevation that have occurred over a period of time by comparing historical elevation data with modern elevation data, be conducted as part of its archaeological review process. For Washington D.C., an 1888 U.S. Coast and Geodetic Survey map is used as a topographic color gradient to distinguish cut areas, or a decrease in elevation, from fill areas, an increase in elevation. For example, green is used to indicate cutting, red to indicate filling, and yellow to indicate areas of little elevation change (Figure 5).

²³⁹ Chapman, 339–42.

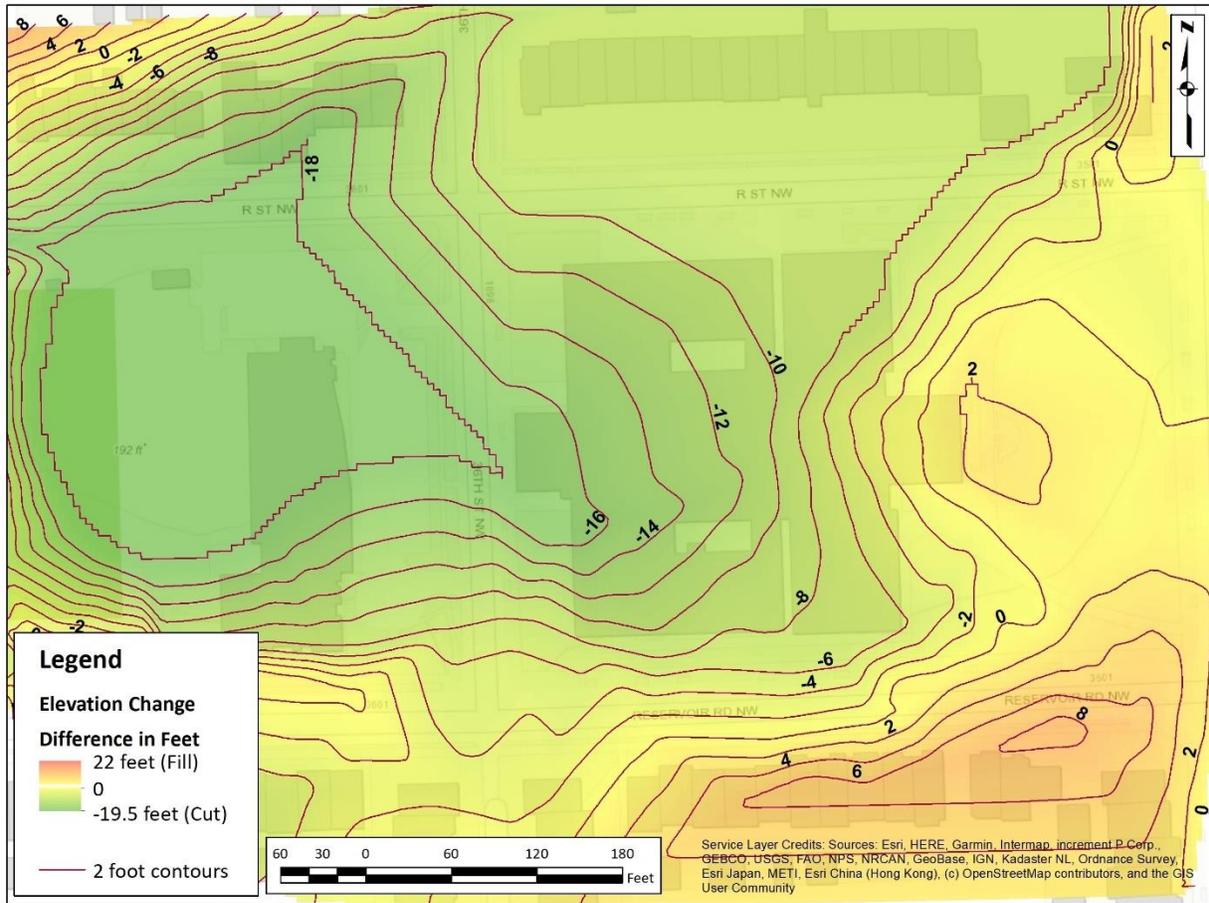


Figure 5: Example of a cut-and-fill map for a location in Northwest Washington, D.C. [Source: the author, 2020, using data from U.S. Coast and Geodetic Survey, 1888, and Open Data DC, 2019, <https://opendata.dc.gov/>.]

While the cut-and-fill analyses still often require some ground truth testing to confirm accuracy, the information that the analysis provides can guide the methods of required archeological investigations to ensure efficiency and practicality in regard to time, effort, and, of course, cost. For example, if the cut-and-fill analysis for a project site suggests that there may be at least five to ten feet of fill present, the field-testing method of hand excavated shovel test pits would not be productive as it is unlikely that these test pits could extend below fill deposits

where intact archaeological deposits could remain. The investigatory method of machine-excavated trenches would be more practical.

At all levels of government, but particularly at the municipal level, the use of predictive tools such as models, sensitivity maps, and cut-and-fill analyses provides a basis for practical and, most importantly, defensible land-use decisions.²⁴⁰ Specific areas determined to be archaeologically sensitive, the definition of which is unique to each local municipality, are already identified and this information can be made available to planners, developers, and local government staff very early on in the project planning process. If a project is located within an archaeologically sensitive area, the potential for archaeological resources is considered and can be managed with as little disruption, delay, or unexpected costs as possible.

Archaeological Review Triggers

As Chapter II introduces, at every level of archaeological review, there must be an action that triggers, or prompts, the review requirement. Regulatory triggers vary at the local level, where the flexibility of local regulations enables the ability to meet the specific archaeological and political needs of the community.²⁴¹ Still, defining review triggers requires careful consideration of local political concerns and how to best balance those with the municipality's archaeological needs. When a city begins adding legal requirements to the development process, that inevitably leads to increased costs for private developers, and archaeology instantly becomes political.²⁴²

²⁴⁰ Barker, "The Process Made Me Do It," 85.

²⁴¹ Appler, "Setting the Machine in Motion: What Triggers Archaeological Review at the Local Level?"

²⁴² Appler, "Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology's New Best Friend," 196.

The primary review trigger under Alexandria’s Archaeological Protection Code is development actions involving ground disturbance for which site plans, development special use permit plans, or erosion control plans are required to be filed with the city. The code defines ground disturbance as any movement of earth manually or mechanically, such as dredging, demolition, excavation or fill, grading, coring, well drilling, pile driving, utilities, trenching, and shoring. This includes private development on private property. However, Alexandria’s city code does not require every construction project to submit development site plans. For example, projects proposing less than three housing units do not require site plans; thus, an archaeological review would not be triggered.²⁴³

Nevertheless, it is important to note that city archaeologists will review building permits or other activities that do not require formal site plans to be filed, even though it is not mandated by the Archaeological Protection Code. Projects such as an addition to a private residence or the replacement of a utility pipe would fall under this category. If it is determined that a significant resource is or may be located on the property, the landowner is not burdened with funding an archaeological investigation. Instead, City archaeologists ask permission to conduct an emergency recovery excavation or to monitor the proposed ground disturbance. In this situation, the cost of the archaeology is covered by the City.²⁴⁴

Alexandria links archaeological review with archaeological zones referred to as Archaeological Resource Areas. These zones, which signify varying degrees of archaeological

²⁴³ Appler, 197.

²⁴⁴ Bromberg et al., “We Dig Alexandria: A Reflection on More Than Fifty Years of Community Archaeology,” 212.

potential, further delineate which projects must follow the city’s review procedures and whether an archaeological evaluation is required before or at the same time as the filing of site plan applications. The use of archaeological zones, usually expressed in map form, helps give private developers, who do not appreciate the surprise of unexpected archaeological discoveries, a general idea of what resources may be present before the start of the project. Often defined through predictive modeling techniques, archaeological zones also make the archaeological review process much more palatable to private developers compared to regulations that essentially imply that “nobody knows what is under the ground here so you must pay a lot of money to figure it out.” Alexandria’s Archaeological Resource Areas are further described in the “Special Review Status for Areas of Archaeological Potential” section below.

Santa Fe is another city that applies archaeological zones, or districts, to its review triggers. In general, building permit applications, development proposals that need approval by the Planning Commission such as rezoning and subdivisions, and city projects, including city park projects are the main actions that trigger archaeological review, contingent on location within the archaeological review districts. Santa Fe also requires compliance with archaeological review procedures for the construction of new sewer mains or main lines of other utilities such as telephone lines, gas lines, and fiber optics, including the entire construction easement, anywhere in the city.²⁴⁵

²⁴⁵ “Municipal Charter and Code of Ordinances, City of Santa Fe, New Mexico,” Archaeological Clearance Permits § 14-3.13 (2017), https://library.municode.com/nm/santa_fe/codes/code_of_ordinances?nodeId=MUCHCOORSAFENEME.

Some municipalities set proposed disturbance thresholds, either in terms of area or depth. The ordinance in St. Augustine, Florida, which also uses archaeological zones, states that all projects on both public and private property within these zones that require a city building permit, utility permit, or right-of-way permit greater than 100 square feet in area and deeper than three inches in depth must submit an application for archaeological review. Reviews are conducted for a wide range of projects from the construction of new additions to single-family houses to large-scale commercial or residential developments.²⁴⁶ Similar to Alexandria, St. Augustine links archaeological review with archaeological zones which further delineate which projects must follow the city's review procedures. In addition to the archaeological zones, the ordinance defines what constitutes a potentially significant impact by the size and depth of ground disturbance, for example, more than 250 square feet in area and three inches in depth.²⁴⁷ Phoenix, Arizona, is similar in that it sets area and depth threshold triggers for city projects. The City Archaeologist reviews all city projects that are more than two square feet in area and two inches in depth.²⁴⁸

The archaeological review trigger for Prince George's County, Maryland, a much larger municipality comprised of a range of densely populated urban areas to suburban areas to more rural outskirts, differs from that of the cities mentioned above. Subdivision development as the review trigger is appropriate for Prince George's County because, as a county with a substantial

²⁴⁶ Halbirt and Miller, "Municipal Archaeology Policies as a Vector in Public Outreach Programs: Digging Up Dirt for the Masses in St. Augustine, Florida," 302.

²⁴⁷ Halbirt and Miller, 305.

²⁴⁸ Appler, "Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology's New Best Friend," 196–97.

amount of farmland and currently undeveloped land, subdivision development was identified as one of the major threats to archaeological resources at the time of the ordinance's adoption. Its location adjacent to Washington, D.C. makes Prince George's County an optimal target for new, large residential and commercial developments. While Prince George's County has been successful in considering and protecting archaeological resources from the impacts of subdivision development, there are still many development types that do not receive archaeological review. These include properties that fall under the Zoning Ordinance such as large sand and gravel mining activities reviewed as special exceptions, although the county archaeologist has been successful in requesting archaeological investigations in a few of these cases.²⁴⁹

Archaeological review in Anne Arundel County is triggered by all site development projects that involve grading or that require a building permit, as well as demolition permits, telecommunication towers, and State community development block grant projects. These regulations are not limited to pre-defined archaeological zones. The next level of archaeological review is triggered by the likelihood that the proposed project will impact a previously identified archaeological site.²⁵⁰ The County Code states that development should avoid disturbing significant archaeological resources already listed on the Maryland Inventory of Historic Places. However, it also states that if the Office of Planning and Zoning determines that

²⁴⁹ "Approved Historic Sites and Districts Plan for Prince George's County," 58; Jennifer Stabler, telephone conversation with the author, 2019.

²⁵⁰ Appler, "Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology's New Best Friend," 196.

there is a known potential or high potential for archaeological resources to be present, the office may require a Phase I archaeological survey.²⁵¹

Albuquerque, New Mexico, is similar to Anne Arundel and Prince George's Counties in that it does not use archaeological zones to determine which projects require archaeological review. The preliminary plats or site development plans for all projects over five acres in size are reviewed by the City Archaeologist for archaeological potential.²⁵²

Special Review Status for Areas of Archaeological Potential

In municipalities that have used predictive modeling tools to identify areas of archaeological potential, often expressed through the use of archaeological zones, this data commonly guides the specific circumstances in which the local regulations apply. In some cases, only areas that have been identified as having a high potential for archaeological resources are subject to the regulations. Some municipalities assign different levels of review to each defined archaeological zone or area, often by applying varying review trigger thresholds based on the archaeological zone. The combination of archaeological review triggers and special review status for areas of archaeological potential is where local archaeological review regulations vary the most from municipality to municipality.

As part of Alexandria's zoning ordinance, Archaeological Resource Areas, which are overlay zones similar to historic districts, determines the applicability of the Archaeological Protection Code (Figure 6). Table 1 provides the definitions for the three color-coded groupings

²⁵¹ "Anne Arundel County, Maryland County Code," § 17-6-502. Archaeological resources. (2005), <https://www.aacounty.org/our-county/county-code/index.html>.

²⁵² Appler, "Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology's New Best Friend," 196.

of resource areas. The main difference between the three is that projects located on land within the two groupings with known potential to contain archaeological resources are required to comply with the archaeology code *before* applying for site plan approval, or other associated development plan as specified in the regulations. The remainder of the city falls into the third group in which projects are not reviewed for archaeological potential until development plans are submitted. This is because the potential for unknown resources in this group is not considered to be high; however, the fact that the entire city is included in these groupings suggests that Alexandria does not assume any large swathes of the city to be completely lacking archaeological potential.

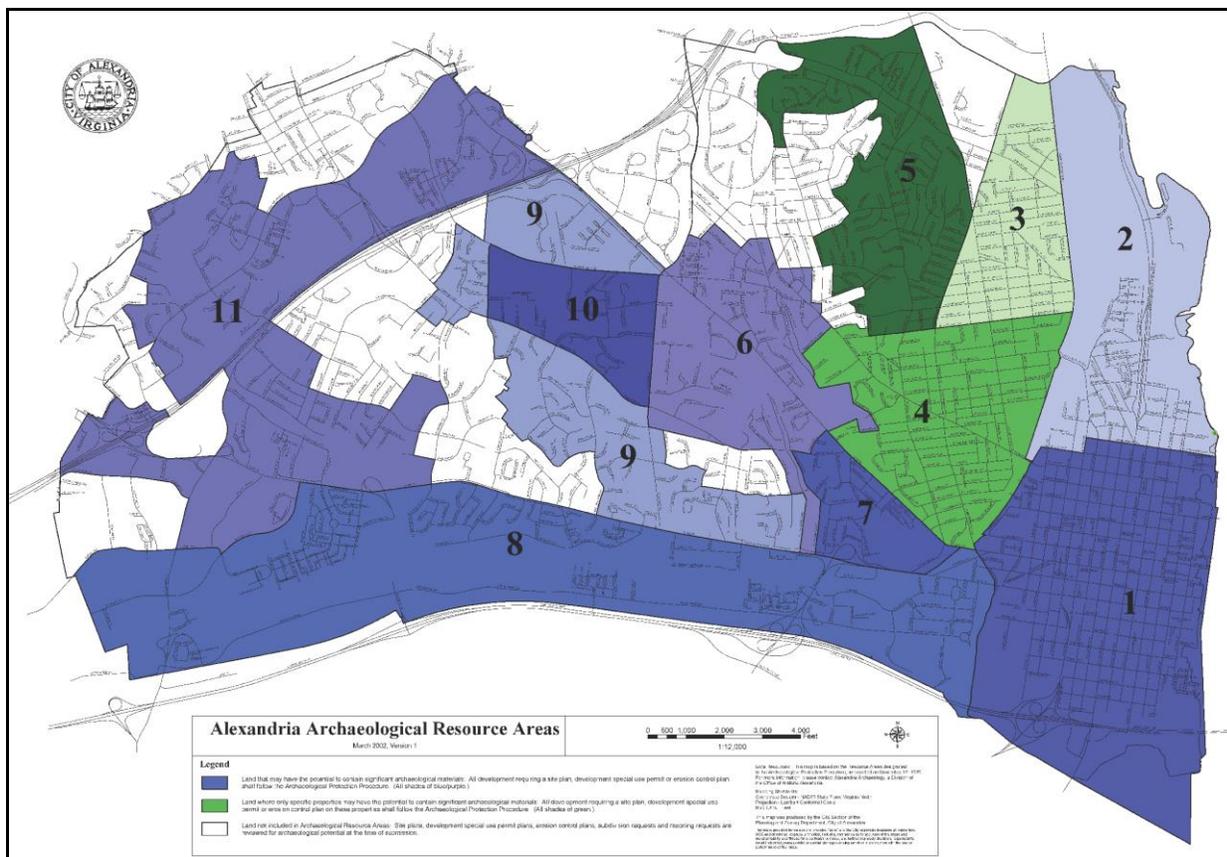


Figure 6: Alexandria Archaeological Resource Areas. [Source: The City of Alexandria, 2002.]

Color Grouping	Definition	Trigger for Review
Shades of blue and purple	Land that may have the potential to contain significant archaeological materials	All development requiring a site plan, development special use permit, or erosion control plan must comply with code <i>before submission</i> of application
Shades of green	Land where <i>only specific properties</i> may have the potential to contain significant archaeological materials	All development requiring a site plan, development special use permit, or erosion control plan <i>on these properties</i> must comply with code <i>before submission</i> of application
White (remainder of the city)	Land not included in Archaeological Resource Areas	Site plans, development special use permits, erosion control plans, subdivision requests, and rezoning requests are reviewed for archaeological potential <i>at the time of submission</i>

Table 1: Alexandria Archaeological Resource Areas – Definitions and Regulatory Implications. [Source: The City of Alexandria, 2002.]

The numbers on the map correspond with the specific resource areas, and the City of Alexandria’s website offers a historic background and description of the significance of each. For example, Old Town (number 1), is the historic core of the city. Previous surveys suggest that seventy-two percent of the land in this resource area has the potential to contain archaeological resources, and numerous sites representing the full development of Alexandria have been identified here.²⁵³

St. Augustine’s use of zones to identify and manage areas of archaeological potential is similar to that of Alexandria, but it uses zones as well as subzones. The primary zones are I, II, and III and are defined somewhat differently. Zone I contains the most significant identified archaeological sites and the highest archaeological significance and sensitivity. Zone II refers to areas containing important known archaeological sites but with moderate significance and

²⁵³ “Alexandria Archaeological Resource Areas,” accessed September 24, 2019, <https://www.alexandriava.gov/historic/archaeology/default.aspx?id=39410>.

sensitivity. Zone III has the potential for historic/prehistoric archaeological sites but low significance and sensitivity. Within each zone are several subzones that define specific temporal or cultural affiliations. Zone I and its subzones are shown as an example in Table 2. St. Augustine’s archaeological zones are based on historical maps and previous archaeological surveys and excavations from the 1930s to the 1980s when the zone map was created.²⁵⁴

Subzone	Temporal and Cultural Affiliation
IA	Historic resources from the seventeenth to the twentieth centuries in the colonial downtown district, including the Cubo Line west to Ponce de Leon Boulevard, and limited prehistoric resources
IB	Historic resources from the mid-sixteenth through the twentieth centuries, specifically the colonial downtown district
IC	Historic resources from the late seventeenth to the twentieth centuries in colonial downtown district, as well as the eighteenth-century Native American mission community of Nuestra Senora del Rosario de la Punta
ID	The original settlement of St. Augustine in 1565, the late sixteenth- to early-eighteenth-century Native American mission community Nombre de Dios, and prehistoric Native American occupations dating from circa 4000 B.P. to the historical era
IE	The eighteenth-century African American military site of Ft. Mose

Table 2: Designated archaeological subzones within Zone I in St. Augustine, Florida. [Source: Halbirt and Miller, 2017.]

Santa Fe is similar to Alexandria and St. Augustine in that it has defined three archaeological districts, independent of its five historic districts. Each archaeological district has a different threshold for review based on archaeological potential (Table 3).²⁵⁵ Similarly, the City of Vancouver, Washington, has identified two zones that guide its ordinance – Predictive Model Probability Level A and Level B. Any proposed project involving ground-disturbing activities that

²⁵⁴ Halbirt and Miller, “Municipal Archaeology Policies as a Vector in Public Outreach Programs: Digging Up Dirt for the Masses in St. Augustine, Florida,” 302–4.

²⁵⁵ Municipal Charter and Code of Ordinances, City of Santa Fe, New Mexico.

must apply for a permit or approval from the planning department located within Probability Level A must comply with the city’s archaeological review ordinance. Proposed projects located within Probability Level B involving the disturbance of at least five acres must comply. Further, regardless of the location of the proposed project with a Probability Level or the amount of ground-disturbance, when a project area is within one-quarter mile of a known archaeological site, the archaeological review ordinance also applies.²⁵⁶

District Name	Archaeological Potential	Trigger for Review
Historic Downtown Archaeological Review District	High	<ul style="list-style-type: none"> • Building permit or grading permit applications for 2,500 square feet or more of ground disturbance • City projects over 2,500 square feet
River and Trails Archaeological Review District	High	<ul style="list-style-type: none"> • Development proposals of two or more acres that require approval by the Planning Commission, such as rezonings and subdivisions • City projects over two acres and city park projects over one acre in size
Suburban Archaeological Review District	Moderate	<ul style="list-style-type: none"> • Development proposals of ten acres or more that require approval by the Planning Commission, such as rezonings and subdivisions • City projects over two acres and city park projects over one acre in size

Table 3: Santa Fe’s Archaeological Districts – Definitions and Regulatory Implications. [Source: The City of Santa Fe.]

Albany, New York, also follows the archaeological zone trend. The city considers two Archaeological Resources Overlay districts to be potentially archaeologically sensitive – the Fort Orange/Downtown Albany Archaeological Review District and the Secondary Downtown Albany Archaeological Review District. Any applicant proposing excavation within these two districts is

²⁵⁶ “Vancouver Municipal Code,” § 20.710 Archaeological Resource Protection (2019), https://www.cityofvancouver.us/sites/default/files/fileattachments/vmc/titles_chapters/020.710.pdf.

required to perform a Phase IA investigation, at a minimum, as part of the environmental and development plan review. However, the ordinance goes further and requires that development actions proposed in the remainder of the city be subject to the review regulations. For projects involving excavation, a Phase IA investigation *may* be required as part of a permit or development plan review; however, this depends on available information about potential archaeological resources in the area, including but not limited to the presence of features such as “evidence of human remains or burial grounds; evidence of foundation, roof, walls, or infrastructure built with construction materials or techniques not commonly used during the last 50 years; or evidence of railroad structures, or canals, dams, or locks.”²⁵⁷

Portland, Oregon, has enacted regulations in its zoning code that specifies archaeological resource protection measures within the Columbia South Shore Plan District. Areas of archaeological interest have been identified within this district, like many of the municipalities described above. However, this ordinance goes further to identify areas where confirmation testing, consisting of auger probes, must be conducted before construction activities begin. Maps are provided which list the number of auger probe tests required for each area of archaeological interest (Figure 7).²⁵⁸ The ordinance states that confirmation testing has occurred in much of the district, and its goal is to fill in the gaps.

²⁵⁷ “Unified Sustainable Development Ordinance, City of Albany, New York,” § 375-2(F)(2): AR-O Archaeological Resources Overlay (2017), <https://ecode360.com/documents/AL0934/source/eX-AL0934-1497472247239.pdf>.

²⁵⁸ “Columbia South Shore Plan District, Title 33, Planning and Zoning, Portland, Oregon,” § 33.515.262 Archaeological Resource Protection (2018).

**Columbia South Shore
Areas Where Confirmation Testing is Required**

Map 515-7

Map 2 of 2

Map Revised January 1, 2015

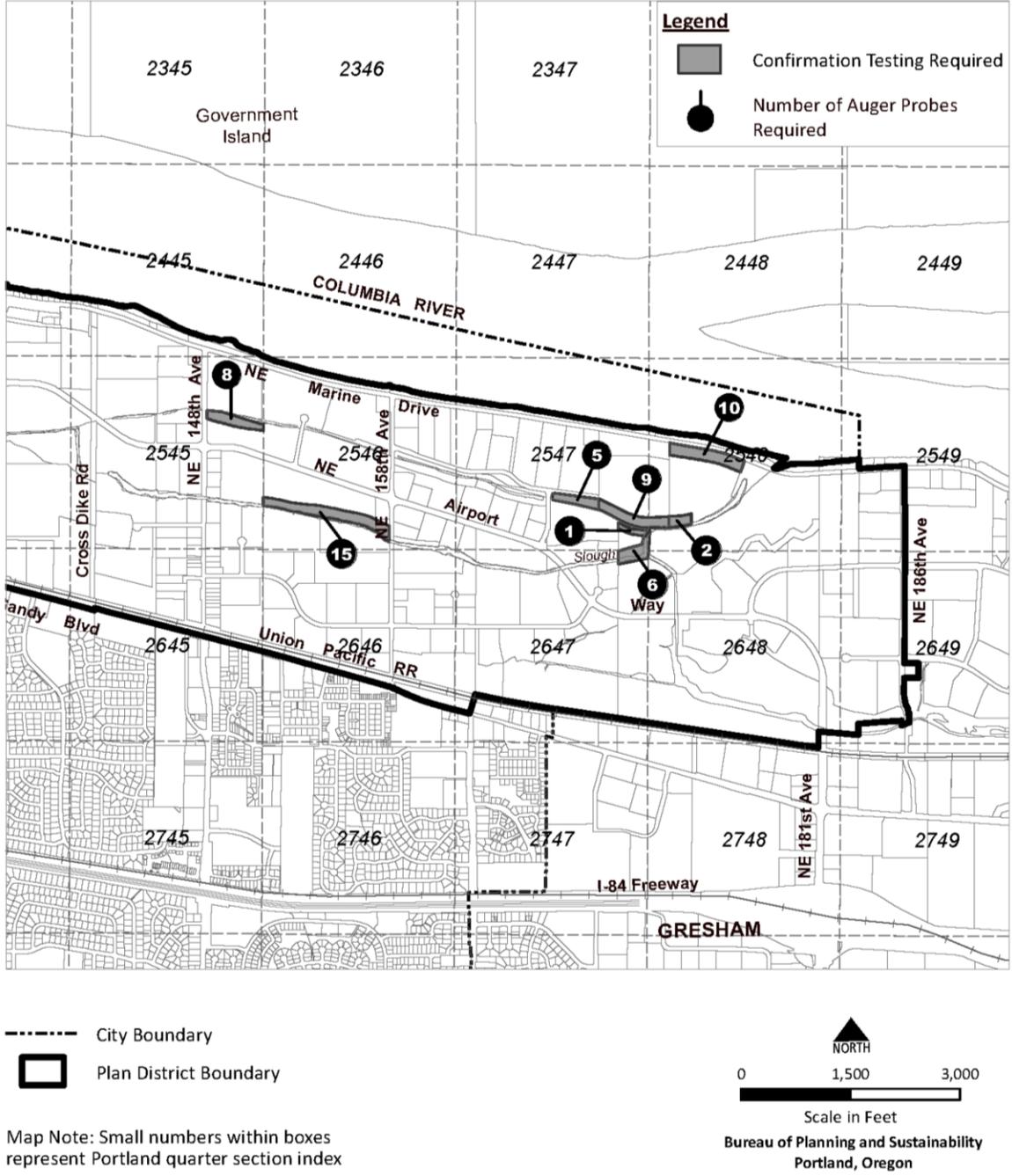


Figure 7: Eastern portion of the Columbia South Shore Plan District, Portland, Oregon. [Source: The City of Portland.]

It should be noted that Portland's ordinance focuses on potential Native American archaeological sites within the Columbia South Shore Plan District, with special concern given to human remains. Confirmation testing must be conducted in consultation with appropriate Oregon tribes. Portland's requirement to use specific testing methods – auger probes that must reach a depth of at least eight feet below surface to reach deeply buried Native American deposits along the Columbia River and smaller waterways – is an example of a highly tailored ordinance designed to meet a specific research goal that places more significance on particular resource types. However, when this practice is employed, caution should be taken to ensure that other potentially significant resource types are not being unknowingly overlooked – for example, evidence of the early European settlement of Portland in the mid-nineteenth century. But, again, the municipality and its citizens are responsible for determining what resources should be given the most attention in the review process.

Archaeological Review Responsibilities

In Alexandria, when a project must comply with the city code, city staff archaeologists conduct the preliminary archaeological assessment which determines the level of archaeological investigation needed. If it is determined that there is the potential for archaeological resources, and the project will have significant impacts on known or unknown archaeological resources, the permit applicants, often private developers, then need to submit an archaeological evaluation report and a resource management plan as part of the preliminary site plan application. The applicants are responsible for hiring a qualified archaeologist to conduct all investigations and prepare all required reports.

In general, it is common practice for the financial responsibility of archaeological investigations and subsequent reporting to fall on the landowner or developer. In addition to Alexandria, municipalities such as Prince George's County, Albany, New York City, Santa Fe, and many others, employ this practice. The requirement that the investigations be performed by or under the supervision of professional archaeologists who meet the qualifications of an archeological professional as defined by the municipality is also very common. Archaeologists must meet the *Secretary of the Interior's Professional Qualification Standards*.²⁵⁹ To comply, applicants often contract with a CRM firm.

In contrast, St. Augustine's ordinance does not require permit applicants to hire CRM consultants when archaeological investigations are required. The City Archaeologist is responsible for conducting excavations within the budget limits and time constraints established by the ordinance. When a proposed site development plan is submitted for review, a City Archaeological Permit Application must also be submitted and there is a fee associated with this application based on estimated construction costs and the archaeological zone in which it is located. Since the ordinance's inception, the average archaeological permit fee for commercial and residential property owners has been \$1550. Additional funds for the archaeology program come from the city's tax-supported General Fund. Further, the ordinance defines the maximum time provided for an archaeological response from the City Archaeologist, dependent upon the level of impact (major or minor as defined by the size and

²⁵⁹ "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines -- Professional Qualifications Standards," National Park Service, 1983, https://www.nps.gov/history/local-law/arch_stnds_9.htm.

depth) and the archaeological zone involved. For example, a proposed project located in Zone II determined to be a major disturbance would incur a permit fee of one-and-one-quarter percent of the cost of construction and provide for a minimum of four weeks to complete the archaeological investigations with the possibility to add two additional two-week periods when approved by the City Manager.²⁶⁰ Despite having an archaeological review ordinance enacted, the efforts of St. Augustine's City Archaeologist are basically salvage archaeology with an average of three or four excavations occurring at any one time.²⁶¹ While this may work in St. Augustine, putting so much burden on one or two city archaeologists is unlikely to be sustainable in larger municipalities.²⁶²

St. Augustine is not the only municipality where staff archaeologists are often overburdened by responsibility from a lack of or inadequate staffing. In Anne Arundel County, many projects with small footprints come under review that are located on known archaeological sites, for example, small, single-family home projects. Pursuant to the development code, a Phase I archaeological survey can be requested of the landowner. However, the cost would be extremely high in comparison to the cost of the small project. The solution is to send the county archaeologists and volunteers out to the project sites to conduct a small survey at the expense of the county. If it is a significant known archaeological site or has very high potential, one of the county archaeologists will conduct an initial desktop review of

²⁶⁰ Halbirt and Miller, "Municipal Archaeology Policies as a Vector in Public Outreach Programs: Digging Up Dirt for the Masses in St. Augustine, Florida," 305–7.

²⁶¹ "St. Augustine: America's Ancient City, Saving the Past for the Future," Florida Museum and the University of Florida, August 7, 2019, <https://www.floridamuseum.ufl.edu/staugustine/saving-the-past-for-the-future/>.

²⁶² Appler, "Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology's New Best Friend," 198.

the project area and a site visit which may involve the excavation of a few shovel test pits. Then the staff archaeologists need to determine if the project warrants further archaeological investigations at the landowner's expense. The county archaeologist averages one or two of these reviews/surveys each week and this volume puts a strain on the staff; however, the county cannot afford to hire another full-time archaeologist. While this is a fairly new procedure, it has been found to be warranted the majority of the time; but it is by no means sustainable.²⁶³

Municipality-Wide Surveys and Access to Survey Data

Surveys are precursors to most local archaeological protection programs because they provide a baseline that may guide future protection measures. Survey results are often incorporated into a GIS layer that local government staff, particularly planning staff, can consult.²⁶⁴ Municipality-wide surveys for archaeological resources require much more effort, time, and resources compared to surveys for above-ground resources mainly due to the survey methods. A "windshield survey", commonly used to survey buildings and structures, can only provide a portion of the necessary information relating to archaeological resources. However, the predictive modeling tools explored in a previous section can be used to conduct a reconnaissance level archaeological survey for an entire municipality that could guide more intensive field survey in the future, if funds and resources allow.

²⁶³ Cox, March 13, 2019.

²⁶⁴ Deur and Butler, "Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice," 195.

Municipality-wide cemetery surveys have been, or continue to be, undertaken by a number of illuminators. For example, Prince George's County, Anne Arundel County, and Alexandria have conducted surveys that have gathered locational information about these particularly sensitive resources. Prince George's County and Anne Arundel County have involved the public in this endeavor and are continually accepting information from the public regarding unknown cemeteries and burials. This information is then used for planning purposes by local government staff.

Opportunely, previous archaeological surveys have been conducted in many municipalities as a result of federal and state regulations. The results of these surveys provide locations of previously identified archaeological sites as well as areas determined to be void of significant archaeological resources. This data is instrumental as a starting point for municipalities that may not have the resources to conduct a municipality-wide survey. However, access to this information and other records held by SHPOs may be restricted not only to the public but possibly even to local government staff. In Deur and Butler's study, seventeen of the twenty-four states only share site locations with local government staff that meet the *Secretary of the Interior's Standards for Archaeology*.²⁶⁵ Others, including Virginia, have protocols in place to share this information with local governments that do not employ staff archaeologists.

The motive for these restrictions stems from the concern for archaeological site looting or damage. While this concern has legitimacy, a representative for the Washington SHPO when

²⁶⁵ See "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines -- Professional Qualifications Standards."

interviewed for Deur and Butler's study reminds us that "we're losing more sites to bulldozers than to looting."²⁶⁶ The potential loss due to looting must be weighed against what can be gained by providing this information to local planning staff who can use it to protect unknown archaeological resources.

Criteria for Determining Significance and Development of Historic Contexts

Only resources considered to be significant are offered the possibility of protection in the legislative context, so assessing significance is crucial.²⁶⁷ Further, determining which archaeological sites are significant and which are not under local archaeological review regulations has huge implications for the local municipality and the private developers or citizens required to conduct the archaeological investigations. When a site is considered eligible for listing in the National Register and/or a state or local inventory, more excavations are often required. Being too liberal with determining sites to be eligible leads to a large amount of money being spent on mitigation measures that result in the gathering of limited or redundant data. Archaeologist Lynne Sebastian contends that "being redundant is a terrible approach to public policy!"²⁶⁸ However, criteria for determining significance can also swing in the opposite direction and exclude potentially significant resources from being determined as such if they do not fit the mold.

Because the National Register is a major focus of preservation activities at all levels, its criteria, required for federal purposes, have been widely adopted for evaluating significance

²⁶⁶ Deur and Butler, "Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice," 198.

²⁶⁷ Kerber, "Introduction," 4.

²⁶⁸ Sebastian, "Deciding What Matters: Archaeology, Eligibility, and Significance," 96.

and eligibility for state and local inventories as well.²⁶⁹ For example, New York City uses National Register criteria for determining eligibility for listing in the New York State Register of Historic Places, and it is the basis for determining archaeological significance at the local level.²⁷⁰ But should National Register criteria be applied to archaeological sites under local review? In Chapter II's discussion of determining significance, Sebastian argues that the way that archaeology approaches the protection of resources is fundamentally different from other preservation professions and the way the National Register criteria have been adapted for the evaluation of archaeological sites is often awkward and incompatible. Further, this reliance on criteria designed for determining eligibility to the National Register becomes problematic when applied to resources in the local archaeological review process. The priorities of specific local municipalities are not considered. Some additional values of archaeological resources, beyond their potential to yield information, are reflected in the criteria used in the two examples below. While the National Register criteria can provide a foundation for municipalities with local archaeological review to build on, municipalities have the opportunity to define more meaningful criteria for determining significance – as such, the standardized approach should be avoided. When criteria consider other values, it recognizes that local context is vital.²⁷¹

²⁶⁹ "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines -- Secretary of the Interior's Standards for Evaluation," National Park Service, 1983, https://www.nps.gov/history/local-law/arch_stnds_3.htm.

²⁷⁰ "Guidelines for Archaeological Work in New York City" (New York City Landmarks Preservation Commission, June 2018).

²⁷¹ Tim Williams, "Archaeology: Reading the City through Time," in *Reconnecting the City: The Historic Urban Landscape Approach and the Future of Urban Heritage*, ed. Francesco Bandarin and Ron van Oers (New York: John Wiley & Sons, Inc., 2014).

Staff archaeologists in both Alexandria and Prince George’s County use very similar criteria when conducting archaeological reviews, both of which draw from the National Register criteria but with some variance. These include research value (the extent to which potential archaeological data would contribute to the expansion of knowledge), rarity (the resource’s potential to provide archaeological information about a person, structure, event, or historic process, for which there are very few examples), public value (level of importance to the community), and site integrity (the extent of site disturbance that would reduce research or public value). Alexandria also considers the presence of materials while Prince George’s County considers the interpretive value in place, or the extent to which the resource retains its spatial context and offers the opportunity for visual interpretation to the public.²⁷² The expansion of criteria to evaluate the value to the public will put municipal regulatory archaeology programs in a better position to focus on the social benefit that archaeology can provide to the community in the long term.²⁷³

The Secretary of the Interior’s Standards and Guidelines require that the significance of historic and archaeological resources be evaluated by applying the criteria within established historic contexts.²⁷⁴ Historic contexts identify the important research topics relating to a specific place, time, and theme, providing a way to define what is considered to be important information and determine significance in comparison to similar resources. Historic contexts

²⁷² “Archaeological Protection Code, The Zoning Ordinance of the City of Alexandria, Virginia,” Section 11-411: Archaeology Protection (1992), <https://www.alexandriava.gov/historic/archaeology/default.aspx?id=28146>; “Overview of Archeology Review Procedures in Prince George’s County.”

²⁷³ Lipe, “In Defense of Digging: Archeological Preservation as a Means, Not an End,” 27.

²⁷⁴ “Archeology and Historic Preservation: Secretary of the Interior’s Standards and Guidelines -- Secretary of the Interior’s Standards for Evaluation.”

often include a list of associated property or site types, descriptions of the ways in which these reflect the significance of the historic context, and descriptions of the physical characteristics and integrity a resource must possess in order to be considered representative of one of the identified property types or site types.²⁷⁵

To develop robust historic contexts, substantial amounts of time, staffing, and funding are required, which agencies and CRM archaeologists do not often have given the single project-focus of federal, state, and local compliance work. This results in consultants forgoing the development of true historic contexts and resorting to using background research as a proxy context for determining the significance of archaeological resources.²⁷⁶ To remedy this, local archaeology programs could develop municipality-wide historic contexts to be used for archaeological compliance investigations required at all levels. Historic contexts often provide guidance and definitions of how the significance of resources should be evaluated. This avoids digging for digging's sake – contexts help provide a clear pathway to what the municipality, and hopefully the public, has determined the archaeology's purpose to be for the community. If a local municipality invests in the development of a robust historic context to guide local regulatory archaeological review, unoriginal or cliché research questions can be avoided – resulting in more focused and purposeful archaeological investigations.

In Alexandria, the need to develop a context to allow for the accurate identification, evaluation, and interpretation of sites became apparent shortly after the ordinance was

²⁷⁵ The SRI Foundation and ICF International, "National Register of Historic Places Eligibility" (American Association of State Highway and Transportation Officials (AASHTO), November 30, 2007), 5, [http://onlinepubs.trb.org/onlinepubs/archive/NotesDocs/25-25\(33\)_FR.pdf](http://onlinepubs.trb.org/onlinepubs/archive/NotesDocs/25-25(33)_FR.pdf).

²⁷⁶ The SRI Foundation and ICF International, 44.

enacted. The early emphasis was on the Colonial and Federal periods of the city's history resulting in the stories of historically marginalized groups, the city's African American residents, in particular, being overlooked. By the late 1970s when the first City Archaeologist was appointed, the city's archaeological research was reoriented to include all groups of people who have called Alexandria home.²⁷⁷ Periods of significance as well as study themes – domestic, industrial, waterfront, religious, agricultural, African Americans – were established to guide locally mandated investigations.²⁷⁸ By broadening the definition of what would be considered archaeologically significant, Alexandria began to develop a more comprehensive view of its history and was also able to increase the ways the community could engage with its archaeological past.²⁷⁹

Planning for Artifact Storage

The archaeological community, particularly the cultural resource management field, is facing a curation crisis and has been since the 1970s when, even then, there were widespread issues of deterioration of existing collections, inaccessibility for research, little security, and lack of organization.²⁸⁰ To execute responsible archaeological research projects, however funded, it is imperative to consider the long-term curation of all archaeological materials – the artifacts themselves as well as associated documents. To ignore this responsibility would be unethical.²⁸¹ Local municipalities need to ensure there will be a place to store archaeological collections. The

²⁷⁷ Appler, "The Formation of the Alexandria Archaeological Commission," 25, 30.

²⁷⁸ Bromberg and Cressey, "Digging the Past for Fifty Years: A Model for Community Archaeology."

²⁷⁹ Appler, "The Formation of the Alexandria Archaeological Commission," 31.

²⁸⁰ Lynne P. Sullivan and S. Terry Childs, *Curating Archaeological Collections: From the Field to the Repository*, Archaeologist's Toolkit 6 (Walnut Creek: Altamira Press, 2003), 28.

²⁸¹ Karen Thomson, "Handling the 'Curation Crisis:' Database Management for Archaeological Collections" (Thesis, Seton Hall University, 2014).

repository should be a secure, climate-controlled facility as mandated by federal guidelines.²⁸²

The curation of artifacts does not just occur after fieldwork – it is a long-term process.

In general, all artifacts recovered from archaeological sites in the United States are the property of the landowner, unless they are donated, or deeded, to a repository. Most SHPOs and local governments recommend that landowners donate archaeological collections to a state or local repository for proper long-term storage and to make the collections available for research purposes. For example, Prince George’s County recommends that artifact collections and associated documentation be submitted to Maryland’s state-of-the-art archeological research facility, the Maryland Archeological Conservation Lab (MAC Lab), to assure collections will be placed in a stable curation and storage environment and to ensure accessibility for research by future generations.²⁸³ The current one-time storage fee for the MAC Lab as of this writing is \$600 for one standard size box.²⁸⁴

Alexandria boasts a museum space where artifacts are processed as well as a long-term storage facility. The Alexandria Archaeology Museum opened in 1984 and, in addition to featuring exhibits and other educational activities, it functions as a working laboratory. Once processed, some artifacts are used in exhibits or for educational programs, while the remainder of the collections is stored in the climate-controlled Alexandria Archaeology Storage Facility, a 1,500 square foot facility located a little over one mile from the museum. The storage facility

²⁸² Sullivan and Childs, *Curating Archaeological Collections*, 25.

²⁸³ “Guidelines for Archeological Review.”

²⁸⁴ “Archaeological Curation Fee Policy” (Maryland Historical Trust, Jefferson Patterson Park and Museum, Maryland Archeological Conservation Laboratory, January 1, 2019), <https://jefpat.maryland.gov/Documents/mac-lab/collections-fee-policy.pdf>.

was established in 1990. Over two million artifacts from over 150 archaeological sites are currently in the collection, which is made available for research purposes, as it is held in public trust. There is additional space reserved in the storage facility for future expansion.²⁸⁵

Alexandria does not charge a repository fee for collections that are donated to Alexandria Archaeology.²⁸⁶

In St. Augustine, the City Archaeologist partners with the Florida Museum of Natural History which serves as a repository for the city's artifact collections. The museum employs a collections manager, a conservator, museum technicians, and also receives assistance from student interns to help manage collections. New information gathered through excavations within the city is periodically shared with the public through museum exhibits.²⁸⁷

Anne Arundel County operates a public archaeological laboratory at the County-owned Historic London Town Gardens. The first county archaeologist, Al Luckenbach, started the curation facility. Since the county pays for the long-term curation of artifacts, there is no fee to submit to the repository.²⁸⁸ The current county archaeologist and staff are responsible for managing the collections and developing and implementing public programs to allow the public

²⁸⁵ "Collections at the Alexandria Archaeology Museum," City of Alexandria, Virginia, December 16, 2016, <https://www.alexandriava.gov/historic/archaeology/default.aspx?id=33502>.

²⁸⁶ "City of Alexandria Archaeological Standards, Collections Management Section" (Alexandria Archaeology, Office of Historic Alexandria, October 31, 2007), 9, <https://www.alexandriava.gov/uploadedFiles/historic/info/archaeology/AlexandriaArchaeologyCollectionsStandards2009.pdf>.

²⁸⁷ "St. Augustine: America's Ancient City, Saving the Past for the Future."

²⁸⁸ Cox, March 13, 2019.

to interact with the collections.²⁸⁹ This would not be possible without the help of their dedicated volunteers.

CLG Benefits and Other Grant Funding Opportunities

Local communities that have a preservation commission, maintain a cultural resources inventory, and have a historic preservation ordinance are eligible to achieve Certified Local Government status. As of January 2017, there were 1,966 communities in the CLG program.²⁹⁰ With CLG status comes the access to technical assistance and grants from SHPOs who reserve ten percent of their allocations from the Federal Historic Preservation Fund for CLG grants. For example, available funding in Maryland for 2019 was expected to be approximately \$80,000.²⁹¹ While many CLGs have used grant funds for projects and initiatives focused on the built environment, grants can be used for a variety of preservation purposes including archaeological documentation, protection, and education.²⁹²

An example of CLG funds being used for archaeological research can be found in Alexandria. The City and Alexandria Archaeology, the city's archaeology office, conducted non-invasive archaeological surveys at two historic cemeteries using CLG grant funding: Penny Hill Cemetery, a municipal burying ground established in 1795, and Douglass Memorial Cemetery, a

²⁸⁹ "London Town: The County's Archaeological Park and Museum," Anne Arundel County, Maryland, 2018, <https://www.aacounty.org/departments/planning-and-zoning/cultural-resources/archaeological-sites/Museum>.

²⁹⁰ "News Release: National Park Service Designates 38 New Certified Local Governments in 2016," National Park Service, Office of Communications, January 30, 2017, <https://www.nps.gov/orgs/1207/01-30-2017-certified-local-governments.htm>.

²⁹¹ "Certified Local Government Grant Program FFY 2019 Application Guidelines" (Maryland Historical Trust, Maryland Department of Planning, 2019), https://mht.maryland.gov/documents/PDF/grants/Grants_CLG_Guidelines.pdf.

²⁹² Deur and Butler, "Incorporating Archaeology Into Local Government Historic Preservation and Planning: A Review of Current Practice," 199.

segregated African American cemetery established in 1895. At both cemeteries, the number of documented burials far outnumbered the amount of visible grave markers. Ground-penetrating radar and electrical conductivity techniques were used to identify the locations of unmarked burials in order to better maintain and preserve these cemeteries.²⁹³

Public Component and Education

Alexandria's local archaeology program has successfully and consistently made cooperation with the public a top priority.²⁹⁴ As discussed above, the creation of the city's archaeology program began with the support of citizens who were concerned about protecting archaeological resources. In fact, the Archaeological Protection Code would likely have not been passed by the City Council had it not been spearheaded by the public.²⁹⁵

The public continues to play an integral role in the success of the program today. Volunteers, in particular, are fundamental to how Alexandria Archaeology accomplishes its goals; for example, in 2013, volunteers contributed over 8,200 hours to support the program's various activities.²⁹⁶ Generally, anyone over sixteen years of age can volunteer. Opportunities are available to help with historical research, field excavations, artifact processing (washing, labeling, identifying, and cataloging of artifacts), various hands-on educational and public programs, and administrative work.²⁹⁷ Some public programs offered by Alexandria Archaeology include Family Dig Days, walking tours and archaeological site tours, various events

²⁹³ "Non-Invasive Cemetery Survey," City of Alexandria, Virginia, November 5, 2019, <https://www.alexandriava.gov/historic/archaeology/default.aspx?id=111769>.

²⁹⁴ Appler, "Making the Community Archaeology/Local Government Connection."

²⁹⁵ Cressey, Reeder, and Bryson, "Held in Trust: Community Archaeology in Alexandria, Virginia," 7.

²⁹⁶ Appler, "The Formation of the Alexandria Archaeological Commission," 33.

²⁹⁷ "Volunteering at Alexandria Archaeology," City of Alexandria, Virginia, January 10, 2017, <https://www.alexandriava.gov/historic/archaeology/default.aspx?id=39222>.

like “Dive into Archaeology” and “Afternoon with Archaeologists,” archaeology summer camp, and lectures. Volunteers are honored every year for their contributions to the program.

The Alexandria Archaeology Museum receives over 30,000 visitors each year. Visitors view exhibits, participate in various hands-on activities, and can see first-hand how artifacts are processed in an archaeology laboratory.²⁹⁸ The Archaeology Museum is located in the Torpedo Factory Art Center, a living arts space, among working artists and galleries and functions as a living archaeology laboratory.²⁹⁹ Archaeology in Alexandria has become a shared experience where it is conducted with the public and not just for the public.³⁰⁰ From the beginning of the program, archaeology was not seen as an elite activity – it was a local issue that needed to be addressed by the residents. Citizens certainly needed and accepted the guidance of professionals but that was always understood within the context of partnerships with the local community, creating a sense of equality between the local community and professional archaeologists.³⁰¹

While Alexandria sets the bar relatively high when it comes to public involvement, it is by no means the only municipality that prioritizes and fosters its symbiotic relationship with the local community. Anne Arundel County and St. Augustine are a few examples of municipalities that not only invite interested volunteers to help with various tasks – they *need* this help. The ability to accomplish much of these tasks without volunteers would be severely limited. This is especially true for St. Augustine, where the city’s two full-time archaeologists are responsible

²⁹⁸ Bromberg and Cressey, “Digging the Past for Fifty Years: A Model for Community Archaeology.”

²⁹⁹ Cressey, Reeder, and Bryson, “Held in Trust: Community Archaeology in Alexandria, Virginia,” 5.

³⁰⁰ Cressey, Reeder, and Bryson, 1–2.

³⁰¹ Appler, “The Formation of the Alexandria Archaeological Commission,” 24.

for undertaking all review duties required by the city regulations including excavations. Without the support of dedicated volunteers who assist with daily operations in both the field and in the laboratory, many of whom are members of the St. Augustine Archaeological Association, St. Augustine's local archaeological review ordinance would be completely unsustainable.³⁰²

Anne Arundel County provides many opportunities for the public to be involved with various archaeological activities in the county. These include an archaeologist-led paddle tour of the Patuxent River and its history, archaeology lab open houses where citizens can observe or assist with the processing of artifacts, opportunities to help with excavations, and historic research assistance.³⁰³ The County has between thirty and forty regular volunteers, some of whom are very experienced in archaeological field techniques and have helped a great deal with labor gaps. The Cultural Resources Division also partners with STEM programs and gives local schoolchildren the opportunity to work on an archaeological excavation.³⁰⁴

A strong public participation element to a local archaeology program helps validate its value to the community and promote political support. This necessity to connect with the public and the greater community is further expanded upon in the following section through the examination of various partnerships developed by some of the illuminators.

³⁰² "Archaeology," City of St. Augustine, accessed September 23, 2019, <http://www.citystaug.com/165/Archaeology>.

³⁰³ "Volunteer Opportunities & Public Events, Archaeology and Preservation in Anne Arundel County," Anne Arundel County, Maryland, 2018, <https://www.aacounty.org/departments/planning-and-zoning/cultural-resources/volunteer-and-events/>.

³⁰⁴ Cox, March 13, 2019.

Partnerships

Municipal archaeology programs are not effective or relevant if they isolate themselves from other city departments, organizations, and private developers.³⁰⁵ The success of Alexandria's program would have never been possible without partnerships. Engaging the public is critical to gaining support for the program and regulations, and this is accomplished through collaboration with a number of local groups including the Alexandria Historical Society, the Alexandria Society for the Preservation of Black Heritage, the Friends of Alexandria Archaeology, and the Historic Alexandria Foundation. For example, the Friends of Alexandria Archaeology is a nonprofit group formed in 1985 that encourages participation in and support for archaeology. Alexandria Archaeology also partners with volunteers, developers, planners, members of descendant communities, among others, and can ensure that the public is being engaged and given a voice through these partnerships.³⁰⁶

Avocational archaeology groups are another source of support for local regulations and local programs. Avocational archaeologists are considered amateur archaeologists, not looters or relic hunters. As with professional archaeologists, avocational archaeologists see archaeological sites and artifacts as sources of information; whereas looters and relic hunters see sites only as sources of artifacts.³⁰⁷ Avocational groups can help protect archaeological resources and sites by lobbying for archaeological site protection at all levels of government. Avocational archaeology groups often have a wide range of members and have connections

³⁰⁵ Appler, "Understanding the Community Benefits of Municipal Archaeology Programs," 318.

³⁰⁶ Bromberg and Cressey, "Digging the Past for Fifty Years: A Model for Community Archaeology."

³⁰⁷ Hester A. Davis, "Avocational Archaeology Groups: A Secret Weapon for Site Protection," in *Protecting the Past*, ed. George S. Smith and John E. Ehrenhard (Boca Raton, Florida: CRC Press, Inc., 1991), 175.

with many different groups within the community including politicians, landowners, teachers, and even relic hunters.³⁰⁸ Avocational archaeology groups can be found across the United States, for example, the Society for Pennsylvania Archaeology, the Archaeological Society of Maryland, the Archaeological Society of Virginia, and many others.

The process of enacting a local archaeological ordinance in Pensacola, Florida, is an example of the benefits of creating and cultivating partnerships. As seen in many cities, urban renewal was a substantial factor in the destruction of Pensacola's archaeological resources. But unlike some other cities, when one of the most significant archaeological areas of the state was being devastated by urban renewal actions, there was not a massive outcry from the public. The professional archaeology and preservation community realized that local-level protection of archaeological sites was urgently needed. Partnerships played a huge role in the successful passing of local archaeological regulations in Pensacola. The first major partnership was between professional and avocational archaeologists. It was with their help that legislation was passed in 1985 to protect sites on city-owned property, rights-of-way, and on city-sponsored projects. This helped curtail the destruction from urban renewal activities but did nothing to lessen the impacts of private development. The regulations state that the city archaeologists can make recommendations to private landowners for archaeological investigations, but they are strictly voluntary.³⁰⁹ Despite this limitation, the professional and avocational archaeologists approached private developers and proposed to survey properties before construction to

³⁰⁸ Davis, 177–78.

³⁰⁹ "City of Pensacola, Policies of the City Council" (1985), <https://www.cityofpensacola.com/DocumentCenter/View/31/Council-Policies-PDF?bidId=>.

determine the potential for archaeological resources and were even able to negotiate sponsored investigations. The second significant partnership in Pensacola was with the city itself. A city-wide survey was successfully organized and funded by both the city and grants from private foundations. The resulting report can be used by city staff for planning purposes. Archaeology is now managed just like any other public concern such as water quality, runoff, and air quality.³¹⁰

Another example of valuable partnerships can be found in Anne Arundel County. The County's Cultural Resources Division has partnered with the Anne Arundel Genealogical Society and Preservation Maryland, a state non-profit organization, to offer a cemetery documentation training workshop to get the public involved in a countywide cemetery survey, shifting much of the field survey efforts to volunteers. The Lost Towns Project is a non-profit organization that focuses on the preservation and stewardship of cultural and archaeological resources in Anne Arundel County and surrounding areas. Lost Towns is especially integral in fostering public engagement with the county's archaeological resources, providing volunteer opportunities and a multitude of avenues to connect its archaeological research with the public. It is also beneficial to the County's regulatory archaeology program as it can cover archaeological research gaps that staff archaeologists could not and also fund side projects.³¹¹

³¹⁰ Judith A. Bense, "Archaeology at Home: A Partnership in Pensacola, Florida," in *Protecting the Past*, ed. George S. Smith and John E. Ehrenhard (Boca Raton, Florida: CRC Press, Inc., 1991), 117–19, 122.

³¹¹ Appler, "Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology's New Best Friend," 190.

Other Practices: A Potpourri

This section presents additional practices employed by a few of the illuminators relating to archaeological funds, time limits for excavations, and unanticipated discoveries. Santa Fe's ordinance established an Archaeological Fund. A portion of every building permit fee goes into this fund for use by the Archaeological Review Committee to provide financial support to projects. Projects in which the developer has reached its cap spending amount³¹² or that uncover unexpected discoveries, and city-wide surveys, among others, are eligible to use these funds.³¹³ As discussed in an earlier section, St. Augustine also uses a similar fund, the General Fund, and charges permit fees to fund excavations. Santa Fe – and St. Augustine, as previously discussed – also sets a maximum time allowed for mandated excavations – no more than fifteen regular eight-hour days carrying out excavations or an additional twenty days carrying out additional investigations for significant sites.³¹⁴

The inclusion of guidelines to be used in the event that artifacts or features, or unanticipated discoveries, are uncovered during construction activities is fairly common in local archaeological regulations. For example, Albany's ordinance states that "if any of the following features are discovered on the site, all activity that could disturb...or destroy the feature must stop immediately, and the applicant or property owner must notify the City promptly": human remains or burials; evidence of foundations or infrastructure built within the last 50 years; or

³¹² Santa Fe's Archaeological Review Districts Ordinance defines a cap dollar amount that a developer is required to spend on treatment of significant archaeological sites. As of 2017, this maximum funding limit is one percent of the valuation of the property as shown on the building permit.

³¹³ Grzeskowiak Ragins, "Archaeology in Santa Fe: A Public-Private Balancing Act," 205; Municipal Charter and Code of Ordinances, City of Santa Fe, New Mexico.

³¹⁴ Municipal Charter and Code of Ordinances, City of Santa Fe, New Mexico.

evidence of railroad structures, canals, dams, or locks.³¹⁵ Santa Fe’s code also includes an unexpected discoveries clause that warns that failure to report such finds can result in a suspension of construction permits.³¹⁶ Conversely, Portland’s zoning code does not include an unanticipated discoveries clause that applies to projects falling under local review. “The zoning code does not address new discoveries of archaeological resources found during project construction. The applicant should be aware of state and federal regulations that apply to such discoveries.”³¹⁷ In particular, NAGPRA is a federal regulation that would apply to the discovery of human remains of Native American origin.

Archaeological Review Practices: Matters to Consider

Following the above examination of various archaeological review practices utilized by the illuminator municipalities, this section addresses a few examples of practices that may have either fallen short of effectively providing archaeological resource protection or have proven to be inherently outdated or inappropriate in their application. This discussion also brings attention to particular issues that should be considered when implementing some of these effective practices.

Archaeological zones can be used as a way to define which projects require archaeological review under local regulations or to further guide thresholds for review. To remain effective, the zones should be periodically reviewed and revised based on new information gathered from subsequent archaeological investigations or development activities

³¹⁵ Unified Sustainable Development Ordinance, City of Albany, New York.

³¹⁶ Municipal Charter and Code of Ordinances, City of Santa Fe, New Mexico.

³¹⁷ Columbia South Shore Plan District, Title 33, Planning and Zoning, Portland, Oregon.

that could affect their relevance. Alexandria's archaeological resource area map was created in 1986 and the most recent creation date provided is 2002, however that may just be when the current version was created using GIS. Therefore, Alexandria's resource areas are based on data from the 1980s or early 2000s at best. In fact, while the resource area map may have been helpful initially, staff began to shift towards other more useful and precise tools to determine if a project requires archaeological investigation including GIS and reviewing the findings of previous archaeological work in the City. Further, the City Archaeologist does not have plans to update the archaeological resource map at the present time.³¹⁸ Santa Fe's archaeological district map was also created in the late 1980s and, at best, may have been updated in 1999 when it was printed in the city's General Plan. Municipalities that utilize archaeological zones, districts, or areas to determine archaeological potential should review the maps and associated data at a suitable interval, for example, every five years.

Historic contexts used to guide local archaeological review and research should also be regularly revised based on new data from archaeological investigations to ensure their relevance and validity. Sebastian argues that in order to better assess a site's significance, focus should be placed on synthesizing existing survey and excavation data.³¹⁹ This synthesized data should then be included in historic contexts or be used to update existing ones. In a piece exploring the challenges of disseminating archaeological data, Julia King recommends that archaeological syntheses be produced for various types of study areas, whether for a particular municipality, state, or region, that pull together information on previous archaeological

³¹⁸ Breen, e-mail to the author, October 7, 2019.

³¹⁹ Sebastian, "Deciding What Matters: Archaeology, Eligibility, and Significance," 98–99.

surveys, known sites, and historical data into a comprehensive document to help make decisions on significance.³²⁰ In Maryland, the MHT launched its Archaeological Synthesis Project in 2007 with the goal of synthesizing data from the thousands of Phase II and III excavations conducted statewide in the past decades. The searchable database provides information on original site survey files and report information but also generates synopsis reports with summaries of each excavation project. Maryland's Archaeological Synthesis Project allows for the comparison of critical data from these sites and the synthesized data will help guide future investigations and research questions by identifying data gaps.³²¹ This database is accessible through a public version and a professional version, and is available for use by CRM professionals, agencies, and municipalities across the state.

When crafting criteria for determining significance of archaeological resources in the local review process, Sebastian's proposal to develop a systematic way of placing sites in categories or levels of significance could be explored. The options for significance would not be either eligible or non-eligible – they would have to be flexible and comprehensive.³²² Under local archaeological resource protection, the goal is to determine what should be done about an archaeological site threatened by immediate destruction. Sebastian suggests that we move away from the notion that a site needs to be considered eligible, or it is going to be destroyed. A more sensible approach is necessary – a significance-based approach that lets us manage

³²⁰ Julia A. King, "The Challenges of Dissemination: Accessing Archaeological Data and Interpretation," in *Archaeology & Cultural Resource Management: Visions for the Future*, ed. Lynne Sebastian and William D. Lipe, School for Advanced Research Advanced Seminar Series (Santa Fe, New Mexico: School for Advanced Research Press, 2009), 156–57.

³²¹ "The MHT Archeological Synthesis Project" (Maryland Historical Trust, 2015), https://mht.maryland.gov/documents/pdf/archeology/arch_synthesis_detail.pdf.

³²² Sebastian, "Deciding What Matters: Archaeology, Eligibility, and Significance," 101–2.

sites and treat them according to their current and future information potential. Time and money, whether the municipalities', the taxpayers', or the private sectors', could then be spent on archaeological research that yields the greatest return in knowledge of the past, education, cultural preservation, and other public benefits.³²³ The example algorithms that Sebastian presents for sorting sites into significance categories will not be covered here as it seems that the variables could be determined by an individual municipality; however, a hypothetical set of categories provided by Sebastian are presented in Table 4. Category 5 in particular demonstrates how archaeological sites can be determined significant by the greater community of interested citizens whose definition of significance and value may differ from the status quo, including living descendants or locally-marginalized groups such as African Americans, women, low-income communities, and immigrant communities.

Category 1	Sites likely to contribute significantly to current research questions and theoretical issues
Category 2	Sites likely to yield substantial information about the past but whose current research potential has been largely exhausted by previous excavation of similar sites
Category 3	Sites whose information potential cannot be tapped with current research approaches and archaeological methods
Category 4	Sites whose information potential appears to have been exhausted by the act of recording their location and characterizing their contents
Category 5	Sites with high traditional cultural values as identified by descendant communities or other sources

Table 4: Example of significance categories presented by Sebastian. [Source: Sebastian, "Deciding What Matters: Archaeology, Eligibility, and Significance," 2009.]

³²³ Sebastian, 114.

Sebastian's criticism above is of the National Register criteria and its "eligible-not eligible" approach, but because most local governments use the same or very similar criteria, her points can be directly applied to the local review process as well. Further, there is likely more of a chance that this change could be made at the local level long before it is made at the federal level, particularly with municipalities that are currently passing their own ordinances, or will in the near future, and can take this into consideration before the regulations are crafted.

Further, the public should be involved in defining what is considered significant in the local archaeological review process. Building on the discussions above regarding the reevaluation of the criteria used to determine significance – the National Register criteria and the similar criteria often employed at the state and local levels – and the recommendations from Sebastian and others to shift the focus of criteria towards public value and the importance of local context, it logically follows that the public must have a seat at the table when the following questions are formally considered: What is important to the understanding of this community's history? Who is it important to? What should be protected? How can these resources bring value to this community?

In cultural resource management, in particular, the responsibility of determining significance has generally been a top-down expert-driven endeavor which tends to underestimate resources that are important to a particular community, favoring types of resources with which experts are more comfortable and familiar.³²⁴ A more community-driven approach must be employed in the local archaeological review process. Richard M. Hutchings,

³²⁴ Dirk H. R. Spennemann, "Gauging Community Values in Historic Preservation," *CRM: The Journal of Heritage Stewardship* 3, no. 2 (Summer 2006): 10.

Director of the Institute for Critical Heritage and Tourism, has explored the “dark side” or “shadow” of cultural resource management and its “McDonaldization” that “have transformed heritage stewardship into a rigid, bureaucratic, elite-driven...institution.”³²⁵ Hutchings’ study embraces the fact that cultural or heritage resource management is at a crossroads, particularly in regard to its confidence in legitimacy and power – top-down resources management no longer works and “the era of expert-knows best decision making is all but over.”³²⁶

Lastly, involving and consulting with the public in local archaeological review programs is another practice that, if not considered effectively, can be detrimental to some municipalities. After its initial formation in 1981, New York City’s archaeology program boasted an ethic of active community outreach and strong engagement through the implementation of several public archaeology projects. Unfortunately, due to economic challenges, budget cuts, and political shifts over the last few decades, civic involvement and outreach are no longer a high priority. Sherene Baugher, New York City’s first City Archaeologist, has observed that not many CRM projects receive publicity and, therefore, the public is not aware of what is discovered in their own city. Baugher believes that the city’s citizens, who have shown interest in their archaeological heritage in the past, deserve to know how their tax dollars are spent.³²⁷

Although the African Burial Ground project, discussed in Chapter II, is not an example of a local undertaking – it involved the federal Section 106 review process – it is wise for any

³²⁵ Richard M. Hutchings, “Meeting the Shadow: Resource Management and the McDonaldization of Heritage Stewardship,” in *Human-Centered Built Environment Heritage Preservation: Theory and Evidence-Based Practice*, ed. Jeremy C. Wells and Barry Stiefel (New York, NY: Routledge, Taylor & Francis Group, 2019), 67–87.

³²⁶ Derek Armitage, Fikret Berkes, and Nancy Doubleday, eds., *Adaptive Co-Management: Collaboration, Learning, and Multi-Level Governance.*, UBC Press (Vancouver, 2007) in Hutchings, “Meeting the Shadow: Resource Management and the McDonaldization of Heritage Stewardship,” 79.

³²⁷ Baugher, “Reflections on the New York City Archaeology Program (1980-2016),” 251–52.

municipality considering local archaeological review to heed the lesson it provides on the importance of public involvement and engagement in archaeological research in general. The GSA's delayed engagement with the public, particularly with the descendant community, showed a lack of concern and respect for both those buried in this sacred place as well as the contemporary African American community. Efforts were not made to incorporate these stakeholders in the project planning stage, denying them ownership of their own sacred past.³²⁸

Conclusion

Because the appropriateness and success of specific regulatory practices are dependent upon the municipality itself – different methods work better for different places – it is futile to attempt to make sweeping statements about which of the above practices are the most effective. But some general issues have become clear, and the above examination of effective practices will provide the basis for solutions and recommendations suggested for Baltimore City in the two remaining chapters. It seems logical that one of the most important considerations regarding local archaeological review regulations is to ensure the overarching goal is to serve the public. Local regulations and associated practices should be formed around what value they can bring to the community. Citizens should be part of the initial phases of crafting local regulations. This will help identify which practices should be adopted to make the review process more palatable to the taxpayer. The more efficient the archaeological review process, the less the public's resources are wasted. The input from the public will also help determine

³²⁸ Evan Schueckler, "Choosing How to Remember: Negative Heritage and Values-Centered Preservation" (Philadelphia, Pennsylvania, University of Pennsylvania, 2018), 72, https://repository.upenn.edu/hp_theses/660.

which practices will lead to the protection of archaeological resources that have the most meaning to the community – to *all* groups within the community. Citizens must be provided the opportunity to participate in, benefit and learn from, and recognize their ownership over the archaeological information recovered. Regulatory archaeological programs must be transparent, open, available, and inclusive, or archaeologists and supporters of local regulations risk alienating the public – the people that have the ultimate say in whether or not the power and resources of their local government should be used for the protection of archaeological resources.³²⁹

³²⁹ Appler, “Toward a Theory of Municipal Archaeology: Why Local Government Should Become Public Archaeology’s New Best Friend,” 199.

CHAPTER IV

CREATING EFFECTIVE LOCAL ARCHAEOLOGICAL REVIEW, THE TEST CASE: RECOMMENDATIONS FOR BALTIMORE CITY

Introduction

Defining effective local archaeological protection practices requires the consideration of many factors. The variety of archaeological resources currently threatened by private and municipal development can be gleaned from an overview of the development and major events in Baltimore's prehistory and history. Baltimore's government organization and political climate help place regulatory archaeology in its local framework. The development and mission of Baltimore's local preservation commission, the Commission for Historical and Architectural Preservation (CHAP), and the now-defunct public archaeological program, the Baltimore Center for Urban Archaeology (BCUA), provides a background for the current scope of archaeological resource protection at the local level. A look at local preservation and archaeology organizations, specifically those already advocating for archaeological resource protection, reveals their potential to be partners in the pursuit of a local regulatory program. Finally, these factors help support a number of recommendations proposed for how the City of Baltimore can become a more active steward of its known and unknown archaeological resources.

Baltimore's Pre-History and History: A Snapshot

A comprehensive city-wide historical context can help identify gaps in the current archaeological dataset and can play a role in identifying underrepresented archaeological examples of specific site types, cultural affiliations, and temporal periods in the city's known archaeological record. Further, the purpose of a historical context should go beyond providing direction for archaeological research. Historic contexts must also connect the historic and archaeological data with contemporary society by examining the implications of the past on the present, subsequently creating a personal and collective connection with the past. The foundation of all historic contexts is a historical overview of the locality, and for Baltimore, the historical overview provided below is by no means exhaustive. It draws from the following comprehensive prehistoric contexts for Maryland and the Chesapeake Region, and others: Richard Dent's *Chesapeake Prehistory: Old Traditions, New Directions* (1995)³³⁰; Stephen Potter's *Commoners, Tributes and Chiefs: The Development of Algonquian Culture in the Potomac Valley* (1993)³³¹; and William Gardner's *Early and Middle Woodland in the Middle Atlantic: An Overview* (1982)³³². J. Thomas Scharf's *History of Baltimore City and County, from the Earliest Period to the Present Day*³³³ – which was 1881 in this case – may technically be outdated; however, Scharf's account is exhaustive and extremely detailed. Matthew Crenson's

³³⁰ Richard J. Dent, *Chesapeake Prehistory: Old Traditions, New Directions* (New York: Plenum Press, 1995).

³³¹ Stephen R Potter, *Commoners, Tribute, and Chiefs: The Development of Algonquian Culture in the Potomac Valley* (Charlottesville; London: University Press of Virginia, 1994).

³³² William M. Gardner, "Early and Middle Woodland in the Middle Atlantic: An Overview," in *Practicing Environmental Archaeology: Methods and Interpretations*, ed. Roger W. Moeller, Occasional Paper No. 3 (Washington, Connecticut: American Indian Archeological Institute, 1982), 53–86.

³³³ J. Thomas Scharf, *History of Baltimore City and County, from the Earliest Period to the Present Day* (Philadelphia: Louis H. Everts, 1881), <https://archive.org/details/historyofbaltimo01scha/page/n8>.

Baltimore: A Political History (2017)³³⁴ is a current and comprehensive source on Baltimore's history written through a political lens; thus, providing a detailed insight into Baltimore's physical, economic, social, and cultural development.

Prehistory of the Baltimore Region

The prehistoric era in Maryland is divided into three periods by most archaeologists – Paleoindian, Archaic, and Woodland. The Archaic and Woodland periods are further broken up into three sub-periods – Early, Middle, and Late. The dates of each of these periods and sub-periods provided in this section are approximate, as there is some disagreement within the archaeology community about these date ranges.³³⁵

Human occupation of what is now Baltimore, and Maryland in general, began as early as 11000 or 12000 BCE.³³⁶ Table 5 and Table 6 present an overview of the prehistoric periods and sub-periods including their approximate date ranges, environmental characteristics, settlement and subsistence patterns, and artifact types commonly recovered from archaeological sites dating to these time periods. A number of comprehensive prehistoric contexts published for Maryland and the Chesapeake Region provide the basis for this overview.³³⁷

³³⁴ Matthew A. Crenson, *Baltimore: A Political History* (Baltimore: Johns Hopkins University Press, 2017), <https://www.muse.jhu.edu/book/55895>.

³³⁵ "Maryland's Prehistory," Jefferson Patterson Park & Museum, State Museum of Archaeology, Diagnostic Artifacts in Maryland, December 30, 2012, <https://apps.jefpat.maryland.gov/diagnostic/PrehistoricCeramics/prehistoryinMD.html>.

³³⁶ The abbreviation "BCE" is used here to reference Before Common Era, or the equivalent to "BC" (Before Christ). The abbreviation "CE" refers to Common Era, or the equivalent to "AD" (Anno Domini).

³³⁷ Maureen Kavanagh, *Archaeological Resources of the Monocacy River Region, Frederick and Carroll Counties, Maryland* (Submitted to the Maryland Historical Trust, Frederick County Planning Commission, Carroll County Planning and Zoning Commission, 1982); Gardner, "Early and Middle Woodland in the Middle Atlantic: An Overview," 53–86; Dent, *Chesapeake Prehistory: Old Traditions, New Directions*, 124, 165–77; "Maryland's Prehistory"; Jeffrey L. Hantman, "Virginia in a North American Perspective," in *Early and Middle Archaic Research in Virginia: A Synthesis*, ed. Theodore R. Reinhart and Mary Ellen N. Hodges, Special Publication No. 22 (Richmond: Archeological Society of Virginia, 1990), 138.

Period / Sub-Period	Date Range	Environment, Settlement, and Subsistence Patterns	Archaeological Evidence
Paleoindian	12000 – 9500 BCE	<ul style="list-style-type: none"> • Rapid climate change during a period of glacial warming • Deciduous forests extend northward • Small hunting camps tied to sources of high-quality lithic materials • Settlement centered on large rivers • Very mobile populations dependent on seasonal availability of resources 	<ul style="list-style-type: none"> • Large, fluted, lanceolate-shaped projectile points (i.e., Clovis type) • Lithic material: jasper, chert, chalcedony, quartz, quartzite • Other tools: scrapers, spokeshaves, awls, drills, wedges, utilized flakes, hammerstones, knives
Early Archaic	9500 – 7000 BCE	<ul style="list-style-type: none"> • Less mobile populations • More seasonally organized settlements • Large residential camps on floodplains and terraces of large rivers; short-term camps on uplands • Trade networks develop 	<ul style="list-style-type: none"> • Notched, stemmed, and bifurcated projectile points • Lithic material: increased use of quartz and quartzite • Ground-stone tools • Formal hearths
Middle Archaic	7000 – 3750 BCE	<ul style="list-style-type: none"> • Rising temperatures, sea-level rise, summer droughts • Emphasis on seasonal availability of floral and faunal resources • Plant foraging supplements hunting • Settlement centered along tributaries of river; small base camps near inland swamps; small short-term upland hunting camps 	<ul style="list-style-type: none"> • Stemmed projectile points • Lithic material: lower-quality local materials • Increased tool diversity: axes, grinding stones, nutting stones
Late Archaic	3750 – 1250 BCE	<ul style="list-style-type: none"> • Warmer and drier climate, continued sea-level rise • Settlement focused on estuaries, freshwater streams, and inland swamps • Hunting/catching of fish, shellfish, waterfowl, deer, turkeys, and turtles • Collection of nuts and other plant foods 	<ul style="list-style-type: none"> • Broad and narrow blade projectile points • Use of more multifunctional tools, recycling of tools • Increased use of ground-stone tools: axes, hammerstones, mortars, fishing net weights, atlatl weights, drills • Carved steatite cooking stones, bowls, other vessels

Table 5: Overview of the Paleoindian and Archaic prehistoric periods. [Source: Compiled by author from Kavanagh (1982), Gardner (1982), Dent (1995), Jefferson Patterson Park & Museum (2012), and Hantman (1990).]

Period / Sub-Period	Date Range	Environment, Settlement, and Subsistence Patterns	Archaeological Evidence
Early Woodland	1250 BCE – 50 CE	<ul style="list-style-type: none"> • Sedentary settlement focused on riverine areas • Small seasonal camps elsewhere • Increased use of seed plants – precursor to crop cultivation • Increased consumption of shellfish, especially oysters 	<ul style="list-style-type: none"> • First use of pottery (ceramics) • Subterranean storage pits • House features • Oyster shell middens
Middle Woodland	50 – 950 CE	<ul style="list-style-type: none"> • Seasonal settlement; food and other resources from a wider range of aquatic and upland environments • Large, multi-band base camps with smaller, family-sized summer camps • High-carbohydrate diet suggests the transition from hunting and foraging to agriculture was starting 	<ul style="list-style-type: none"> • New ceramic types • Lithic material: non-local rhyolite, argillite, and jasper • Rock shelters
Late Woodland	950 – 1600 CE	<ul style="list-style-type: none"> • Less seasonal movement • Settlement near large streams and soil suitable for agriculture • Large villages, some within palisades for protection from other groups • Cultivation of maize, squash, and beans • Hunting of wild game and collection of wild plants 	<ul style="list-style-type: none"> • Bow and arrow • Bone tools, beads, and clay tobacco pipes • Thinly potted and extensively decorated ceramics • Triangular projectile points • Lithic material: a shift back to the use of local resources

Table 6: Overview of the Woodland prehistoric periods. [Source: Compiled by author from Kavanagh (1982), Gardner (1982), Dent (1995), Jefferson Patterson Park & Museum (2012), and Hantman (1990).]

In the Paleoindian period, the Chesapeake Bay did not exist as it does presently – it would have consisted of mostly dry land along the ancestral Susquehanna River that flowed directly into the Atlantic Ocean.³³⁸ While high-quality lithics such as jasper and chert were the most preferred materials to manufacture tools in many parts of North America, lower-quality materials such as quartz, quartzite, and slate may have been more common in the Chesapeake

³³⁸ “Maryland’s Prehistory.”

Bay region. The environment of the Early Archaic period was very similar to that of the Paleoindian period. Archaeological sites from this period tend to be multicomponent sites, meaning that the sites were frequently reoccupied over time.³³⁹ As the population increased in the Middle Archaic period, mobility decreased and distinct activity areas including those used for tool manufacture and food processing activities are evident. More variety in the types of tools used in this period suggests that a broader range of food sources were available. In the Late Archaic period, the diversity of stone tool types decreased as more multifunctional tools were preferred and some tools were reused for different purposes. For example, drills and scrapers were made from used projectile points. By the end of the Archaic period, the Chesapeake Bay had mostly formed, and one of the biggest changes in subsistence strategies was the exploitation of estuarine resources including fish and shellfish.³⁴⁰

The most important marker of the beginning of the Early Woodland period was the production of ceramic vessels. The presence of subterranean storage pits and dense midden deposits, including shell middens, in the archaeological record suggests this was a time of increased sedentism. While sedentism generally increased into the Middle Woodland period, evidence of non-local lithic materials suggests long-distance trade expanded. Large villages began to be developed about 700 years ago during the Late Woodland period, some of which were comprised of dispersed houses while others were located within palisades, suggesting that warfare was more common in this period.³⁴¹

³³⁹ Dent, *Chesapeake Prehistory: Old Traditions, New Directions*, 124–27, 162.

³⁴⁰ Dent, 176–87.

³⁴¹ “Maryland’s Prehistory.”

After about 1500 CE, there was an increase in social and political activity among native tribes in Maryland and Virginia, and an alliance of coastal plain Algonquian groups, including the Assateague, Choptank, Delaware, Matapeake, Patuxent, and Piscataway, formed before Europeans arrived in the area.³⁴² The period from 1600 to approximately 1650 is referred to as the Contact period, when interaction between native and non-native populations increased, particularly English colonists from Jamestown who began exploring the Chesapeake region in 1608.³⁴³ Some archaeologists believe that there were no permanently settled native groups within the area where Baltimore is situated during the Contact period. In fact, a 1608 map created by Captain John Smith does not show any native settlements in the Baltimore vicinity. However, short-term hunting camps, lithic procuring and processing sites, and other temporary occupation sites were likely located across the entire region. Reasons for a lack of permanent settlements include increased frequency of droughts and the southward migration of the Susquehannock tribe from New York to south-central Pennsylvania that may have pushed groups to the south and east to coastal areas.³⁴⁴ The Susquehannock tribe used what is now Baltimore County as hunting and trapping grounds. They controlled much of the upper tributaries of the Chesapeake but made little contact with the Powhatan group to the south of Maryland.³⁴⁵ The wider Chesapeake region was occupied by Algonquian speakers but was

³⁴² Potter, *Commoners, Tribute, and Chiefs*, 151.

³⁴³ "Maryland's Prehistory."

³⁴⁴ Stuart Fiedel, John Bedell, and Charles LeeDecker, "Cohongorooto: The Potomac Above the Falls, the Archeological Identification and Evaluation Study of Chesapeake & Ohio Canal National Historical Park – Rock Creek to Sandy Hook (Mile Markers 0 to 59) — Volume I" (Washington, D.C.: The Louis Berger Group, Inc., 2005), 42.

³⁴⁵ Adam Youssi, "The Susquehannocks' Prosperity & Early European Contact," *Historical Society of Baltimore County Blog* (blog), 2006, <http://www.hsobc.org/on-the-susquehannocks-natives-having-previously-used-what-is-now-baltimore-county-as-hunting-grounds/>.

surrounded by other groups: Iroquoian to the north, Siouan to the northwest, and other groups to the west. The Nanticoke tribe was based on the Eastern Shore. The Piscataway tribe of Algonquians, located south of Baltimore along the north side of the Potomac River, was led by a chief and consisted of six or seven groups each led by a subchief.³⁴⁶

By the beginning of the eighteenth century, the majority of the native population of Maryland had either migrated or been decimated by disease. However, while Baltimore may not be home to large groups of Native Americans indigenous to the area, there is a vibrant community of Lumbee Indians in East Baltimore. The Lumbee are native to North Carolina, but many migrated to Baltimore after World War II looking for employment. While the community has dispersed to surrounding areas over the decades, their presence remains, and their community has contributed to the many layers of history of the East Baltimore neighborhood once referred to as “the reservation.”³⁴⁷

The Birth of Baltimore Town

The initial development of Baltimore did not come about like most other port cities on the East Coast as it was not the first destination for most European settlers – Baltimore’s development began almost a century after the first colonists established a settlement in Maryland in 1634. The area now known as Baltimore City was part of Baltimore County when the county was established in 1659.³⁴⁸ Colonial Maryland’s main crop was tobacco. White

³⁴⁶ Dent, *Chesapeake Prehistory: Old Traditions, New Directions*, 261–64.

³⁴⁷ Ashley Minner, “The Lumbee: Indigenous Peoples of North Carolina in Baltimore,” *Brewminate*, May 14, 2019, <https://brewminate.com/the-lumbee-indigenous-peoples-of-north-carolina-in-baltimore/>.

³⁴⁸ Phillip J. Hill, Ward Bucher, and Lisa Johnson, “An Identification and Evaluation of Cultural Resources Located Within the Proposed Phase 2 Gwynns Falls Pathway, Baltimore City, Maryland” (Silver Spring, Maryland: Archeological Testing and Consulting, Inc., 1999), 3–11.

indentured servants provided much of the labor for tobacco plantations for most of the seventeenth century. The importation of enslaved Africans accelerated after 1680. Many farmers could build docks on their properties because of the many navigable estuaries of the Chesapeake Bay; therefore, they did not have a need for a large port city to ship their tobacco crop.³⁴⁹ However, by 1706, the colony's legislature was concerned that relying on a single crop would not bode well for economic development. To help stimulate trade of other goods, the legislature proposed a port of entry for each county. One of the locations in Baltimore County was Whetstone Point, now Locust Point. By 1729, a small settlement had sprung up on the Northwest Branch of the Patapsco River, north of Whetstone Point. In that same year, the state assembly granted a charter naming this settlement of just forty-three people Baltimore Town, after Cecilius Calvert, 2nd Lord Baltimore.³⁵⁰ The town was bounded by the harbor to the south, the Jones Falls River and marshes to the east, a bluff and woods to the north, and large ravines to the west.³⁵¹

The political system that created Baltimore Town was essentially a feudal one. The Lord Proprietor owned and governed Maryland and had full authority to create courts and laws, establish governing bodies, and appoint governing officials. But this system of feudal authority – a system designed for a hierarchical society built on the submission of peasants – was not so easily accepted by the colonists. When the town charter for Baltimore was created, the provincial assembly provided very little authority to the seven town commissioners they

³⁴⁹ Crenson, *Baltimore: A Political History*, 9.

³⁵⁰ Crenson, 10.

³⁵¹ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore" (Baltimore City Department of Planning, July 9, 2006), http://www.baltimorecity.gov/sites/default/files/5_History.pdf.

appointed. The commissioners, who were not voted into position by the town's citizens, could not tax, legislate, or regulate. Their only responsibility was to ensure that the boundaries of the town's original sixty one-acre lots were maintained.³⁵²

Growth was very slow in the town's beginning, mainly because of its proximity to Annapolis, the center of the proprietary government and the resultant growing market. Annapolis, not Baltimore, was the destination for wealthy merchants and politicians throughout most of the eighteenth century.³⁵³ The charter for Jones Town, a small ten-acre village northeast of Baltimore Town, was granted in 1732, and fifteen years later, they were joined through the annexation of an eighteen-acre tract between the two areas. Additional annexations occurred in 1750, 1765, and 1773, after which the town added eighty-three acres to the east including the village of Fell's Point. When Baltimore Town and Jones Town merged in 1747, the law behind this merger further allowed "any Person to make Land below the Banks of Baltimore Town and where the water usually flows," meaning that if someone used the landfilling process to create new waterfront property, they owned that new property.³⁵⁴ Because of this and subsequent landfilling activities, Water Street, which was originally adjacent to the harbor's edge, is now more than two blocks inland.³⁵⁵ Archaeological excavations in Baltimore in the 1980s revealed a great deal about early landfill practices and waterfront

³⁵² Crenson, *Baltimore: A Political History*, 10–12.

³⁵³ Esther Doyle Read, "Digging Deeper: Unearthing Baltimore's Rich Historical Landscape" (Helen Denit Honors Program Lectures, University of Baltimore, Baltimore, Maryland, April 22, 1998), 3.

³⁵⁴ Crenson, *Baltimore: A Political History*, 12–16.

³⁵⁵ Doyle Read, "Digging Deeper: Unearthing Baltimore's Rich Historical Landscape," 4.

technologies including information on the nature of the fill, the artifacts in the fill, and lost technologies utilized to hold the fill in place or to build on unstable landfill.³⁵⁶

A sketch was created by a Whetstone Point property owner, John Moale, depicting Baltimore Town in 1752 with twenty-five residences housing about two hundred people, two taverns, a church, and a few businesses (Figure 8). By 1774, Baltimore had reached a population of about 5,000 and would soon become the fastest growing city in the colonies with about 18,000 residents in 1794.³⁵⁷ This rapid growth was largely due to Maryland's expanding grain trade. The tobacco market declined, and Maryland farmers shifted their production efforts to flour made from wheat grown in the surrounding countryside. A number of flour mills were built along the various rivers of Baltimore – the Jones Falls, Gwynns Falls, and Patapsco – and warehouses were built on wharves in the harbor. Roads were extended from Baltimore to the west and the north and ships sailed from Baltimore to ports in Europe, the Caribbean, and South America. The growing economy attracted immigrants from many countries including Ireland, Scotland, and Germany through the mid- to late-eighteenth century.³⁵⁸

³⁵⁶ Joseph Gary Norman, "Eighteenth-Century Wharf Construction in Baltimore, Maryland" (MA thesis, Williamsburg, Virginia, College of William and Mary, 1987) in Rothschild and diZerega Wall, *The Archaeology of American Cities: The American Experience in Archaeological Perspective*, 55–56.

³⁵⁷ Crenson, *Baltimore: A Political History*, 18.

³⁵⁸ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

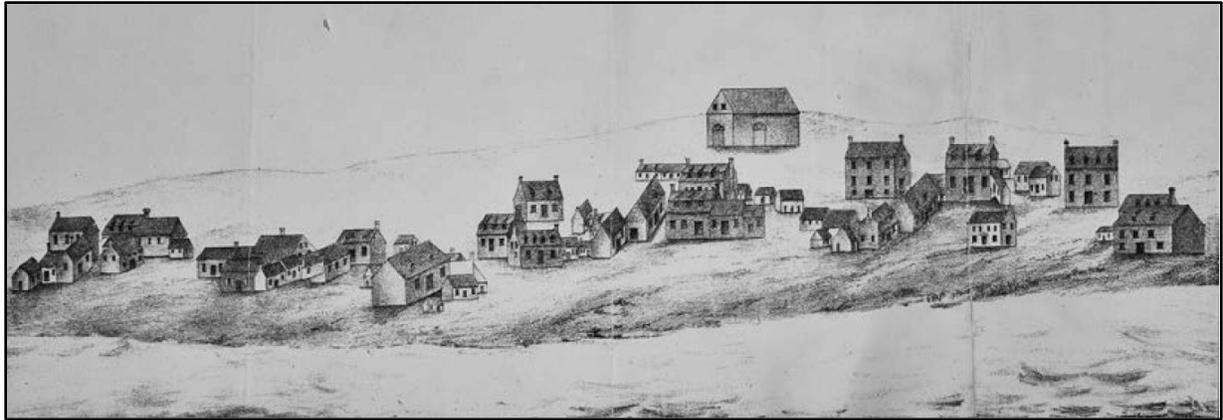


Figure 8: *View of Baltimore Town in 1752, Painted from memory on paper*, by John Moale. [Source: Maryland Historical Society, Baltimore.]

In the 1770s, work began to reclaim, or fill in, the town's marshlands to increase the amount of developable land.³⁵⁹ As Baltimore grew to be the largest port on the Chesapeake Bay and trade expanded, much-needed goods and luxuries were also imported to Baltimore in return.³⁶⁰ In August 1785, trade with China began when John O'Donnell arrived in Baltimore with cargo from Canton, after which the Baltimore neighborhood would be named.³⁶¹

Baltimore At War: The American Revolution and the War of 1812

During the Revolutionary War, Baltimore avoided direct fighting. As in other colonies, residents were divided between patriots and those loyal to the British crown. Baltimore's shipbuilding industry was one of the most prolific in the world, contributing to the colonists'

³⁵⁹ Scharf, *History of Baltimore City and County, from the Earliest Period to the Present Day*, 59–60.

³⁶⁰ Hill, Bucher, and Johnson, "An Identification and Evaluation of Cultural Resources Located Within the Proposed Phase 2 Gwynns Falls Pathway, Baltimore City, Maryland," 3–11.

³⁶¹ "Baltimore City, Maryland - Historical Chronology, 1700-1799," Maryland State Archives, Maryland Manual Online: A Guide to Maryland and Its Government, October 22, 2019, <https://msa.maryland.gov/msa/mdmanual/36loc/bcity/chron/html/bcitychron17.html>.

naval dominance. The town was also a supply depot, storing flour, iron, and salt. Baltimore was able to continue trading during the war due to its highly maneuverable ships and their ability to outrun the Royal British Navy and pirates. Also, because of its location at the head of the Chesapeake Bay, Baltimore was protected from British attack. As some residents became privateers, many Baltimoreans feared that the British troops would target the city in revenge. When Philadelphia came under threat of British invasion at the end of 1776, the Continental Congress abandoned the city and moved to Baltimore where it held sessions in a tavern at the west end of Market Street. A few years later, Baltimore was a front-runner for the location of the new national capital. However, because of its commercial prominence, it was argued that issues in a busy port city would be a distraction to the nation's government.³⁶²

Baltimore's population grew considerably after the Revolutionary War. Economic growth also allowed for a number of public works projects and legislative actions including the annexation of the Fell's Point area with Baltimore in 1773, the creation of a Street Commission in 1782 to plan and pave streets, and the creation of a Board of Port Wardens to survey the harbor and dredge a main shipping channel in 1783. Baltimore was incorporated as a city in 1796, allowing its local officials to create and pass laws for the first time.³⁶³

Baltimore's shipbuilding industry was in the spotlight again with the inception of the War of 1812. Its shipbuilders produced the fastest ships in the world at this time, known as "Baltimore Clippers." These allowed privateers to capture many British vessels, and Baltimore

³⁶² Crenson, *Baltimore: A Political History*, 45–57; Scharf, *History of Baltimore City and County, from the Earliest Period to the Present Day*, 76–78.

³⁶³ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

soon became a target. After burning Washington, D.C., the British sailed towards Baltimore in September 1814, engaging with the Maryland Militia in the Battle of North Point in Baltimore County along the way. Baltimoreans quickly built trenches and earthworks at Hampstead Hill in present-day Patterson Park and prepared for the attack at Fort McHenry, erected during the Revolutionary War and located at the tip of Whetstone Point. Francis Scott Key watched the Battle of Baltimore as a prisoner on a British ship and documented the battle in a poem. The song born of this poem, the Star-Spangled Banner, became the National Anthem in the early twentieth century.³⁶⁴ Fort McHenry withstood the attack, preventing the British from invading the city. Fort McHenry endures today as a National Park.

Baltimore Moves into the Nineteenth Century

Development continued to expand beyond the city's boundaries in the early nineteenth century. In 1816, the population had increased to 46,000 residents and expanded in size from three to ten square miles. A plan was prepared for the future extension of streets. The gridiron street pattern created a hierarchical grid with main streets, side streets, and alleys. The size of residences varied based on this street grid: large houses were built on main streets and very small houses, often occupied by immigrants and laborers, were constructed along alleyways.³⁶⁵

New industries were growing in the early nineteenth century. Mills along the Jones Falls were converted to or built as textile mills, producing over eighty percent of the country's cotton duck, or sailcloth, by 1830. Sawmills, paper mills, powder mills, and foundries operated along

³⁶⁴ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

³⁶⁵ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

streams in and around the city, and sugar refineries, shipyards, brick kilns, copperworks, ironworks, and glass factories operated along the harbor and elsewhere.³⁶⁶

With the opening of the Erie Canal in 1825, Baltimore's economic power declined. Transporting goods from the west to east via the canal was much cheaper than using the National Road, which stretched across Maryland from Cumberland to Baltimore. A solution to this problem was the creation of the Baltimore & Ohio (B&O) Railway Company. The B&O Railroad was completed from Baltimore to Wheeling, West Virginia, in 1852 creating the world's first long-distance railroad and first passenger railroad.³⁶⁷

Slavery and the Civil War

Until slavery was abolished, Maryland was home to a very large population of free African Americans. By 1820, Maryland had the largest free population, over 10,000, and held this record until emancipation. Baltimore, and Maryland in general, became a destination for enslaved runaways from the south. Free blacks in Baltimore harbored runaways, and a number of religious and abolitionist groups provided support. Some free and enslaved African Americans stayed in Baltimore rather than traveling deeper into the north because of employment opportunities and the drastically better quality of life the city provided compared to southern plantations. In fact, Frederick Douglass recalled that "life in Baltimore, when most oppressive, was a paradise" compared to enslaved life on the plantation.³⁶⁸ While life may have

³⁶⁶ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

³⁶⁷ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

³⁶⁸ "History," Mount Clare Museum House, 2007, <https://www.mountclare.org/history/index.html>.

been better in Baltimore, free blacks still struggled greatly, particularly when competing with whites for skilled and unskilled jobs.³⁶⁹

Due to its location along the Mason-Dixon line, Maryland was a mix of both Unionists and Southern sympathizers, even in Baltimore. At the beginning of the Civil War, the federal government occupied Maryland to ensure it did not secede. Federal troops were stationed throughout the city, including at Fort McHenry and Federal Hill. Confederate prisoners of war were held at Fort McHenry and a number of houses and hotels in the city were used as hospitals.³⁷⁰

Postbellum Baltimore

After the Civil War, Maryland moved from an agriculture-based economy to one dominated by industry and commerce. The fishing and canning industries grew, and by the 1880s, Baltimore was the largest supplier of oysters and a leader in producing canned fruits and vegetables. The city was also a leader in the manufacture of chrome, copper, and steel products. Sparrows Point was developed in 1887 by the Pennsylvania Steel Company. Though technically located in Baltimore County, Sparrows Point employed thousands of city residents. It was founded as a company town with its own hospital, school, store, and a railroad. Baltimore also became a garment manufacturing center.³⁷¹

³⁶⁹ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore"; "History."

³⁷⁰ Scharf, *History of Baltimore City and County, from the Earliest Period to the Present Day*, 131, 152.

³⁷¹ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore"; Klaus Philipsen, *Baltimore: Reinventing an Industrial Legacy City*, Built Environment City Studies (New York: Routledge, Taylor & Francis Group, 2017), 33.

The population of Baltimore grew from 169,000 to over 500,000 between 1850 and 1900. Baltimore annexed more land in 1888, expanding from ten to thirty square miles. The horsecar railway system that developed in 1859 was replaced with the electric streetcar in the 1890s, leading to the development of over one hundred suburban villages around the city by 1900. Much of the city's growth was fueled by the more than two million immigrants that arrived in Fell's Point and Locust Point. For instance, Polish immigrants first settled in Fell's Point before moving east and northeast of the harbor. Lithuanians settled in East Baltimore and formed communities along Paca and Saratoga Streets. Many parts of the city have multiple layers of immigrant settlement history. For example, before the Little Italy neighborhood became a hub for Italian immigrants, it was home to communities of German, Irish, and Jewish residents. There was also an influx of African Americans from southern rural areas looking for employment, which led to crowded conditions in many neighborhoods.³⁷²

Twentieth-Century Baltimore: Suburbanization and Urban Renewal

On February 7, 1904, a fire broke out in the basement of a dry goods store on the corner of German (now Redwood) and Liberty Streets in the downtown business district and spread east and south, covering over 140 acres and destroying over 1,500 buildings. Baltimoreans began rebuilding very quickly, and the city's downtown was completely rebuilt within ten years of the Great Baltimore Fire.³⁷³

In 1918, another annexation increased the city's size from thirty to almost ninety square miles. This annexed area was characterized by curved streets and new suburban-style houses

³⁷² "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

³⁷³ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

such as bungalows. In northeast Baltimore between 1900 and 1939 the number of housing units increased from 279 units to over 14,000. African Americans were generally not able to participate in this suburban expansion due to many racist tactics including the passing of ordinances barring them from moving into white neighborhoods. By 1904, half of Baltimore's black population had moved to Old West Baltimore as the German community began to move out into the city's outskirts and suburbs. In the early twentieth century, many factories and foundries moved to Midwestern states. This, in combination with early suburban growth, negatively affected the city's growth and development.³⁷⁴

During the Second World War, Baltimore's economy was improved by the presence of the Glenn L. Martin Company which built aircraft for the Army and Navy. The city's port was also an important military supply center.³⁷⁵ With the return of soldiers after the war ended, families began to move farther and farther out into the suburbs of Baltimore County, and the city's population began to decline, leading to an equally devastating economic decline. In the 1950s, 10,000 people left the city and 35,000 left in the 1960s. Many of downtown's retail stores also moved to the suburbs and industry soon followed.³⁷⁶ Despite Baltimore's deindustrialization trend, the steel industry continued to flourish into the middle of the century. In 1959, the largest employer in the greater Baltimore area was Bethlehem Steel,

³⁷⁴ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore"; Hill, Bucher, and Johnson, "An Identification and Evaluation of Cultural Resources Located Within the Proposed Phase 2 Gwynns Falls Pathway, Baltimore City, Maryland," 3–12.

³⁷⁵ Hill, Bucher, and Johnson, "An Identification and Evaluation of Cultural Resources Located Within the Proposed Phase 2 Gwynns Falls Pathway, Baltimore City, Maryland," 3–13.

³⁷⁶ "The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore."

located in Sparrows Point, with 35,000 workers.³⁷⁷ By this time, Bethlehem Steel was also the world's largest steel mill.³⁷⁸

In the 1950s and 1960s, the urban renewal philosophy spread to most major cities in the country. In the name of progress, “blighted” buildings were demolished to make way for expressways, new schools, and public housing projects, particularly in poor and African American neighborhoods. The National Highway Act of 1956 provided funding for interstate highway construction and plans to build highways through Baltimore were soon proposed. For example, Interstate 95 was proposed to cut through Federal Hill. This would have destroyed many neighborhoods along the harbor and pedestrian access to the harbor would have been lost. While the most devastating of these plans did not come to fruition thanks to the protest of Baltimoreans, the city still lost over two hundred historic properties, and hundreds more were condemned for highway construction and sat vacant for years. In response to the threat of urban renewal in Baltimore, the Commission for Historical and Architectural Preservation (CHAP) was created in 1964 and the Mount Vernon Urban Renewal Ordinance was passed. As first of its kind, the goal of this ordinance was to restore, not demolish, the historic structures present in the Mount Vernon neighborhood.³⁷⁹ High-rise public housing projects and expressways separated Baltimore’s business district from the already-declining inner-city neighborhoods. Like other major cities, public housing high-rise buildings, promoted for being

³⁷⁷ Philipsen, *Baltimore*, 7.

³⁷⁸ “PreserveMaryland II, The Statewide Preservation Plan (2019-2023),” 98.

³⁷⁹ “The City of Baltimore Comprehensive Master Plan (Final Draft), The History of Baltimore.”

light and airy, deteriorated into “warehouses for the poor” and symbols of continued segregation as most of their residents were black.³⁸⁰

Architecturally, Baltimore is characterized by its rowhouses. Fortunately, mid-century urban renewal policies did not destroy all of the city’s historic rowhouses. However, economic decline and inequality in particular neighborhoods have resulted in high rates of vacancy. As of 2017, there were at least 16,000 vacant rowhouses and another 14,000 that have already been demolished in recent decades.³⁸¹ The city did experience a renaissance in the 1970s and 1980s, focusing on investment in its waterfront. Commercial development in and around the Inner Harbor, including the Gallery at Harborplace, transformed the area into a major tourist attraction. Waterfront communities such as Harbor East, Federal Hill, Fell’s Point, and Canton benefited from this economic development and are now some of the most popular neighborhoods in the city.

Neighborhood Segregation and Redlining in Baltimore

As seen above, urban renewal policies disproportionately impacted black and other minority neighborhoods, displacing thousands of residents and businesses. In order to provide some additional context to the major social and economic inequalities facing particular Baltimore neighborhoods, it is necessary to explore the history of neighborhood segregation and the practice of redlining in Baltimore. In its early days, Baltimore’s neighborhoods were racially and culturally diverse, due in part to increased immigration and its large free black population. By 1835, white citizens began to inhabit the main streets, pushing free blacks, poor

³⁸⁰ Philipsen, *Baltimore*, 10.

³⁸¹ Philipsen, 11–12.

immigrant groups, and others to the more crowded side streets and alleys or to less desirable parts of the city. This neighborhood segregation intensified into the twentieth century when, in 1910, the city passed legislation that allowed housing developments and neighborhoods to set up restrictive covenants denying blacks and Jewish citizens the ability to move into those areas. The real estate market developed into one in which housing property was clearly defined along racial lines, and banks denied loans to African Americans.³⁸² The term ‘redlining’ originates from maps created by the national Home Owners’ Loan Corporation that outlined in red the least desirable real estate properties in major cities to discourage lending in black neighborhoods. This was blatantly linked to race and allowed for various practices designed to keep blacks and other minorities out of white neighborhoods. When the *Brown v. Board of Education* Supreme Court decision required the desegregation of public schools, Baltimore was the first major city to comply. However, because the neighborhoods were already racially segregated, most schools were unaffected by this social change. In fact, it caused some white families to withdraw their children from certain schools.³⁸³

Deindustrialization in the late-nineteenth century and the subsequent economic downturn had an especially negative impact on the black community of Baltimore, as blacks and other minorities were more likely to hold jobs in manufacturing. Suburbanization in the early- and mid-twentieth century resulted in the movement of much of the city’s middle class

³⁸² Antero Pietila, *Not in My Neighborhood: How Bigotry Shaped a Great American City* (Chicago: Ivan R. Dee, 2010), 5.

³⁸³ Pietila, 122; Erin Durham, “Mapping Inequality: Historical Context of Baltimore’s Neighborhoods,” *Mapping Inequality: Baltimore* (blog), April 13, 2016, <https://dcicblog.umd.edu/redliningbaltimore/baltimores-history/>.

out of the urban center and into the surrounding county. Many neighborhoods that were previously occupied by whites quickly became majority black. In the 1960s and 1970s, activists encouraged by the Civil Rights movement began fighting for equal housing and economic opportunities in the city's poor, majority-black neighborhoods.³⁸⁴ While grassroots political and activist organizations continue to campaign for racial and social equality in Baltimore today, racism – particularly structural racism – persists.

Potential Archaeological Resource Types in Baltimore City

Over the centuries, Baltimore's landscape has been altered in many ways and by many different people – by constructing dwellings, filling in swamps, grading hills, dredging rivers and bays, and straightening channels. The imprint of this development can be seen both above and below ground. This historical overview of Baltimore City provides clues as to the types of archaeological resources that may remain underfoot. Table 7 provides a partial list of these archaeological resource types including specific site functions, cultural affiliations, and temporal periods that could be present in Baltimore City's archaeological record; however, a current, comprehensive historic context that considers archaeological resource potential and identifies potential research avenues is needed for Baltimore City.

³⁸⁴ Durham, "Mapping Inequality: Historical Context of Baltimore's Neighborhoods."

<i>Site Type/Function and Cultural Affiliation (if identifiable)</i>	<i>Relevant Temporal Periods</i>
Lithic scatters and workshops: Native American	All prehistoric
Short-term hunting camps: Native American	All prehistoric
Long-term base camps: Native American	Archaic and Woodland prehistoric
Evidence of landfilling along waterfront and marshland	Mid-18 th to 19 th centuries
Wharves and warehouses	Mid-18 th to early 20 th centuries
Shipyards and associated shipbuilders' housing: working-class whites, various immigrant groups, and African Americans	Late-18 th to mid-19 th centuries
Residential plantations and estates: white elite class	18 th to early 19 th centuries
Rowhouses: various middle-class groups	Mid-19 th to 20 th centuries
Tenant houses: middle to lower classes	
Alley residences: lower- and working-class whites, immigrant groups, African Americans	Early-19 th to 20 th centuries
Rural or suburban farmsteads	19 th to mid-20 th centuries
Residences or social buildings associated with specific groups: free black communities, immigrant groups such as Germans, Irish, Polish, Lithuanian, Italian, etc., Jewish neighborhoods	Late-18 th to 20 th centuries
Associated residential features including privies, cisterns, and wells: various groups	Mid-18 th to 20 th centuries
Early public housing sites: predominantly segregated black neighborhoods	Mid-20 th century
Industrial buildings such as pottery kilns, brick kilns, glass factories, bottleries, breweries, mills (flour, textiles, powder, saw, paper), foundries, copperworks, ironworks, sugar refineries, etc., and associated workers' housing: various working-class groups	Late 18 th to 20 th centuries
Food production industries including fishing and canning	Late-19 th to 20 th centuries
Churches and other places of worship: various denominations, serving as social hubs in predominantly African American, Italian, Irish, German, Jewish, etc. neighborhoods	Mid-18 th to 20 th centuries
Unmarked cemeteries associated with places of worship, family burial plots, potter's fields, etc.: specific cultural groups particularly the enslaved, African Americans, poor residents, etc.	Mid-18 th to 20 th centuries
Taverns, Groceries, Schools, Parks: various groups	Mid-18 th to 20 th centuries
Transportation (railroad stations, trolley car bridges, historic road surfaces, etc.)	Mid-18 th to 20 th centuries
Military fortifications	Late-18 th to mid-19 th centuries
Civil Rights Movement sites: predominantly poor and African American neighborhoods	Mid-20 th century

Table 7: Examples of potential archaeological resource types present in Baltimore City. [Source: Compiled by the author.]

Baltimore's Current Government Organization and Political Climate

The first English settlers to arrive in what is now Maryland in 1634 brought with them the forms of government familiar to them in England including local governance at the county and village level. While local government has since evolved, the importance of local governance has persisted.³⁸⁵ Over the first few centuries, Baltimore City became increasingly independent, especially after the General Assembly of Maryland granted the City Charter of 1898, which provided its citizens with a fairly high degree of self-government compared to the counties. A nationwide movement was underway by the end of the nineteenth century to give local municipalities the ability to govern themselves, at least concerning local matters. In 1914, the General Assembly proposed the Home Rule Amendment to the state constitution, which gave Baltimore City and all counties the right to create and adopt their own local charters.³⁸⁶

Baltimore City's local government status is unique in Maryland. Although technically a municipality, Baltimore has been considered equivalent to a county jurisdiction since the adoption of the Maryland State Constitution in 1851.³⁸⁷ The City, operating under charter home rule, utilizes a "strong mayor-council" form of government.³⁸⁸ Under a strong mayor-council

³⁸⁵ "Overview of Maryland Local Governments" (Department of Legislative Services, Office of Policy Analysis, Annapolis, January 2018), 1. "Overview of Maryland Local Governments," 1.

³⁸⁶ Martha Frisby Rasin, "Casenotes: Charter Home Rule-Charter Material-Exercise of Police Power by Non-Legislative Body-Citizens' Right to Initiate Legislation-Electorate's Exercise of Police Power in Charter Amendment Form Violates Home Rule Amendment of State Constitution. *Cheeks v. Cedlair Corp.*," *University of Baltimore Law Review* 11, no. 1 (1981), <https://scholarworks.law.ubalt.edu/ubl/vol11/iss1/5>.

³⁸⁷ "Maryland Counties, Local Government," Maryland State Archives, Maryland Manual Online: A Guide to Maryland and Its Government, July 23, 2018, <https://msa.maryland.gov/msa/mdmanual/01glance/html/county.html>.

³⁸⁸ There are four forms of municipal government common to all local governments in the United States based on structure: strong mayor-council, weak mayor-council, council-manager, and commission; "Forms of Municipal Government," The Maryland Municipal League, accessed October 20, 2019, <https://www.md-municipal.org/415/Forms-of-Municipal-Government>.

government, the council serves as the legislative branch of government and the mayor is designated as chief executive. The Baltimore City Council has the power to establish policy and local laws through the enactment of ordinances and resolutions, and the mayor has veto power over ordinances. The Council also determines its own rules of procedure. There are thirteen Council committees to address individual policy and legislative issues including health, housing and urban affairs, land use, and public safety. It is within these committees that the drafting of most city legislation begins. The Council is comprised of fifteen members who are elected every four years. One member is elected from each of the city's fourteen districts and the Council President is elected at-large by city voters. City Council meetings are also open to the public.³⁸⁹

The legislative process begins when a bill is submitted to the City Council by a Councilmember. The bill is introduced at a Council meeting and is assigned to the appropriate committee for review. It is also sent to the appropriate city agencies who then issue a written report on the bill. After all reports are received, the committee will next hold a hearing where public testimony can be heard. The bill is then presented by the committee chair at a Council meeting with either a favorable recommendation, favorable recommendation with amendments, unfavorable recommendation, or without recommendation. If a bill is passed through this second reading, it is printed for a third reading after which it can be passed by the Council and sent to the Mayor, voted down by the Council, amended by the Council, or returned to the committee for further study. Final action on a bill needs a majority vote of all

³⁸⁹ "About City Council," Baltimore City Council, 2019, <http://www.baltimorecitycouncil.com/about>.

Councilmembers. Amending and taking final action requires a three-quarters vote. If the mayor vetoes the bill, three-quarters of the Council must vote yes to override the veto.³⁹⁰

The City of Baltimore is currently experiencing an exceptionally trying period politically. The City of Baltimore has been facing particularly challenging political, economic, and social issues over the past decade. There have been a number of scandals in the past few years leading to upheaval and a lack of stability in the Mayor's office. A study of 2010 U.S. Census data determined that Baltimore is one of the most racially and economically segregated cities in the United States.³⁹¹ Racial tensions have been high in recent years, coming to a head in 2015 when city-wide riots broke out, spurred by protests against the death of Freddie Gray, a young black man who died while in police custody. These protests and riots were about much more than police brutality. They were a symptom of a much deeper problem – the growing gap between low-income and high-crime majority-black areas of the city facing high poverty and unemployment rates and the affluent majority-white parts of the city.³⁹² Baltimore relies on property taxes for its revenue. But with a declining population and increasing poverty, tax rates must continue to increase in order to support the basic services of city government.³⁹³ In addition to being socioeconomically distressed, Baltimore is also plagued with an extremely

³⁹⁰ "Legislative Process," Baltimore City Council, 2019, <http://www.baltimorecitycouncil.com/legislative-process>.

³⁹¹ John R. Logan and Brian J. Stults, "The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census," Census Brief Prepared for Project US2010, March 24, 2011, <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf>.

³⁹² Pamela Engel, "There's Another Reason Why Freddie Gray's Baltimore Neighborhood Is so Angry," *Business Insider*, April 28, 2015, <https://www.businessinsider.com/theres-another-reason-why-freddie-grays-baltimore-neighborhood-is-so-angry-2015-4>.

³⁹³ Philipsen, *Baltimore*, 15.

high crime rate. A recent 2018 study placed Baltimore fourth on the list of the most dangerous cities in America.³⁹⁴

Every municipality faces ever-evolving socioeconomic challenges, both common and unique, and local governments and voters must determine what constitutes a priority. High crime, underperforming public schools, and socioeconomic inequality are just a few of the major issues currently facing Baltimore. This raises the question: is it an appropriate time to be thinking about funneling more of the city's resources away from these matters? If not, when is an appropriate time? Will there ever be an appropriate time?

Historic Preservation and Archaeology in Baltimore, Then and Now

This section presents an overview of historic preservation, generally, and archaeological activities, specifically, in the City of Baltimore, beginning with the development and goals of the city's historic preservation commission, the Commission for Historical and Architectural Preservation. An exploration of Baltimore's now-defunct public archaeology program, the Baltimore Center for Urban Archaeology, reveals its goals, successes, challenges, and implications for archaeological resource protection today – what can be learned from this endeavor? A number of state and local level preservation advocacy groups are presented in order to showcase the past and current efforts of these non-profit and volunteer-lead groups and their impacts on the greater historic preservation and archaeological community in Baltimore and in Maryland. The groups explored in this treatise represent just a portion of

³⁹⁴ "Baltimore Ranks 4th Most Dangerous City In America," October 25, 2019, <https://baltimore.cbslocal.com/2019/10/25/baltimore-ranks-top-4-for-most-dangerous-cities-in-america/>.

Baltimore's preservation community – there are many more grassroots groups, particularly at the neighborhood level, fighting to protect the city's historic and archaeological resources. Partnerships with these organizations would be critical to the success of any regulatory archaeology program. Lastly, a cursory review of known archaeological sites and previous archaeological surveys conducted in Baltimore City provides an overview of archaeological efforts spurred by federal, state, and local regulations.

The Commission for Historical and Architectural Preservation (CHAP)

Baltimore's Commission for Historical and Architectural Preservation (CHAP) was established in 1964 to oversee and implement design review for the newly designated Mount Vernon Historic District. CHAP, governed by Article Six of the City Code titled "Historical and Architectural Preservation,"³⁹⁵ serves as a citizen review board on historic preservation issues in Baltimore. The Commission and its staff work to preserve and revitalize Baltimore's neighborhoods and to promote the economic benefits of historic preservation. CHAP's mission "is to enhance and promote the culture and economy of Baltimore through the preservation of buildings, structures, sites, and neighborhoods that have aesthetic, historic, and architectural value." CHAP's many responsibilities include overseeing Baltimore's thirty-six local historic districts and more than two hundred city landmarks, maintaining an inventory of historic properties, designating new historic districts and landmarks, reviewing plans that affect locally designated properties, managing the Baltimore City Historic Restoration and Rehabilitation Tax

³⁹⁵ See "Baltimore City Code, Article 6 Historical and Architectural Preservation (As Last Amended by Ord. 19-258)" (Baltimore City Department of Legislative Reference, Avery Aisenstark, Director, 2019), <https://ca.baltimorecity.gov/codes/Art%2006%20-%20HistPres.pdf>.

Credit program, providing recommendations for federal- and state-funded projects, maintaining City-owned monuments, and providing technical assistance and historic preservation information to the public.³⁹⁶

CHAP is comprised of thirteen Commissioners, eleven of which are appointed by the Mayor. Seven of these members are appointed at-large, one is to be nominated by the Greater Baltimore Committee, one by Baltimore Heritage, one by the Board of Directors of Preservation Maryland, and one by the Board of the Baltimore City Historical Society. One member is a City Council member appointed by the City Council President and the final member is the Commissioner of Housing and Community Development. Similar to many local historic preservation commissions, members must show special interest or knowledge in fields such as history, architecture, preservation, African-American history, or urban design. Of the eleven appointed members, at least one must be knowledgeable in the architecture of the city, one must be knowledgeable in the African-American history of the city, two must be licensed architects knowledgeable in architectural preservation, one must be a licensed real estate broker in the city, one must own and reside in a contributing residence within a local historic district, one must own and operate a contributing commercial property within a local historic district, and two must have knowledge of landscape architecture, archaeology, or construction or engineering. Commissioners serve for four-year terms, concurrent with the Mayor's term of office, with the ability to serve two full terms.³⁹⁷

³⁹⁶ "About CHAP," Historical and Architectural Preservation, City of Baltimore, 2018, <https://chap.baltimorecity.gov/about-chap>.

³⁹⁷ "Baltimore City Code, Article 6 Historical and Architectural Preservation (As Last Amended by Ord. 19-258)," 8–9.

CHAP and its staff became part of the Department of Planning in 2005. CHAP has an Executive Director and a professional staff, the Planning Department's Historical and Architectural Preservation Division, that serves the Commission. CHAP staff must meet the "Professional Qualifications Standards" of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.³⁹⁸ In its advisory role, CHAP makes recommendations regarding the historic districting of properties, amendments to ordinances, and other preservation issues. With its decision-making authority, CHAP reviews and approves building permits that are issued for projects located within local historic districts. Specifically, CHAP reviews all rehabilitation and exterior painting, alteration, new construction, and demolition activities. Projects involving major rehabilitation, significant new construction, and substantial demolition are heard by the Commission at monthly public meetings.³⁹⁹

The Baltimore Center for Urban Archaeology

The Baltimore Center for Urban Archaeology (BCUA) formed in April of 1983 as Baltimore's public archaeology program. The impetus for the creation of the BCUA was then-mayor William Donald Schaefer's interest in the public archaeology that was occurring in nearby Annapolis.⁴⁰⁰ Schaefer saw the potential benefits of archaeology and public excavations

³⁹⁸ See "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines -- Professional Qualifications Standards."

³⁹⁹ "Baltimore City Historic Preservation Rules and Regulations" (Adopted by the Commission for Historical and Architectural Preservation, Baltimore City Department of Planning, City of Baltimore, Maryland, December 8, 2015), 2–5, <https://chap.baltimorecity.gov/sites/default/files/CHAP%20RULES%20AND%20REGULATIONS%2012%209%2015.pdf>.

⁴⁰⁰ Angus Phillips, "Dock, Street Unearthed Near Baltimore Harbor Street's Origins Traced to the 1800s," *The Washington Post*, November 15, 1984.

as a way to promote heritage tourism in the city starting with the struggling Fallswalk, a historic walking trail located along the Jones Falls.⁴⁰¹

The BCUA was first located in the Office of the Mayor; however, its first director acknowledged the risk of the program and its political support being slashed with the election of a new mayor. It soon moved to the Municipal Museum of Baltimore, also known as the Peale Museum, giving the BCUA greater stability within the city budget.⁴⁰² Elizabeth A. Comer directed the BCUA from its inception in 1983 to 1988. Kristen Stevens Peters and Louise Akerson served as co-directors from 1988 to 1990 and Akerson took over as sole director until 1996. The final director, Esther Doyle Read, served until the program dissolved in 1997.⁴⁰³

Before the creation of the BCUA in 1983, only a few archaeological excavations in Baltimore had received much publicity. By this time, a small number of archaeological sites had been excavated in the 1960s and 1970s by the Archaeological Society of Maryland in the Fell's Point neighborhood.⁴⁰⁴ Prior to the construction of the new Federal Reserve Bank of Richmond Building in the 1970s, rescue excavations uncovered over fifty archaeological features dating from as early as the start of the nineteenth century including privies, wells, and cellars. A number of these features were hurriedly excavated and documented after construction activities had already begun.⁴⁰⁵

⁴⁰¹ Elizabeth A. Comer, "Public Archaeology as a Tool for Community Preservation and Empowerment," Elizabeth Anderson Comer / Archaeology, accessed August 5, 2018, <http://eacarchaeology.com/publicBalto.html>.

⁴⁰² Comer.

⁴⁰³ Patricia Samford, "New Pieces of History at the MAC Lab," *Our History, Our Heritage: The Maryland Historical Trust Blog* (blog), April 27, 2018, <https://mdhistoricaltrust.wordpress.com/2018/04/27/new-pieces-of-history-at-the-mac-lab/>.

⁴⁰⁴ Doyle Read, "Digging Deeper: Unearthing Baltimore's Rich Historical Landscape," 1–2.

⁴⁰⁵ Mark A. Tobias, "Maryland Inventory of Historic Properties, Archaeological Site Survey: Federal Reserve Building (Site Number 18BC27)" (Maryland Historical Trust, Maryland Department of Planning, 1994).

In the early 1980s, a comprehensive survey was conducted for the planned extension of the Jones Falls Expressway through Fell's Point. The threat of the planned highway expansion was a factor in the creation of the BCUA – its first project, undertaken in response to this threat, was the “Great Baltimore Brewery Dig” at the Peters/Clagett Brewery site, one of Baltimore’s oldest breweries. Grants from the local Humanities Council, the National Trust for Historic Preservation, and two local foundations provided funding for the project, along with funding directly from the city’s budget. The project had a cash budget of about \$60,000 and also received about \$75,000 worth of in-kind services from a number of local public and private entities, such as the use of heavy equipment, shovels, and more. The project relied heavily on volunteers for much of the excavation labor. The BCUA and the city promoted the “Great Baltimore Brewery Dig” project through a variety of platforms, and the public was encouraged to visit the site and take a guided tour. Mayor Schaefer even visited and participated in the dig (Figure 9). The media played a huge role in the success of this excavation and of the BCUA as a whole. A public relations volunteer assisted the BCUA with communicating with the press and using the media – television and radio stations, magazines, newspapers – to promote the project. A local radio station would air “The Dig Update,” providing a daily live report on what was being uncovered by the excavations.⁴⁰⁶ Armed with the significant discoveries made regarding the late-eighteenth to late-nineteenth-century brewery and late-nineteenth to late-twentieth-century casket factory that occupied the site, BCUA Director Comer was able to persuade the city to abandon its plans to convert the site back to a parking lot and to turn it

⁴⁰⁶ Comer, “Public Archaeology as a Tool for Community Preservation and Empowerment.”

into a park instead, aptly named Brewer's Park. These excavations were pivotal to promoting the importance of undertaking archaeology in the city by proving that archaeological resources do remain in heavily developed areas and by displaying the wealth of information that these resources can provide about Baltimore's past.⁴⁰⁷



Figure 9: Student volunteer archaeologists dig at the site of Claggett's Brewery, with Mayor William Donald Schaefer. [Photo from Preservation Maryland, Wikimedia Commons, CC-BY-SA-2.0, 1983.]

⁴⁰⁷ Doyle Read, "Digging Deeper: Unearthing Baltimore's Rich Historical Landscape," 1–2.

Another major project undertaken by the BCUA was the Cheapside Wharf site excavations in 1984 prior to the construction of the Gallery at Harborplace, an extensive commercial development in the center of the Inner Harbor, which was becoming a huge tourist attraction. The developer, the Rouse Company, not only allowed the time for the salvage excavations, albeit a limited amount of time, but also donated \$30,000 to the project. BCUA Director Comer successfully convinced Rouse to donate these resources by reminding them that while they “may have bought the land, the history it contains belongs to Baltimore and its people.”⁴⁰⁸ Excavations of the Cheapside Wharf site revealed a rare glimpse into life on and around the eighteenth- and early-nineteenth-century wharves and docks of Baltimore. While the Gallery at Harborplace construction site consisted of six wharves, only the Cheapside wharf was able to be excavated, given the BCUA’s time and resources. Unfortunately, construction destroyed the remaining five wharves and any potential they had to contribute to the city’s knowledge of this part of its past.⁴⁰⁹

Over the next fifteen years of operation, the BCUA conducted historical research for fifty-three city properties and excavated twenty-one of those properties, generating a plethora of information on the city’s past, including approximately five hundred boxes of artifacts.⁴¹⁰ One of the goals of the BCUA was to compile information recovered from all research and excavations into a database in order to look at the whole city as a single archaeological site. In its beginning years, each identified site was treated as a distinct and separate part of the city’s

⁴⁰⁸ Phillips, “Dock, Street Unearthed Near Baltimore Harbor Street’s Origins Traced to the 1800s.”

⁴⁰⁹ Eric Cronise, “Maryland Inventory of Historic Properties, Archaeological Site Survey: Cheapside Wharf (Site Number 18BC55)” (Maryland Historical Trust, Maryland Department of Planning, 1994).

⁴¹⁰ Samford, “New Pieces of History at the MAC Lab.”

broad history and was interpreted independently. By the time the BCUA closed, the database had expanded to a point where the information gathered from these sites could be connected, not only to other sites across the city and across time periods, but also to contemporary society. A more holistic view of the city – of its past and present – was beginning to be constructed.⁴¹¹ Unfortunately, the BCUA’s progress was cut short before this could be achieved.

In 1985, the Peale Museum, Carroll Museum, and the H.L. Mencken House were renamed the Baltimore City Life Museums (BCLM). The BCUA later joined the BCLM along with two other historic resources – the 1840 House and Brewer’s Park. In 1992, the BCLM and all history museums in the city were informed by Mayor Kurt Schmoke that they would need to privatize and become self-sufficient within five years. After privatization, the BCLM was approximately \$2 million in debt by 1994, largely due to taking over a historic site from the Department of Recreation and Parks and constructing an exhibition center. Over the next few years, several BCLM staff members were dismissed and hours were cut – BCLM was becoming less and less financially stable. The city allocated \$500,000 to keep the BCLM in operation, but only if the BCLM could raise matching funds within a year. Unfortunately, it could not. The BCLM’s nine entities, including the BCUA, abruptly closed on June 20, 1997. While a number of issues including administrative and financial blunders are responsible for the demise of the BCLM, one major mistake was the attempt by local politicians to privatize institutions that were

⁴¹¹ Doyle Read, “Digging Deeper: Unearthing Baltimore’s Rich Historical Landscape,” 1–2.

never meant to be profitable – like schools and libraries, museums exist for the benefit of the public.⁴¹²

When the BCLM folded, all museum collections, including artifacts from BCUA excavations, were purchased by the Maryland Historical Society. This resulted in the archaeology collections not being available to researchers for over twenty years. In recent years, the Maryland Historical Society determined that they could no longer store the BCUA collections and requested that the City take them back. However, the City does not have an archaeological laboratory or an artifact repository facility with a curatorial staff; therefore, it could not properly provide for the long-term storage of the archaeological material.⁴¹³ After lengthy negotiations between the State of Maryland, the City of Baltimore, and the Maryland Historical Society, it was resolved that the five hundred boxes of artifacts be curated at the Maryland Archaeological Conservation Laboratory (MAC Lab). The MAC Lab displayed some of these artifacts very soon after receipt and also began adding collection information to their website allowing immediate access by the public and researchers.⁴¹⁴

A few months after the BCLM closed in 1997, the University of Baltimore invited the BCUA to become part of their Public History program, allowing the BCUA to continue to operate, albeit in a somewhat limited capacity. The BCUA continued to undertake public archaeological excavations and to offer internships and volunteer opportunities to high school

⁴¹² Matthew A. White, “What Went Wrong in Baltimore,” *Curator: The Museum Journal* 40, no. 3 (1997): 168–73, <https://doi.org/10.1111/j.2151-6952.1997.tb01299.x>.

⁴¹³ Lauren Schiszik, telephone conversation with the author, October 18, 2019.

⁴¹⁴ Samford, “New Pieces of History at the MAC Lab.”

and college students.⁴¹⁵ Esther Doyle Read, the final director of the BCUA, was instrumental in keeping the program going and was fairly successful until 2004 when she could no longer sustain a full-time pursuit. However, Mrs. Read was given the right to use the BCUA name by its trustees at the time of its closure. Now a professor at the University of Maryland Baltimore County, Mrs. Read has the option to undertake projects and programs under the BCUA name, the last of which was undertaken in or around 2016.⁴¹⁶

State and Local Advocacy Groups: Partners of Regulatory Archaeology

As stated in Chapter III, engaging the public is critical to gaining support for any potential regulatory program, and this is accomplished through collaboration with local preservation groups. These groups can provide sources of funding and other valuable resources such as volunteers. Advocacy groups, whether at the state or local level, can support legislation at all levels by lobbying for archaeological site protection. Partnerships with organizations such as the following would be critical to the success of any regulatory program or practice.

Preservation Maryland

The first preservation organization in Maryland formed in 1931 as the Society for the Preservation of Maryland Antiquities. Until the early 1970s, the organization's focus was on maintaining a handful of historic properties. In the early 1980s, the mission of the organization was changed to include education, advocacy, outreach, and funding, and its name was shortened to Preservation Maryland. In 1966, Preservation Maryland was instrumental in blocking a proposed highway that threatened the Federal Hill and Fell's Point neighborhoods. It

⁴¹⁵ Doyle Read, "Digging Deeper: Unearthing Baltimore's Rich Historical Landscape," 1–2.

⁴¹⁶ Esther Doyle Read, e-mail to the author, October 28, 2019.

also supported preservation and landmarks legislation in Baltimore City. From 2000 to 2005, through the Historic Communities Investment Fund, Preservation Maryland provided funding for the nominations of seventeen National Register Historic Districts in Baltimore.⁴¹⁷

Preservation Maryland provides funding to preservation projects through various grants, the Heritage Fund in partnership with MHT, and revolving fund loans. While the majority of projects that have received financial support are architecture-focused, Preservation Maryland has provided funding to a number of archaeology projects across the state beginning in the 1990s. One of the most recent Heritage Fund grants was awarded in 2019 to the St. Mary's College of Maryland Foundation in support of excavations at an important early colonial archaeological site and to ensure public access to this research in the future.⁴¹⁸

The Archaeological Society of Maryland

The Archaeological Society of Maryland (ASM) is one of the largest avocational archaeology organizations in the country. Some of the goals of ASM include the “discovery, investigation, and conservation of Maryland’s archaeological resources, the proper recording of archaeological sites, the creation of bonds between avocational and professional archaeologists, and the publication of the results of all excavations undertaken...”⁴¹⁹ ASM has developed the Certification and Training Program for Archaeological Technicians (CAT program). This program provides members, those who do not hold academic degrees in

⁴¹⁷ “75 Years with Preservation Maryland” (Baltimore: Preservation Maryland, 2007), 4–6, 22, 28, <http://www.preservationmaryland.org/wp-content/uploads/2017/11/preservation-maryland-75th-anniversary-book.pdf>.

⁴¹⁸ “Heritage Fund Supports Seven New Preservation Projects,” Preservation Maryland, December 4, 2019, <https://www.preservationmaryland.org/heritage-fund-support-seven-new-preservation-projects/>.

⁴¹⁹ “Archeological Society of Maryland, Inc.,” 2017, <http://marylandarcheology.org/>.

archaeology, training in archaeological field and laboratory techniques and practices.⁴²⁰

Maryland Archaeology, a journal published by the ASM, reaches a wide audience of archaeological resource advocates.⁴²¹ ASM sponsors local chapters that conduct local, public archaeology projects. The ASM Central Chapter serves Baltimore City, as well as Baltimore and Carroll Counties, and has participated in many public archaeology projects in Baltimore City.⁴²²

The Council for Maryland Archaeology

The Council for Maryland Archaeology (CfMA) was founded in 1976. The main goal of the organization is to “foster the public awareness, concern, and responsibility for the conservation of archaeological resources in Maryland.”⁴²³ To achieve its goals, CfMA is comprised of several committees including the Legislative Watch Committee, Education Committee, Best Practices Committee, and the Archaeology Month Committee. Quarterly meetings are held which provide the opportunity for archaeological professionals to share information and to coordinate lobbying efforts in support of legislation affecting archaeological resources. In 1997, CfMA began sponsoring Maryland Archaeology Month which is held every April.⁴²⁴ In 2011, CfMA organized a Best Practices Symposium, at which professional archaeologists working in a wide range of sectors came together to discuss how current

⁴²⁰ “Certified Archeological Technician Program,” Archeological Society of Maryland, Inc., n.d., <http://marylandarcheology.org/CATprogram.html>.

⁴²¹ Robert C. Chidester, “‘Movement Archaeology’ Promoting the Labor Movement in Maryland,” in *Archaeologists as Activists: Can Archaeologists Change the World?*, ed. M. Jay Stottman (Tuscaloosa, Alabama: The University of Alabama Press, 2010), 86.

⁴²² “ASM Central Chapter,” n.d., <http://asmcentralchapter.weebly.com/>.

⁴²³ “Council for Maryland Archaeology,” 2019, <http://www.cfma-md.org/>.

⁴²⁴ “Council for Maryland Archaeology.”

archaeological practices could be improved, how to strengthen public support of archaeology, and other relevant topics.⁴²⁵

Baltimore Heritage

As Baltimore's nonprofit historic and architectural preservation organization, the focus of Baltimore Heritage is to preserve and promote the city's historic buildings and neighborhoods. In 1960, a group of activists from a number of the city's civic and cultural groups united under the shared belief that something must be done to combat the loss of historic and architectural landmarks as a result of neglect, urban renewal, and public works projects. Among the first tasks undertaken by Baltimore Heritage was the preparation of a tour guide and map of the city's historic landmarks and the restoration of the USS Constellation, the only surviving warship from the Civil War era. Baltimore Heritage also led the charge in establishing Baltimore's Commission for Historical and Architectural Preservation (CHAP) in the 1960s and assisted with the designation of Mount Vernon as the city's first historic district. Over the subsequent decades, while Baltimore Heritage was successful in saving many historic landmarks across the city, it also experienced many failures.⁴²⁶ But the organization has persevered and continues this work today with the support of a very small staff, thirty-three volunteer board members, and many volunteers. And in recent years, Baltimore Heritage has expanded its reach to include archaeological resources through the promotion of public archaeology projects and the building of partnerships. With other local preservation groups,

⁴²⁵ Lyle Torp, "Best Practices," Council for Maryland Archaeology, 2011, <http://www.cfma-md.org/bestpractices.html>.

⁴²⁶ "History of Baltimore Heritage," Baltimore Heritage, accessed July 15, 2018, <https://baltimoreheritage.org/about/history/>.

Baltimore Heritage has acquired grant funding to conduct various excavations in areas of high archaeological potential to help raise awareness of archaeological resources across the city. “We Dig Hampstead Hill,” an excavation undertaken in Patterson Park in 2014, showed the potential for intact archaeological deposits on city-owned land to yield tremendous information, in this case, about the War of 1812.⁴²⁷ Other projects supported by Baltimore Heritage include the Lafayette Square Civil War Archaeology Project and the Herring Run Archaeology Project discussed below.

The Herring Run Archaeology Project

The Herring Run Archaeology Project is a public archaeology project led by volunteers in partnership with Baltimore Heritage, Friends of Herring Run Park, the Archaeological Society of Maryland, the Northeast Baltimore History Roundtable, a resident-led community preservation group, and other preservation groups. The project began in 2014 with a survey in Herring Run Park, located in Northeast Baltimore City, to identify archaeological resources related to the nineteenth-century Hall Springs Hotel and the late-nineteenth-century Ivy Hill Plantation.⁴²⁸ In addition to finding evidence of these historic resources, project members also identified Native American camp locations and the eighteenth-century Eutaw Manor and grist mill.

Lisa Kraus and Jason Shellenhamer, two professional archaeologists and Baltimore City residents, direct the Herring Run Archaeology Project. While the project started as a public research project, a number of threats to archaeological resources within Herring Run Park

⁴²⁷ “We Dig Hampstead Hill! Searching for the War of 1812 in Patterson Park,” *Baltimore Heritage* (blog), 2014, <https://baltimoreheritage.org/patterson-park-archaeology/>.

⁴²⁸ “Herring Run Park Archaeology,” Baltimore Heritage, accessed October 22, 2019, <https://baltimoreheritage.org/project/herring-run-park-archeology/>.

became clear. For example, park improvements such as trail repairs and utility work can disturb unknown archaeological resources and the City does not consistently consider its impacts on these resources.⁴²⁹ Another threat is the allowance of metal detecting within Baltimore City Parks. These citywide issues are discussed in more detail in the next section of this chapter.

The Herring Run Archaeology Project has been undertaking yearly excavations since 2014 with the help of hundreds of volunteers (Figure 10). A detailed archaeology field manual was created for the project that presented an overall history of the park, the project's research design and objectives, and field procedures that archaeologists and non-archaeologists alike can follow to ensure the thorough and systematic excavation and documentation of identified archaeological resources.⁴³⁰ After excavations close each season, volunteers assist with the artifact processing in laboratory space donated by the Maryland Natural History Society. The results of the Herring Run Park archaeological investigations have been presented to the public in various formats including a brochure reporting the findings of the initial excavations,⁴³¹ updates on social media and a project blog, multiple public presentations, and media appearances such as local television news programs and radio stations. The project has also gained recognition for its work in successfully connecting the local community with its history through archaeology. In 2017, Baltimore Heritage presented the project with a Heritage

⁴²⁹ Lisa Kraus, e-mail to the author, November 4, 2019.

⁴³⁰ "Herring Run Archaeology Project: A Handbook for Archaeological Fieldwork" (Herring Run Archaeology Project, 2016), <https://herringrunarchaeologydotorg.files.wordpress.com/2016/03/herring-run-field-handbook-20161.pdf>.

⁴³¹ "Public Archaeology at the Eutaw Manor Site: Uncovering the History of an 18th and 19th Century Plantation Site in Baltimore's Herring Run Park" (Herring Run Park Archaeology, 2015), <https://herringrunarchaeologydotorg.files.wordpress.com/2015/12/eutaw-manor-booklet4.pdf>.

Preservation Award and in 2018, the project received the Maryland Preservation Award for Outstanding Individual Leadership.



Figure 10: Herring Run Park Archaeology Project volunteers screening soil for artifacts. [Photo by Jason Shellenhamer, Wikimedia Commons, CC-BY-2.0, 2015.]

In regard to funding, the Herring Run Archaeology Project received a grant from Preservation Maryland in 2015 and a micro-grant from Baltimore Heritage in 2016 which has allowed the project to purchase field equipment. A few small, private donations have also been instrumental in purchasing various supplies. Beyond funding for equipment and supplies, the

Herring Run Archaeology Project relies on donated time from volunteers to complete all field investigations and artifact processing tasks.⁴³²

The Baltimore City Historic Preservation Fund

The Baltimore City Historic Preservation Fund was created in February 2019 by Preservation Maryland in partnership with MHT, Baltimore Heritage, and CHAP. This grant program is funded by the Baltimore Community Foundation, a philanthropic foundation based in the Greater Baltimore area. The goal of the Baltimore City Historic Preservation Fund is to “provide direct assistance for capital and non-capital activities that advance efforts to preserve historically significant properties” in Baltimore. The fund was created to support the preservation of historic resources with priority given to projects that help strengthen neighborhood identity and revitalize communities.⁴³³ Grant awards between \$1,000 and \$10,000 are available to tax-exempt organizations. Among the types of projects eligible for assistance through this fund include rehabilitation of properties that significantly contribute to the history of Baltimore and its neighborhoods, preparation of National Register nominations, and public archaeology or public history programs that strengthen neighborhood cohesion.⁴³⁴

In the first round of awards, nine projects received a total of \$70,000 in grants. These included seven bricks-and-mortar projects and two education and research projects. One of these projects, the Caulker’s House Rehabilitation project, was awarded \$10,000 to support the

⁴³² Lisa Kraus, January 15, 2020.

⁴³³ “Announcing the Launch of the Baltimore City Historic Preservation Fund,” Preservation Maryland, February 20, 2019, <https://www.preservationmaryland.org/announcing-the-baltimore-city-historic-preservation-fund/>.

⁴³⁴ “Baltimore City Historic Preservation Fund Guidelines and Procedures,” Preservation Maryland, 2019, <https://www.preservationmaryland.org/wp-content/uploads/2019/02/baltimore-city-historic-preservation-fund-grant-guidelines-2019.pdf>.

rehabilitation of two rare wood frame vernacular houses located in Fell's Point. These structures were inhabited by African American ship caulkers and their families in the early nineteenth century. Funding will be used to restore the houses to their 1840s appearance so they can be used as an educational tool to highlight this particular chapter in Baltimore's history.⁴³⁵

The proposed rehabilitation of the Caulker's Houses has been on preservationists' radar for decades. Because there is an MHT preservation easement on the properties, archaeological investigations were required as part of the rehabilitation. The Herring Run Archaeology Project team offered to conduct the archaeology work for free so that all of the grant funding could go towards building stabilization and rehabilitation⁴³⁶, further demonstrating the importance of nonprofit archaeology advocacy groups. In the spring of 2019, the Herring Run team and their volunteers, in partnership with Baltimore Heritage and local preservation groups including the Preservation Society of Federal Hill and Fell's Point and the Friends of 612-614 South Wolf Street, conducted investigations in the rear yards of the houses. These initial investigations revealed that portions of the yards have great potential to yield significant information about the lives of the caulkers and subsequent immigrant families who resided in the homes over the centuries, including children's marbles and porcelain dolls, writing slates and pencils, buttons, a wide range of imported and locally-made ceramics, and even a human wisdom tooth –

⁴³⁵ "Baltimore City Historic Preservation Fund Grants Awarded," Preservation Maryland, August 5, 2019, <https://www.preservationmaryland.org/baltimore-city-historic-preservation-fund-grants-awarded/>.

⁴³⁶ Lisa Kraus, e-mail to the author, January 15, 2020.

evidence of nineteenth-century home dentistry.⁴³⁷ While the Baltimore City Historic Preservation Fund grant monies did not go directly to the archaeological investigations, archaeology was mentioned in the grant application and the grant remains a future funding opportunity for other archaeological investigations across the city.

The Baltimore Archaeology Forum

Founded in 2017, the Baltimore Archaeology Forum (BAF) aims to promote the preservation, awareness, and better use of archaeological resources in Baltimore City and Baltimore and Howard Counties. A group of like-minded archaeologists, historians, preservationists, and the public formed the group through collaboration with cultural institutions in the Baltimore area with the goal of not only protecting the area's archaeological heritage but also making these resources "accessible and relevant for everyone."⁴³⁸ Working and connecting with the local communities is a pivotal part of the BAF's mission.

The BAF supports and participates in local public archaeology projects. Recent salvage excavations at the Sellers Mansion in West Baltimore's Lafayette Square neighborhood showed that gaps in the regulatory protection of archaeological resources can be partially filled by dedicated volunteers. The Sellers Mansion, constructed in 1868, has been vacant since the early 1990s and has fallen into great disrepair. A nonprofit developer proposed to rehabilitate the building. Because the mansion is a Baltimore City Landmark, CHAP recommended that an archaeological investigation be conducted as part of the rehabilitation project. Specifically, an

⁴³⁷ "Caulkers' Houses: Update for May 18th & 19th," *The Herring Run Archaeology Project* (blog), May 20, 2019, <https://herringrunarchaeology.org/2019/05/20/caulkers-houses-update-for-may-18th-19th/>.

⁴³⁸ "Baltimore Archaeology Forum," Baltimore Archaeology Forum, accessed October 13, 2019, <https://baltimorearchaeology.wordpress.com/>.

elevator tower was proposed on the Sellers Mansion property in a location where historic maps showed the presence of a previous building. The investigations were to be aimed at determining whether evidence of the previous historic structure remained. The developer, who was not expecting the archaeology requirement, argued that the cost of the investigations would decimate the project's budget.

The BAF volunteered to assist the developer by conducting the required excavations. During the summer and fall of 2018, the BAF, with support from Baltimore Heritage, created a small public archaeology project that went beyond the area of the proposed elevator tower – the project investigated the greater grounds of the Sellers Mansion property. With the help of volunteers, the excavations were quickly and adequately conducted; however, funding for the project was not enough to cover the cost of preparing a report of the findings or processing and curating the artifacts.⁴³⁹ While this is considered a successful outcome because the investigations were able to be conducted without putting an undue burden on the nonprofit developer, the Sellers Mansion project provided the opportunity for lessons learned regarding volunteer groups undertaking regulatory investigations – for example, ensuring that the other equally important aspects to archaeological research, particularly the documentation and reporting of findings, are incorporated into the project's funding.

A symposium proposed by the BAF, "Archaeology on the Horizon: Looking at the Present and Future of Archaeology in Baltimore," was scheduled for October 2019. Unfortunately, due to a lack of response to the call for papers, the symposium was canceled. The goal of the

⁴³⁹ Adam Fracchia, personal communication with the author, October 18, 2019; Schiszik, October 18, 2019.

symposium was to gather Baltimore-area archaeologists, share exciting local projects, and discuss the need for and possibility of creating a public archaeology program in the City. While it is uncertain when the symposium will be rescheduled, BAF will continue to elicit support for a future symposium.

The Baltimore City Historical Society

The mission of the Baltimore City Historical Society (BCHS) is to encourage the study and appreciation of the City's history by connecting the citizens of today to those who have gone before and highlighting the relevance of the City's past to its present. The BCHS also promotes the conservation of the City's material culture including historical records, artifacts, and buildings. The organization's newsletter, *Baltimore Gaslight*, disseminates information and articles about various events, programs, specific historic resources and landmarks, and other aspects of Baltimore's history. The BCHS is an all-volunteer organization and relies on the annual dues of its members and other donations.⁴⁴⁰ While the BCHS does not currently appear to be directly active in the archaeological component of historic preservation, its focus on preservation through education and a strong relationship with the community makes it a natural ally of advocates of the City's archaeological resources.

The Natural History Society of Maryland and its Archaeology Club

The Natural History Society of Maryland (NHSM) is a nonprofit organization with the mission of fostering stewardship of Maryland's natural heritage through the conservation of its natural history collections and the promotion of the natural sciences. The NASM was created in

⁴⁴⁰ Baltimore City Historical Society, accessed November 19, 2019, <https://www.baltimorecityhistoricalsociety.org>.

1929 by members of the Maryland Academy of Sciences. The Maryland Natural History Museum was established in Druid Hill Park in 1936. After losing that space, the NHSM found a home for its collections of flora, fauna, fossils, minerals, and artifacts just outside of Baltimore City in Overlea, Baltimore County. In addition to its many programs directly related to natural resources such as lectures and workshops on bats, dinosaurs and fossils, or plant identification, the NHSM also sponsors a number of clubs, including the Archaeology Club. The Archaeology Club meets once a month, plans archaeology-related field trips, and recently conducted its first small-scale excavations.⁴⁴¹ Three professional archaeologists are a part of the all-volunteer staff, including Lisa Kraus and Jason Shellenhamer, the directors of the Herring Run Archaeology Project discussed earlier. The NHSM provides laboratory space and volunteers to help with the curation of the Herring Run project artifacts. While the inclusion of archaeology amongst the NHSM's strictly natural sciences focus may seem anomalous, the connection bridged between the natural sciences and archaeology advocates in the Baltimore area only broadens support for archaeological resource protection beyond the professional archaeological community.

Known Archaeological Resources and Previous Investigations in Baltimore

Data on previous archaeological investigations and known archaeological resources in Baltimore City was obtained from Medusa, Maryland's Cultural Resource Information System. The MHT maintains this online database of architectural and archaeological resources.⁴⁴² Access to archaeological site and investigation files is not available to the public. Archaeologists,

⁴⁴¹ "About Us – Natural History Society of Maryland," 2019, <https://www.marylandnature.org/about-us/>.

⁴⁴² See "Medusa, Maryland's Cultural Resource Information System - Version 1.0," 2019, <https://mht.maryland.gov/secure/medusa/>.

agency representatives, and researchers must be authorized by MHT in order to access this information. In addition to the archaeological site and Phase I archaeological survey data available through Medusa, information about Phase II investigations and Phase III data recovery projects is available through MHT's Archeological Synthesis Project. As a way to make archaeological "gray literature" more accessible to researchers, the Synthesis Project has condensed data from Phase II and III reports into searchable synopsis reports. Researchers and archaeologists will now be able to compare critical data from sites across Maryland, identify data gaps, and guide future research questions.⁴⁴³

As of this writing, eighty-one Phase I archaeological surveys have been conducted in Baltimore City and recorded with MHT (Figure 11). There is a total of 196 known archaeological sites in Baltimore City registered with MHT. Table 8 presents the number of known prehistoric sites with identified time periods and sub-periods. In addition, eight unidentified prehistoric period sites have been identified. Eleven sites have both prehistoric and historic components. Types of prehistoric sites identified in Baltimore include lithic scatters, short-term camps, base camps, and shell middens.

No contact period sites have been recorded. In regard to historic period sites, no seventeenth-century sites have been identified within Baltimore. Many historic period sites are multicomponent or span multiple time periods. Table 8 presents the number of known historic archaeological sites by time period. A wide range of historic period site types have been identified in Baltimore including, but not limited to, rowhouses, mansions, farmsteads, tenant

⁴⁴³ "The MHT Archeological Synthesis Project."

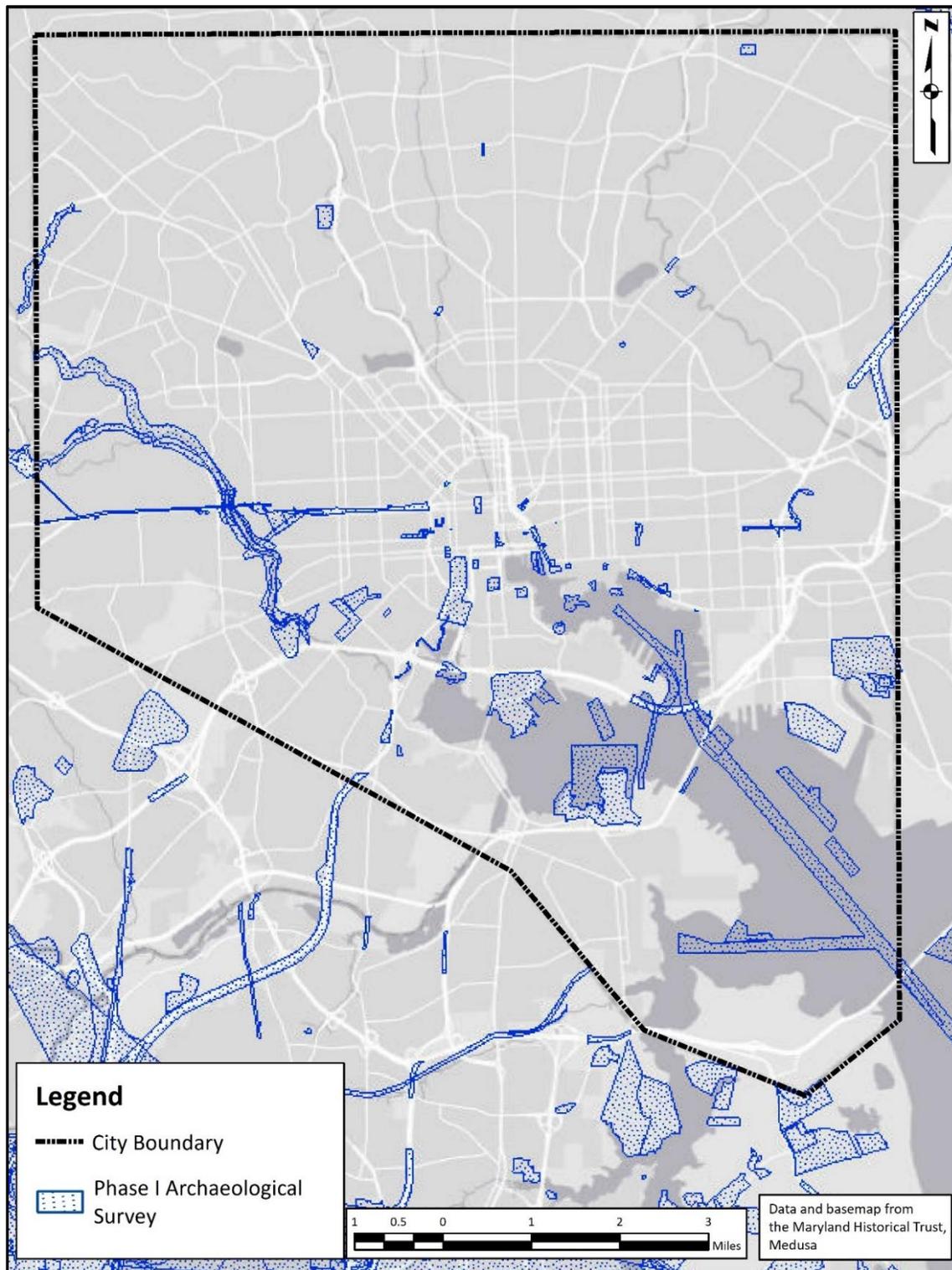


Figure 11: Phase I archaeological surveys conducted in Baltimore City and recorded with the Maryland Historical Trust. [Source: Data and base map from the Maryland Historical Trust.]

PREHISTORIC	Time Period	Paleoindian	Early Archaic	Middle Archaic	Late Archaic	Early Woodland	Middle Woodland	Late Woodland
	Number of Known Sites	0	0	0	1	3	3	2

HISTORIC	Time Period	1630 - 1720	1721 - 1780	1781 - 1820	1821 - 1860	1861 - 1900	1901 - 1930	Post - 1930
	Number of Known Sites	0	16	81	144	163	146	110

Table 8: Number of known prehistoric and historic period archaeological sites in Baltimore City. [Source: Maryland Historical Trust.]

houses, millworker housing, industrial buildings, mills and mill races, pottery kilns, gardens, orchards, schoolhouses, bottleries, sugar refineries, tobacco pipe factories, stables, breweries, taverns, hospitals, churches and synagogues, military fortifications, shipyards, stone quarries, trolley car bridge foundations, cisterns, privies, trash pits, and many others. A review of this data will identify time periods and site types that are either very well-documented or little or not at all represented in Baltimore’s archaeological record.

Current Status of Local-Level Archaeological Resource Protection in Baltimore

Article Six of the Baltimore City Code, titled “Historical and Architectural Preservation,” provides the regulatory foundation for historic preservation in Baltimore. Its purpose statement describes the types of areas and structures to be preserved “for the educational, cultural, economic, and general welfare of the public...Baltimore City contains a number of significant areas within which are located various buildings and other structures that contribute to the historical and architectural significance of the area” and also “contains an even greater number

of individually significant buildings and other structures that have special historical or architectural significance.”⁴⁴⁴

Article Six states that CHAP must adopt rules and regulations to carry out the requirements of the ordinance. The *Baltimore City Historic Preservation Rules and Regulations* were last adopted in December 2015.⁴⁴⁵ This document defines the rules of procedure for CHAP, the process for designating districts and landmarks, and most relevantly, the review procedures for districts, landmarks, and potential landmark properties.

While the protection of archaeological resources via an archaeological review process is not explicitly included in Article Six, it does require that all ground-disturbing activities proposed within any of the City’s thirty-six⁴⁴⁶ locally-designated Historical and Architectural Preservation Districts or on the over two hundred properties designated as City Landmarks be approved by CHAP or its staff (Figure 12). However, there are no regulatory archaeological review procedures mandated by the City Code.

Local historic district designation is granted by the Mayor and City Council by ordinance, most often initiated by the local community. In 2010, CHAP stopped designating new local historic districts because it lacked enough staff to review changes in any additional districts.⁴⁴⁷

⁴⁴⁴ “Baltimore City Code, Article 6 Historical and Architectural Preservation (As Last Amended by Ord. 19-258),” 5.

⁴⁴⁵ “Baltimore City Historic Preservation Rules and Regulations.”

⁴⁴⁶ The Woodberry Historic District is currently considered an ongoing designation and will likely become a local historic district in the coming months. A recent controversy surrounding the demolition of ca. 1840s millworkers’ houses prior to a planned development project, despite assurances from the developer that the structures would be retained in the new design, prompted community members to seek additional protection for its historic resources.

⁴⁴⁷ Natalie Sherman, “Historic Districts Proliferate as City Considers Changes,” *The Baltimore Sun*, March 14, 2015, <https://www.baltimoresun.com/bs-bz-historic-districts-20150314-story.html>.

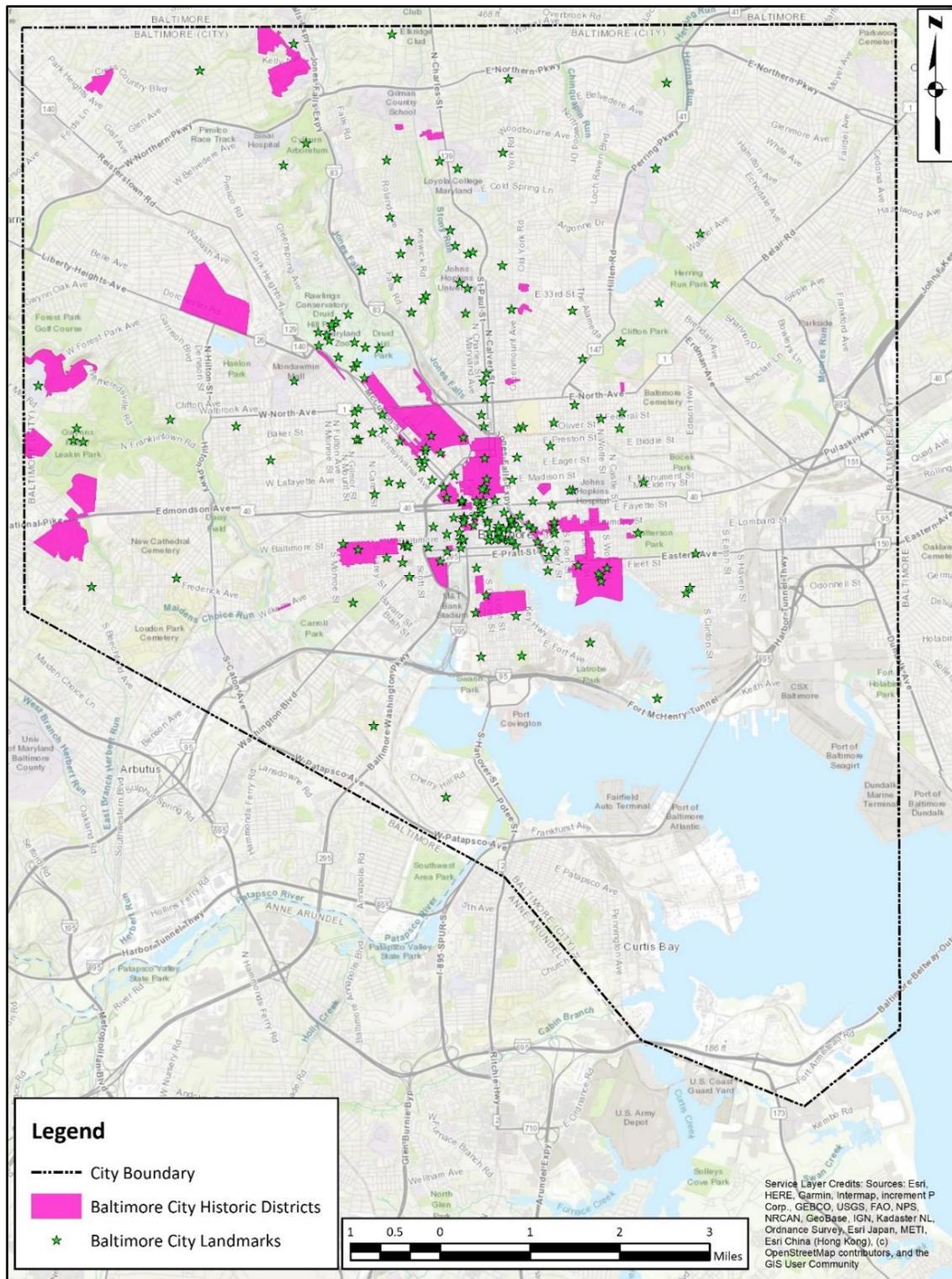


Figure 12: Locations of Baltimore City Historic Districts and Baltimore City Landmarks. [Source: Data from Open Baltimore, <https://data.baltimorecity.gov/>, 2019.]

Fortunately, the designation process has since been restored. Properties can be placed on the Landmarks Lists by ordinance for significant exteriors or public interiors. Only publicly accessible interior spaces can be designated as a City Landmark including theaters and hotel lobbies. The Potential Landmark List identifies individual historically significant structures, including both exteriors and public interiors, which the Commission has determined eligible for the Landmark list but have not yet been designated by the City Council. Properties on the Potential Landmark List are provided with an immediate level of protection but with a limited timeframe.⁴⁴⁸

Subtitle 8 of Article Six, titled “Alterations, etc., to or Affecting Properties,” requires CHAP approval before certain changes are made to any structure located within a local Historical and Architectural Preservation District or included on the Landmarks List: Exteriors or Public Interiors and the Potential-Landmark List: Exteriors or Public Interiors. CHAP approves changes by issuing an Authorization to Proceed and this must be received before a building permit will be granted. The main categories of proposed exterior changes, or interior changes for public buildings, that must be reviewed by CHAP include the repair or replacement of material or architectural features, painting, excavation, demolition, or the construction of a new building, fence, wall, or other structure. The review procedures for minor projects and major projects differ in that minor work can go through an expedited process – as they are not likely to impact archaeological resources and involve little to no ground disturbance – while applicants for major projects are required to have a pre-development meeting with Planning

⁴⁴⁸ “Baltimore City Historic Preservation Rules and Regulations,” 7.

Department staff, including zoning and design review staff, and a pre-submittal meeting with CHAP staff.⁴⁴⁹ These meetings are ideally held early in the project planning process and provide the applicant adequate time to consult with CHAP. Applications for an Authorization to Proceed for major projects are also scheduled for a public hearing where the Commission hears public testimony and recommendations from CHAP staff and makes a decision on the application.

Article Six also gives CHAP the authority to apply the *Baltimore City Historic Preservation Design Guidelines* to projects within local historic districts or landmarks, and these design guidelines include a chapter on archaeology, albeit a very brief and vague one. Chapter 5 of the *Design Guidelines*, “Guidelines for Archaeology,” comprises just one page and is divided into two sections. The first addresses the potential to impact archaeological features present within a landmark interior, particularly under basement and kitchen floors. The second section states that an archaeological assessment report may be required before any ground-disturbing activities occur within historic districts or on landmark property in an effort to identify and protect archaeological resources. Further, it may then be necessary that an archaeological survey be conducted by a professional archaeologist. As with Article Six, the *Design Guidelines* do not provide any criteria for determining when an archaeological assessment is required. These guidelines were written approximately a decade ago by a non-archaeologist, resulting in their vagueness and lack of clear direction. They also do not reflect the Maryland Historical Trust’s language regarding, or standards of, archaeological resource protection and management, as do most local regulatory guidelines in other Maryland municipalities. The

⁴⁴⁹ “Baltimore City Historic Preservation Rules and Regulations,” 13–19.

general recommendations in Chapter 5 include: leave known archaeological resources intact, minimize ground disturbance or hire a qualified archaeologist to monitor excavations, avoid using heavy machinery if they have the potential to disturb archaeological resources, and avoid installing utilities that may disturb underground resources. These recommendations are fairly vague and generic and offer no guidance regarding unknown archaeological resources or how to manage such an unanticipated discovery.

There have been benefits to the archaeology chapter's ambiguity. For example, the archaeology guidelines have been successfully applied to projects that a CHAP Historic Preservation Planner determined to have the potential to impact known archaeological sites or areas with high potential for archaeological resources. The guidelines allowed CHAP to recommend archaeological surveys for a number of projects and to require the developers to conduct the initial archaeological investigations.⁴⁵⁰ While this workaround may help to protect some archaeological resources within Baltimore, it brings uncertainty to the development review process. With a clear archaeological review ordinance, or with more specifics provided in the *Design Guidelines* regarding when archaeological review may be appropriate and how the investigations should be carried out, developers and planners alike would be more prepared for or aware of the potential for added costs related to archaeology.

Another benefit to the archaeology guidelines being within the *Design Guidelines* as opposed to being in the city ordinance is the ability for CHAP staff and the Commission to revise these guidelines. After holding one or more public hearings on the proposed revisions, the

⁴⁵⁰ Lauren Schiszik, e-mail to the author, May 22, 2017.

Commission has the authority to approve any proposed changes to the *Design Guidelines*. Conversely, with an ordinance in the City Code, changes require approval from the City Council who, in turn, would be able to make additional changes without CHAP staff or Commission input.⁴⁵¹ The implications of this could be devastating to the preservation of historic and archaeological resources as political pressure and influence from preservation opponents could go unchecked. Changes to the ordinance also need to be introduced by a Councilmember. Further, in Baltimore, the Commission has very strong regulatory authority as its rulings cannot be reversed by the Planning Department or the Mayor's Office.⁴⁵²

In regard to development activities proposed for city-owned properties, the *Historic Preservation Rules and Regulations* do state that all "plans for the reconstruction, alteration, or demolition of any structure...owned by the Mayor and City Council" should be referred to CHAP for review by the city agency undertaking the project. However, in reality, this is an advisory role and, further, there are not enough CHAP staff available to perform reviews of every city project.⁴⁵³ The procedure for these reviews, when they are undertaken, begins with a recommendation from CHAP staff to the city and to the Mayor regarding potential impacts to historic and archaeological resources. If this report of recommendations is not submitted by CHAP within forty-five days, the Mayor can assume that CHAP does not object to the plans. The project review procedure then follows that of minor or major development projects, as appropriate.⁴⁵⁴ Properties owned by the Mayor and City Council subject to CHAP review include

⁴⁵¹ Schizik, May 22, 2017.

⁴⁵² Schizik, October 18, 2019.

⁴⁵³ Schizik, October 18, 2019.

⁴⁵⁴ "Baltimore City Historic Preservation Rules and Regulations," 20.

municipal offices, parks, schools, fire and police stations, and monuments, among others (Figure 13). City-owned parks have the potential to be the most archaeologically sensitive properties in the city due to their fairly undeveloped nature and limited previous ground disturbance. More than 4,000 acres, or 7.8 percent of Baltimore City's land area, is designated city-owned parkland or public space.⁴⁵⁵

Regulatory Gaps and Major Threats to Baltimore's Archaeological Resources

One of CHAP's current Historic Preservation Planners has a professional background in archaeology. As both a preservation planner and an archaeologist, Lauren Schiszik is able to provide her archaeological expertise in situations where archaeology may not have been adequately considered in the past, particularly in the development review process. In pre-development meetings involving historic district or landmark properties, Schiszik is able to connect with developers and other permit applicants early enough in the process and ensure archaeology-related requirements or recommendations are communicated and understood by all parties. Unfortunately, if a pre-development meeting is attended by another CHAP planner, the potential for archaeological resources to be affected by the project is not always considered. However, this inconsistency has been recognized and is being addressed by CHAP through the education of its staff on these matters.⁴⁵⁶

⁴⁵⁵ "Parks & Trails," Baltimore City Department of Recreation & Parks, December 23, 2015, <https://bcrp.baltimorecity.gov/parks>.

⁴⁵⁶ Schiszik, October 18, 2019.

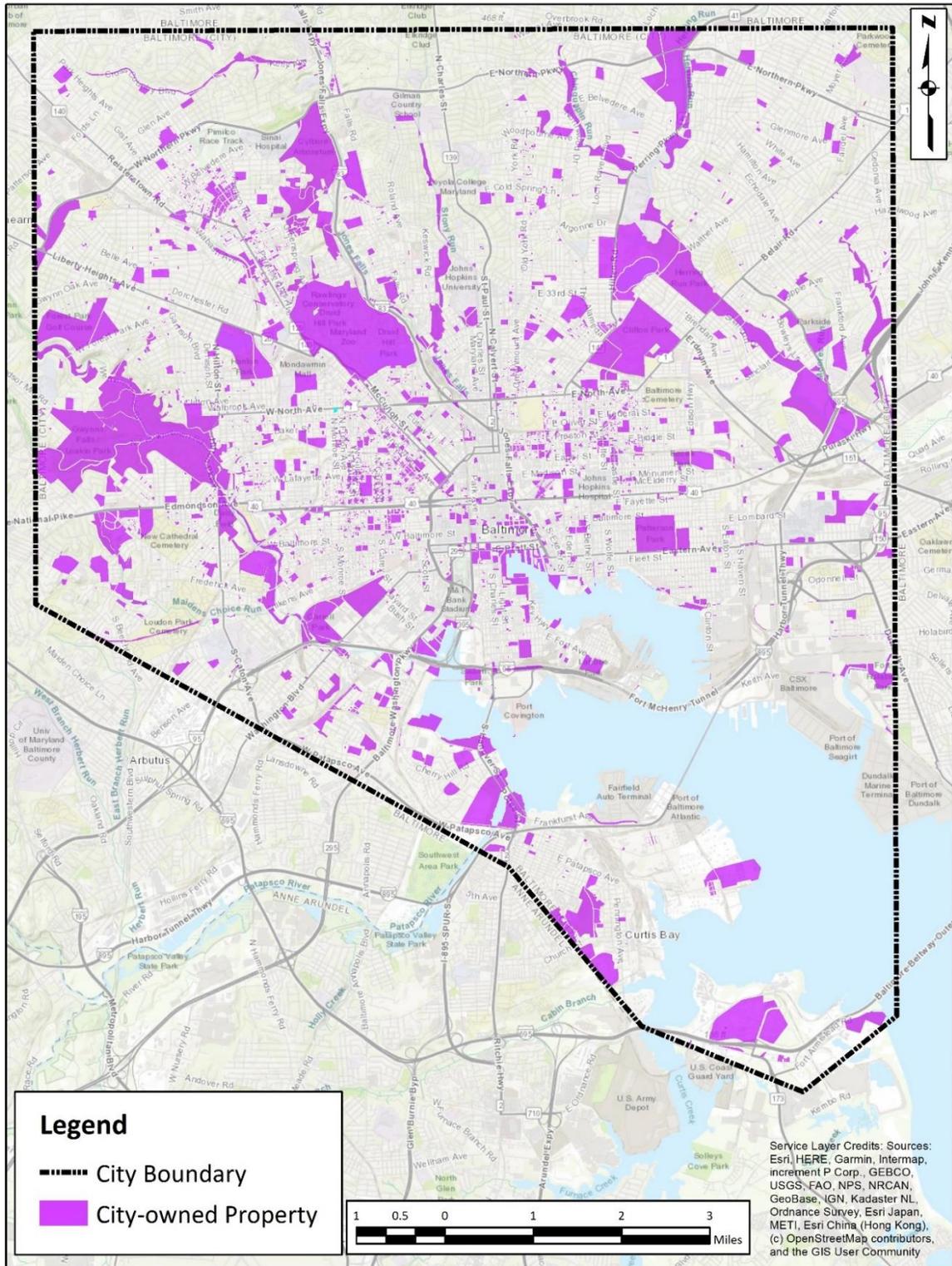


Figure 13: City-owned property in Baltimore City. [Source: Data from Open Baltimore, <https://data.baltimorecity.gov/>, 2019.]

One category of projects undertaken in Baltimore where archaeological review is greatly needed is city-level transportation and infrastructure projects, most of which do not receive any state or federal funding; therefore, the Section 106 process is not always triggered.⁴⁵⁷ Transportation projects including local road or highway reconstruction or expansion and infrastructure projects including the replacement of existing or installation of new underground utilities have the potential to disturb unknown or known archaeological resources, including data pertaining to the history and development of the city's infrastructure itself.

A major gap in archaeological resource protection in regard to transportation and infrastructure projects, and most projects undertaken by the city, is caused by the lack of a pre-development process for projects proposed on city-owned properties like there is for private development. Without a pre-development process and associated meetings, CHAP is not made aware of many city projects until later in the planning process, or not at all. CHAP and its staff recognize the need to make and strengthen connections with other city agencies, particularly the Baltimore City Department of Transportation, so more agencies consider their impacts on historic and archaeological resources by involving CHAP in their planning processes. The Baltimore City Department of Public Works is an example of such. Preliminary designs, usually thirty-percent designs, are often provided for review, allowing for any changes to the project due to archaeological resource potential or mitigation. The Recreation and Parks Department is another example of a city agency that has taken strides to become better stewards of its city's archaeological resources. In light of the discoveries made by the Herring Run Archaeology

⁴⁵⁷ Schiszik, May 22, 2017.

Project and increased local interest in archaeology, the department hired consulting archaeologists to conduct investigations and monitoring in other areas of Herring Run Park prior to park improvements.⁴⁵⁸ The capital division of Recreation and Parks has also included an archaeologist in its budget for on-call services.⁴⁵⁹

Another threat to Baltimore's archaeological resources is the allowance of metal detecting within its parks. For a nominal twenty-five-dollar fee, anyone sixteen years of age or older can apply for a permit to metal detect and collect coins and artifacts from most city park properties, except for municipal golf courses, athletic areas, and ten major park areas including Federal Hill Park, Mt. Vernon Square, the Inner Harbor area, and Patterson Park. While there is a depth restriction of eight inches for digging and retrieving artifacts, this still has the potential to impact archaeological resources and features. Further, this rule is almost impossible to enforce. Permit applicants must also attend a training session at one of two recognized metal detecting clubs – the Maryland Free-State Treasure Club or the Maryland Artifact Recovery Society. The permit application states that the training will provide an orientation in the ethics of metal detecting. The Code of Ethics presented on the Maryland Free-State Treasure Club's website promotes the protection of "natural resources, wildlife, and private property,"⁴⁶⁰ completely overlooking the direct harm that metal detecting causes to our unknown archaeological resources. Additionally, permit regulations do not require detectorists to report their findings to the city's historic preservation staff. In 2018, fourteen metal detecting permits

⁴⁵⁸ Kraus, November 4, 2019.

⁴⁵⁹ Schizik, October 18, 2019.

⁴⁶⁰ "Metal Detecting Code of Ethics," Maryland Free-State Treasure Club Metal Detecting, 2019, <http://marylandfreestateclub.com/Ethics.html>.

were issued by the Department of Recreation and Parks, and increased to twenty-eight in 2019.⁴⁶¹

In addition to metal detecting causing harm to archaeological resources in city parks, bottle collectors and other treasure hunters also pose a threat to archaeological resources, mainly on private property. While entirely legal, the collectors receive permission from homeowners to dig in their rear yards, targeting the locations of now-filled privies or wells, in search of whole bottles and other complete artifacts. Most of the time these collectors, or “privy diggers,” do not have any interest in fragments of artifacts, despite their potential to yield just as much information. The artifacts are removed without documentation, thus destroying their archaeological context.

Recommendations for Baltimore

Chapter III of this treatise identified a number of effective archaeological review practices being implemented in other municipalities. The above overview of Baltimore’s history, political organization and climate, and past and present preservation and archaeological endeavors paired with a review of the current scope of local-level archaeological resource protection in the city provides the basis for a number of recommendations. These potential solutions to better protect the archaeological resources of Baltimore from private and municipal development consider the different regulatory avenues available, archaeological

⁴⁶¹ Permit Office, Department of Recreation and Parks, e-mail to the author, November 26, 2019 and January 23, 2020.

review triggers and responsibilities, local partnerships, metal detecting and bottle collecting, and financial incentives.

Regulatory Avenues

The first regulatory change that should be pursued is to revise the *Historic Preservation Design Guidelines*, specifically Chapter 5 “Guidelines for Archaeology.” This has been a goal of CHAP planner and archaeologist Lauren Schizik for a number of years but time and resources have not been available to take on the task. The *Design Guidelines* as a whole were written to “provide an overarching philosophy or approach to sensible preservation planning and decision making.”⁴⁶² However, Chapter 5 provides very few details and little direction regarding what sensible planning should entail. The archaeology guidelines state that “every reasonable effort must be made to identify, protect, and preserve archaeological [sic] significant resources” and warns that an archaeological assessment report including “an inspection of archaeological sensitivity” may be required. The definition of what is considered a “reasonable effort” is not provided and no additional criteria are specified regarding when an archaeological assessment or investigation would be required. However, the specifics on what would trigger an assessment or investigation would be more appropriately incorporated into Article Six and the related *Rules and Regulations* document. Other major missing elements that must be included in Chapter 5 are standards of archaeological resource identification procedures, for example, how Phase I surveys should be undertaken, field documentation requirements, and reporting

⁴⁶² “Baltimore City Historic Preservation Design Guidelines” (Adopted by the Commission for Historical and Architectural Preservation, Baltimore City Department of Planning, City of Baltimore, Maryland, February 11, 2019), 5, https://chap.baltimorecity.gov/sites/default/files/CHAPDesignGuidelines_2019.02.15_small.pdf.

requirements. A quick solution to the lack of guidance and standards in this chapter is to simply reference the MHT's *Standards and Guidelines for Archeological Investigations in Maryland* and state that those guidelines should be followed when local regulatory avenues require investigations until new, customized standards and guidelines can be drafted.

The recommended revisions to the *Design Guidelines* should be implemented and tested before any additional regulatory changes or avenues are pursued. A test period would allow for a partial review process to be established. Also, revising the *Design Guidelines* would be significantly easier to accomplish compared to amending the city ordinance as CHAP and the Commission can propose and adopt changes without the City Council's approval or input.

While revisions to the *Design Guidelines* are necessary, these revisions would not provide any additional protection to or consideration of archaeological resources on private property not located within local historic districts or on landmark properties. To expand protections to cover these properties, a revision to the city historic preservation ordinance would be required. Despite this need, revising the city ordinance is not practical at the present time. When ordinances are revised, their provisions become vulnerable and exposed. The City Council, the private development community, and the public not only have the opportunity to support or oppose proposed changes, but they also have the opportunity to question and debate other parts of the ordinance. Therefore, this should be done with caution and must only be done at an opportune time – a time when it is certain that archaeological resource protection and increased regulations has supporters in the Council, especially since the

proposed ordinance amendment would need to be introduced to the City Council by a Council member. Because of the risks, revision of Article Six occurs very infrequently.⁴⁶³

In 2014 and 2015, a comprehensive review of Article Six, the *Historic Preservation Rules and Regulations*, and the *Design Guidelines* was undertaken. During the public engagement process, some private developers and homeowners criticized the ordinance, “citing unpredictable, lengthy reviews for projects and overzealous enforcement in the local districts that can inhibit property maintenance by making it unaffordable.”⁴⁶⁴ These concerns will need to be carefully considered if increased archaeological resource protection measures are to be introduced via any of the regulatory avenues. However, in preparation for the next comprehensive review of the local historic preservation regulations, priority should be given to drafting language for the revision of the *Design Guidelines* and Article Six. This would allow for potential criticism from developers, homeowners, and the public to be identified, considered, and ideally addressed in advance of the next opportunity for revision.

Review Process Implementation: Triggers and Responsibilities

Triggers for archaeological review will require much deliberation from CHAP staff, other city agencies, preservation advocacy groups, and the public. But actions identified as major threats to archaeological resources should be given the most consideration. First, transportation and infrastructure projects not involving state or federal funding must be more consistently reviewed by CHAP, as this was identified by CHAP staff as a lost opportunity for

⁴⁶³ Schiszik, October 18, 2019.

⁴⁶⁴ Sherman, “Historic Districts Proliferate as City Considers Changes.”

archaeological review.⁴⁶⁵ Projects occurring on city-owned land, particularly schools and parks, must also be subject to archaeological review in a regulatory as opposed to advisory manner. Further, the wording of the current historic preservation review regulations applies to plans for reconstruction, alteration, or demolition of city-owned structures, not properties. This does not explicitly cover city projects not directly affecting a structure such as park improvements, for example. The *Historic Preservation Rules and Regulations* must be updated to encompass all city projects on city-owned property meeting particular criteria, for example, all projects involving ground disturbance. This could be amended to a specific threshold of ground disturbance if the number of projects triggering archaeological review proves to be unmanageable by CHAP staff.

Another major issue that must be reconciled is in regard to regulatory review for properties located within historic districts or designated as city landmarks. Most of the over 14,000 properties located in Baltimore's local historic districts are private residences. Requiring private homeowners to pay for archaeological investigations for actions such as the construction of a small addition to their house or the replacement of a utility pipe is unreasonable.⁴⁶⁶ The most likely archaeological resources to be identified on small private residence lots, particularly rowhouses, are rear yard features including privies, wells, or cisterns. While these features have the potential to yield information, they are also very common in the archaeological record and many have been excavated in Baltimore.⁴⁶⁷ Placing a

⁴⁶⁵ Schiszik, May 22, 2017.

⁴⁶⁶ Schiszik, May 22, 2017.

⁴⁶⁷ Twenty-one identified archaeological sites have yielded information on these rear yard features – over ten percent of the total number of archaeological sites recorded in Baltimore.

financial burden on a private homeowner to survey or excavate features that are unlikely to yield significant *new* information must be avoided.

However, there are small residential properties in the city that have the potential to retain archaeological deposits that can yield information on specific time periods, site types, or cultural affiliations that are underrepresented thus far in the archaeological record. There must be a mechanism to allow for the consideration of these resources. This is a situation where having a comprehensive archaeological database for the city would be extremely beneficial. This dataset, which would include previous survey locations, known archaeological site locations, historic map data, elevation change data, and an archaeological sensitivity model, would allow CHAP staff reviewers to quickly and efficiently assess the archaeological potential of the property. Partnerships with local preservation groups or schools can be used to help create a city-wide database starting with data already compiled by the MHT. These groups can also assist with the development of a predictive model or archaeological sensitivity map for the city, particularly students in history, archaeology, geography, or GIS programs.

If the assessment reveals that the property has the potential to yield information regarding gaps in the archaeological record of the city, CHAP staff can work with the property owner to accomplish this without burden. Baltimore could approach these situations like Alexandria. While their ordinance does not mandate the review of private development under a certain size, projects not requiring the filing of formal site plans with the city, if it is determined that a significant resource is or may be located on the property, city archaeologists ask permission from the property owner to conduct an emergency recovery excavation or to monitor the proposed ground disturbance. In these cases, the cost of archaeology is covered by

the city. This is where a network of local partnerships would be beneficial. Archaeology advocacy groups like BAF or local preservation groups like Baltimore Heritage could volunteer their time and resources to conduct the investigations, prepare a report of the findings, and process any artifacts for permanent curation.

Under the current preservation ordinance, projects located outside of local historic districts, not on city landmarks, and not city-owned property do not trigger any level of archaeological resource protection. In order to avoid requiring all private homeowners to be subject to archaeological review, but to be able to capture larger private development, a ground disturbance threshold would be most practical. For example, all projects involving more than 1,000 square feet of ground disturbance would automatically require a review. The majority of projects on private residential property would not meet this threshold. Assigning a depth to the trigger criteria in an urban area like Baltimore would not be appropriate due to the huge variation across the city in the amount of fill or disturbed soils that may be present above intact archaeological resources. But, again, this could only be accomplished through amending Article Six and as the above section determined, a revision of the ordinance is the regulatory avenue least likely to be successful until widespread support – from citizens, developers, and the City Council – is in grasp.

When required, private developers and other city agencies would be expected to cover the expense of any required investigations. For private developers, funds can be built into contingency budgets. As regulatory review specifics are developed, CHAP staff should disseminate the details directly to private developers or hold educational meetings so developers can begin to plan ahead in regard to budget and project schedules. City agencies

that undertake projects that often have the potential to impact archaeological resources, such as the Department of Transportation or Department of Public Works, can contract with consulting archaeologists for comprehensive on-call archaeological services, such as conducting archaeological assessments or investigations as required by CHAP. This cost can be incorporated into agencies' operating budgets. This precedent has been set by the Recreation and Parks' capital development division. If this is successful, practical, and sustainable, CHAP must urge other agencies to follow their lead.

In regard to hiring a full-time city archaeologist, this should not be pursued until there is a structural, regulatory change to support the position.⁴⁶⁸ In the meantime, CHAP staff can partner with local universities and offer city archaeology internships. Students from the history, historic preservation, anthropology/archaeology or related departments of Baltimore-based schools such as Johns Hopkins University, Goucher College, University of Baltimore, Coppin State, Morgan State, Baltimore City Community College, or Loyola University could gain real-world experience in municipal-level historic preservation through these internships. The city archaeology program in Wichita, Kansas has shown that this kind of partnership can be successful.

Local Partnerships

Supporters of pursuing local archaeological review in Baltimore must continue to foster the relationships between the preservation and archaeological resource advocacy community. When social capital exists based on a shared interest in archaeology, it provides a starting point

⁴⁶⁸ Schiszik, October 18, 2019.

for strengthening these relationships and creating new ones, and this shared passion for archaeology continues to build on these connections that lead to even stronger social capital.⁴⁶⁹ Partnerships with the state and local preservation advocacy groups discussed above will be crucial to all aspects of archaeological resource protection at the local level – the compilation of an archaeological database, sensitivity map, and historic context; the drafting and planning stage; efforts to gain the support of the public and city officials; the implementation of effective review practices; and ongoing public engagement and education efforts. While the range of local partnerships could be boundless, a few examples of how specific partnerships can benefit local archaeological resource protection in Baltimore City will be provided.

Preservation Maryland and the Baltimore City Historic Preservation Fund can provide many opportunities for financial support through grant programs. Grants can be utilized in a number of ways including funding for the preparation of a comprehensive city-wide historic context, city-wide predictive modeling, or a city-wide database of archaeological information. Public archaeology research projects, those not a result of regulatory review, could also be partially funded through financial support from these and other partners. To keep costs down relating to the development of a city-wide historic context or the preparation of archaeological sensitivity maps for the city, resources can be pooled from various partner groups such as Baltimore Heritage, the Archaeological Society of Maryland, or the Council for Maryland Archaeology who could provide research assistance, or from local undergraduate and graduate students who could undertake the preparation of these tools through internship programs. A

⁴⁶⁹ Little and Amdur-Clark, "Brief 23: Archeology and Civic Engagement."

grant could be used to hire a professional archaeologist to oversee the quality control of the resulting work. Partnerships with preservation advocacy groups like Baltimore Heritage will be critical to lobbying efforts and effectively putting pressure on municipal government to pursue local regulatory archaeology review. It will be imperative to remember that local regulatory archaeology programs are not effective or relevant if they isolate themselves from local organizations, other city departments, or private developers,⁴⁷⁰ so strong and varied partnerships must be fostered.

Metal Detecting and Bottle Collecting

The Department of Recreation and Parks must terminate its metal detecting permit program. Even if public and local government support exists for regulatory archaeological resource protection or programs, the success of such legislation is highly unlikely due to the city's contradicting stance. One city agency permitting the undocumented removal of artifacts from city property while another city agency and the City Council attempts to convince the public that archaeological resources and artifacts are worth protecting is a glaring contradiction. Baltimore's acknowledgment of the importance of its archaeological resources must be consistent across agencies, policies, and programs.

Baltimore should follow the lead from the state as well as the federal government. The Maryland Department of Natural Resources forbids metal detecting or digging to search for relics or artifacts within any Maryland Park Service property. Permits are only issued by the MHT under the Maryland Archaeological and Submerged Archaeological Historic Properties Act

⁴⁷⁰ Appler, "Understanding the Community Benefits of Municipal Archaeology Programs," 318.

to archaeologists proposing scientific investigations.⁴⁷¹ Metal detecting is also prohibited in National Parks. While a number of municipalities prohibit the use of metal detectors in city-owned parks including Charleston, South Carolina; Alexandria and Fredericksburg, Virginia; Philadelphia, Pennsylvania; and Prince George’s County, Maryland, Baltimore is not alone in allowing these permits. New York City also permits metal detecting in many of its parks and beach areas.

If the termination of the metal detecting permit program is not achievable, some alternative solutions are available. CHAP or local advocacy groups like Baltimore Heritage or the BAF should make connections with the Maryland Free-State Treasure Club and the Maryland Artifact Recovery Society to discuss metal detecting procedures on city parkland. The requirement of reporting finds in some manner to CHAP could be added to the permit application rules. This reporting could include the completion of a simple form listing or checking off the types of artifacts recovered, other artifacts identified but not recovered, the general location of the finds, and photographs of some artifacts. This information could then be incorporated into an archaeological resource dataset for the city and may potentially fill in data gaps. A similar documentation process should be advertised to the bottle collecting community. If the collecting occurs on private property, it should be made clear that there is no possibility of the City confiscating any recovered artifacts. But information such as the location, description, and photographs of the artifacts could be submitted to CHAP and added to an

⁴⁷¹ “Relic Collecting, Treasure Hunting and Use of Metal Detectors, Agency Policy 13-17” (Department of Natural Resources, Maryland Park Service, July 1, 2015), <https://dnr.maryland.gov/Publiclands/Pages/MetalDetecting.aspx>.

archaeological database. As with other archaeological data, specific locational information of these finds would not be made available to the public. Metal detectorists and privy diggers will continue to conduct these activities despite, or in spite of, the opinions of archaeologists. But if a partnership can be formed between those groups and a city archaeology program, archaeological data that would otherwise be lost could be collected without offense, barring that the metal detecting or privy digging activities are conducted within the confines of federal, state, and local laws.

Tax Credits, City Funds, and Other Financial Avenues

One option available to both consider archaeological resources and to ease the financial burden of archaeological investigations on small and large developers and property owners is to encourage pre-construction investigations through tax incentives, similar to Baltimore's existing Historic Tax Credit Program. Developed to encourage the rehabilitation and restoration of historic structures, the program offers a ten-year tax credit to offset the increase in taxes as a result of the increased property value. For an archaeological tax credit program, credits to offset an increase in property tax would not make sense. Archaeological excavations or the presence of archaeological resources will not increase property values, but the excavations could be an important first step towards development which will. The amount of the credit would need to be based on the cost of the required archaeological investigations.

The eligibility criteria for an archaeological tax credit would also need to differ from the existing program. In order to be eligible for the city's historic tax credit, the structure must be a designated City Landmark, be listed in the National Register of Historic Places, or be a contributing resource to either a Baltimore City or National Register Historic District. Because

properties located within local historic districts or designated as City Landmarks are already somewhat covered by existing protection, an archaeological tax credit could be extended to privately-owned property not within these designated areas as a way to encourage investigations that may not be required through existing regulatory avenues. In the tax credit application process, there should be a preliminary assessment undertaken in order to determine the archaeological sensitivity of the property. For example, if known land use history suggests massive amounts of prior disturbance, and this is confirmed with a tool such as an elevation change analysis, a tax credit should not be offered if the probability of intact archaeological resources is extremely low.

Another option for utilizing a tax credit program for archaeology is to offer the incentive to any property owner when additional phases of investigations are required through local archaeological review. This would be especially attractive to private developers and would allay some of the financial burden of added excavation costs. Additionally, in instances where significant archaeological resources are threatened by development, tax credits could be offered for the preservation in place of these resources.

As introduced in Chapter II, an archaeological ordinance was recently approved in Savannah, Georgia, the details of which will be examined in Chapter V. During an earlier attempt to develop an archaeological review ordinance, a potential solution to entice private developers to voluntarily submit to local archaeological procedures was considered. Ellen Harris, former Director of Urban Planning and Historic Preservation for the Metropolitan Planning Commission, was looking into potential financial incentives such as allowing developers to build an additional story above the area's building height limits if they commit a

minimum of four percent of their construction budget to archaeological investigations, with a cap of \$500,000. Savannah already has a process in place where developers can earn an additional story if they meet certain criteria considered to be for the public good.⁴⁷² These criteria could be expanded to include archaeological investigations on properties determined to have a known archaeological site or have a high probability of yielding archaeological resources.

Another way to offer financial support to the private sector for required archaeological investigations is to establish an archaeological fund similar to that of St. Augustine or Santa Fe as discussed in Chapter III. The fund would collect a specific amount or portion of particular permit fees, for example, building permit fees which vary based on the proposed work or historic preservation design review permit fees which usually range from \$15 to \$50.⁴⁷³ This would require an increase to the current permit fee rates; however, this increase should be negligible to ensure the support of – or at the very least, avoid strong objections from – developers and private property owners. It would likely take a few years for the archaeological fund to grow to an operational amount, but it could be used in cases of required archaeological investigations resulting in economic hardship. Preference should be given to private homeowners and nonprofit organizations. The existing procedures for economic hardship currently followed by CHAP in the historic design review process⁴⁷⁴ could be followed in regard to receiving financial support through the city’s archaeological fund.

⁴⁷² Edmondson, “Archaeologists Are Worried About Savannah’s Building Boom”; Evans, “Push for Savannah Archaeological Ordinance.”

⁴⁷³ “Historic Districts,” Historical and Architectural Preservation, City of Baltimore, 2018, <https://chap.baltimorecity.gov/historic-districts>.

⁴⁷⁴ “Baltimore City Historic Preservation Rules and Regulations,” 23–24.

Artifact Repository

A major consideration that is sometimes overlooked when planning for archaeological programs or excavations is where the collections, including artifacts and associated documentation, will be stored in perpetuity. The collections must be properly treated and made available for scientific and educational purposes. Similar to most states and municipalities, the chosen repository should be consistent with federal curation standards and guidelines. It is the city's responsibility to properly store all artifacts recovered from city property as well as artifacts donated by private property owners. Baltimore does not currently have an appropriate storage facility for artifacts and should not accept any artifacts recovered from city excavations until this is secured. While partnerships with local museums could be a potential solution, this option should be pursued with caution to avoid repeating the issue that the city just faced when the Maryland Historical Society could no longer care for the artifacts collected from BCUA excavations.

It is unlikely that Baltimore could fund the construction of a new climate-controlled space for artifact storage; however, the City could follow the lead of many other municipalities in Maryland such as Prince George's County and recommend that artifact collections be submitted to the state repository, the Maryland Archeological Conservation Lab (MAC Lab). The extra cost of submitting collections to the MAC Lab, which is currently \$600 for one standard size box, would be covered by private developers or city agencies and would need to be incorporated into project budgets. It should be expected that this additional cost will meet resistance from the development community.

Concurrent to identifying a repository for City archaeological collections, guidelines should be crafted to establish artifact sampling and discard protocols to keep the sizes of collections, and the costs to store them, to a minimum. For example, general protocols set by the MAC Lab should be incorporated as a starting point – large quantities of brick, shell, nails, slag, window glass, or fire-cracked rock from prehistoric contexts can be reduced to a sample through discarding much of the materials⁴⁷⁵ either in the field or after analysis has been conducted in the laboratory. Additional discard strategies can be determined through consultation with the MAC Lab, professional archaeologists, and the public.

The Creation of a Community Archaeology Program

The creation of a community archaeology program to support the regulatory framework, and vice versa, is critical. Ideally, a community archaeology program could offer the local citizens the opportunity to engage in archaeological investigations and research in ways that require little initial interest or effort on the part of the citizens – bring archaeology to the people. For example, such a program could have a presence in local grade schools by coordinating field trips to local excavations or by offering archaeology summer camps. A community program could coordinate events at local museums or historic sites, connecting archaeology to existing cultural and historical resources in the city. By tackling stimulating or difficult research topics such as gender and sexuality or class, race, and white privilege in the

⁴⁷⁵ Rebecca Morehouse, Sara Rivers Cofield, and Nichole Daub, “Technical Update No. 1 of the Standards and Guidelines for Archeological Investigations in Maryland: Collections and Conservation Standards” (Maryland Archaeological Conservation Laboratory, Maryland Historical Trust, Revised 2018), 13, https://mht.maryland.gov/documents/PDF/archeology/Archeology_standards_curation.pdf.

city, the struggle to make connections with the community and to make archaeology more relevant and personal may become easier.

Only through the development of a municipal-level archaeology program can public involvement move beyond the short-term legal requirements of local regulations to build and strengthen relationships between community members over an extended period of time – public involvement becomes civic engagement through this sustained effort.⁴⁷⁶ While the BCUA was successful at promoting archaeology to the public, it was not a sustainable program, financially or politically. The program did receive some of its funding through the city budget but it also relied heavily on grants, donations, and volunteers – all somewhat inconsistent resources. Although the program was created as part of the Mayor’s Office, it was born from the passion of one particular mayor. With inevitable administration changes, political support was never guaranteed. While a powerful political voice can be the driving force for support of an archaeological review program, having such strong support originating from the mayor’s office is very rare – and is highly unlikely to happen in Baltimore today in light of all the socioeconomic struggles that the city faces. Further, despite being initiated through the Mayor’s Office, there was no regulatory arm to the program. No regulations, rules, procedures, or practices were incorporated into CHAP to support or guide the program. While the city was promoting the importance of archaeology and what it could contribute to the understanding of its history, it was not willing to take regulatory steps to address the threat of archaeological resource destruction posed by private development.

⁴⁷⁶ Little and Amdur-Clark, “Brief 23: Archeology and Civic Engagement.”

If a community program is to be formed in the future, it must have the backing of municipal regulations to support and sustain it. Even with various advocacy groups and other partners providing resources, opportunities for financial assistance, and volunteers, a local program must also have the support from Baltimore's city officials and its citizens. Conversely, a community program that conducts public archaeological research apart from the regulatory framework is essential to the sustained political and public support that a regulatory program requires in order to remain relevant and continue to provide value to the community. In this sense, this may seem like a "chicken-and-egg" dilemma. But the solution lies in keeping the scale balanced – local archaeological review regulations on one side and a local community archaeology program on the other – throughout any and all pursuits towards local archaeological resource protection. To compromise one for the other will result in the demise of both.

Determining Significance and Crafting Meaningful Research Questions

Specifics regarding how to determine the criteria for archaeological resource significance must only be made after extensive deliberation between archaeological resource advocates, city officials, and, most importantly, the public. The chief recommendation for Baltimore at this point is that if regulatory avenues are pursued, public engagement must be an integral part of the entire pursuit, particularly in defining what resources should be considered significant and providing input regarding the direction and focus of archaeological research undertaken through the local review process. Archaeologist William D. Lipe reminds us that the dependence of archaeological resource significance and value on context means that the significance is not immutable – different groups see different resource values. Which values and

archaeological resources and sites are important to which stakeholder groups or to which specific communities?⁴⁷⁷ Further, a lack of access to political power by marginalized groups impacts what resources are considered significant and offered protection.⁴⁷⁸

In addition to the search for appropriate criteria for determining significance, the development of a robust historic context is another major opportunity for future research – a necessary one, in fact. Historic contexts provide a means to define what is considered to be important archaeological data needed to determine significance in comparison to similar resources and to guide how significance should be evaluated. Most importantly, historic contexts provide a clear pathway to what the municipality and its citizens consider to be the purpose of the archaeology by way of crafting meaningful research questions. The brief overview of Baltimore’s pre-history and history presented earlier in this chapter provides a glimpse into the city’s long and complex past – all aspects of which should be considered in a potential archaeology program.

After a comprehensive historic context is prepared for Baltimore – one that explores all periods of the city’s history and all of its past citizens, especially those living in the margins of history and the margins of today – one avenue of research to pursue is the complete analysis, or synthesis, of known archaeological resources in the city to identify categories that have not been studied in great detail, particularly those with connections to marginalized contemporary

⁴⁷⁷ William D. Lipe, “Archaeological Values and Resource Management,” in *Archaeology & Cultural Resource Management: Visions for the Future*, ed. Lynne Sebastian and William D. Lipe, School for Advanced Research, Advanced Seminar Series (Santa Fe, New Mexico: School for Advanced Research Press, 2009), 43–45.

⁴⁷⁸ Baugher, Appler, and Moss, “Introduction: Thinking Globally and Acting Locally—Exploring the Relationships Between Community, Archaeological Heritage, and Local Government,” 5.

populations. When crafting meaningful research questions for regulatory archaeological investigations, this analysis will not only provide a means to fill in data gaps but will also help direct local archaeological research in Baltimore down a values-centered pathway as advocated by Mason. When applied to archaeological investigations, values-centered preservation “makes cultural significance the linchpin of preservation decisions,” addresses both the contemporary and historic values of a place or site, and places a high priority on understanding that a community’s definition of what is important does and will change.⁴⁷⁹

A comprehensive historic context should help answer the following questions. What specific or general time periods are missing in the archaeological record of Baltimore? Which marginalized groups – historic or contemporary – are underrepresented in the archaeological record and how can these groups benefit from archaeological research? What value can the archaeological research provide to these groups – a clearer and greater sense of individual and collective identity? What historical themes can be explored through archaeology in Baltimore that may provide a better understanding of current social or political issues?

While the scope of this study could not accommodate a full analysis, a few likely research priorities can be identified for Baltimore: prehistoric occupations of the Middle Archaic period and earlier; the nineteenth-century shipbuilding industry with emphasis on the ship workers, particularly the predominance of free black ship caulkers; the mid-twentieth century Civil Rights movement; and particular groups most ignored in the recorded history of Baltimore including women, early marginalized immigrant populations including the Poles, Irish,

⁴⁷⁹ Mason, “Theoretical and Practical Arguments for Values-Centered Preservation,” 21, 45.

Welsh, Germans, Italians, Greeks, Russians, Lithuanians, Ukrainians, the Jewish community, and African Americans – for example, the enslaved, the antebellum free black communities, and the postbellum and twentieth-century segregated communities. Another group whose experiences are severely underrepresented in history and the archaeological record, not only in Baltimore but across the United States, is the LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) community. The MHT and Preservation Maryland have recently recognized the need to document the historical significance of this community by awarding a CLG grant to Baltimore City and Montgomery County to complete nominations and amendments to the National Register for a number of known historic sites associated with LGBTQ history.⁴⁸⁰ While this avenue for preservation and archaeological research is still quite new, an LGBTQ theme study inclusive of an archaeological context was prepared in 2016 by Megan Springate, a self-identified queer archaeologist pursuing her Ph.D. at the University of Maryland.⁴⁸¹

Looking further into the topic of determining significance and finding value in archaeology, Ellen Chapman’s comprehensive study of the relationship between Richmond’s archaeological resources and community value is an extremely relevant and current example of a city that, like Baltimore, is struggling with the promotion of archaeological resource protection amidst political, social, and racial tensions. To understand how archaeology can lead to social justice, Chapman’s research focuses partly on how “the legacy and current reality of

⁴⁸⁰ “RFP: Nominations and Amendments to the National Register of Historic Places for Sites Associated with LGBTQ History in Maryland,” Preservation Maryland, September 27, 2019, <https://www.preservationmaryland.org/rfp-national-register-nominations-amendments-for-lgbtq-historic-places-in-maryland/>.

⁴⁸¹ “LGBTQ America: A Theme Study of Lesbian, Gay, Bisexual, Transgender, and Queer History” (Washington, D.C.: National Park Foundation, October 2016), www.nps.gov/subjects/tellingallamericansstories/lgbtqthemestudy.htm.

race relations in Richmond influence how and when groups find archaeology valuable” as well as how “the value of archaeological resources is defined across power hierarchies in the city.”⁴⁸²

Particularly pertinent to future research regarding archaeological significance criteria in Baltimore, Chapman’s study “has broader implications for American urban archaeology and for examinations of the development of value, particularly with reference to how the histories of race relations and contemporary race relations in American cities continue to influence how archaeological materials are interpreted and the extent to which they are seen as valuable. It raises questions regarding the tensions that develop when municipal archaeology initiatives coordinated by dominant city power structures attempt to create community-engaged projects. It also provides an examination of the potential of archaeology for restorative justice initiatives and explores how emphasizing these narratives may increase the resonance of community archaeology projects among often under-engaged groups.”⁴⁸³ This aligns with the recommended values-centered approach to preservation, to determining significance, and to local archaeological research in Baltimore as a whole, as described above.

A deep dive into Chapman’s study could provide a foundation for understanding how Baltimore’s historic context and research priorities, which would be developed prior to the pursuit of any regulatory options, could then be used to promote the importance and relevance of a city archaeology program and its associated regulations. For example, by acknowledging

⁴⁸² Chapman, “Buried Beneath the River City: Investigating an Archaeological Landscape and Its Community Value in Richmond, Virginia,” 6–7.

⁴⁸³ Chapman, 9.

nineteenth-century free black and enslaved history as a research priority and linking this history with contemporary African American community identity, archaeological investigations are more likely to become relevant to the majority of Baltimore's citizens.⁴⁸⁴ For a regulatory archaeology program to successfully link the history within the city's archaeological record to present-day identity within communities, the citizens' participation in determining the criteria for archaeological resource significance becomes essential. While filling in data gaps in the archaeological record would be one goal of a regulatory program, it must not be given more weight than the goals of providing value to and of being relevant to contemporary citizens. A strong connection must be created between the public, city officials, and the preservation community in order to work towards these goals.

Conclusion

In the search for effective local archaeological review practices for Baltimore, this chapter considers and explores a number of factors. A look at Baltimore's prehistory and history helps identify the types of archaeological resources at risk in Baltimore, yet to be unearthed. An overview of the city's current government organization and political climate places the potential pursuit of increased archaeological regulations at the local level in a current context. A look at the development of CHAP and the BCUA provides a glimpse at past and present historic preservation and archaeological endeavors within Baltimore. Partnerships and collaboration with state and local preservation and archaeology advocacy groups serving

⁴⁸⁴ Approximately 62.8% of Baltimore City's population identifies as black or African American; "U.S. Census Bureau QuickFacts: Baltimore City, Maryland," U.S. Census Bureau, 2019, <https://www.census.gov/quickfacts/fact/table/baltimorecitymarylandcounty/AGE295218>.

the Baltimore area, such as the ones introduced in this chapter, will be critical to the success of any regulatory program or practice in terms of public and political support, access to preservation and archaeology expertise through professionals and advocates, and volunteer and financial support. A review of the current status of archaeological resource protection details the efforts and progress presently being made through a variety of regulatory avenues, highlights regulatory gaps, and identifies the major threats to Baltimore's archaeological resources. These factors provide the basis for the recommendations made to help close the local regulatory gap threatening the city's archaeological resources.

Regulatory avenues available for strengthening archaeological resource protection in Baltimore consist of a few options, each one appropriate for certain development actions, property ownership criteria, and property locations. Revisions to the *Historic Preservation Design Guidelines*, specifically Chapter 5, will improve protection of resources located within local historic districts or on city landmark properties. The *Historic Preservation Rules and Regulations* can be revised to extend the umbrella of CHAP's review authority to cover more actions proposed on city-owned property, not just ones that affect city-owned structures. Amending the historic preservation ordinance, Article Six, is the avenue most difficult to execute and can place its existing provisions at risk for additional public and political scrutiny; however, this is the only avenue available to pursue regulatory protection to private development not located within local historic districts or city landmarks.

The consideration and implementation of these recommendations will put Baltimore on the track to realizing an organized and valuable local regulatory archaeology program. Achieving this will allow archaeologists and the city's citizens to recognize the potential for

significant archaeological resources in all parts of the city, not just in designated historic districts. More importantly, this allows room for more meaningful contributions of cultural and social groups that are less visible in the historical and archaeological record. The value of all parts of the city – geographically, temporally, and culturally – can be seen.

While this treatise has explored both the need for and benefit of regulatory archaeological resource protection, it must be recognized that a local regulatory archaeology program is not appropriate or practical for every municipality. Expending limited government funds may not be the best use of taxpayer dollars in some municipalities and would likely never achieve enough public or governmental support. During the 2015 revisions to Article Six and the *Design Guidelines*, concerns were raised about the burden the ordinance was causing some developers and homeowners at the time. If there were these concerns in 2015, how would additional or stronger regulations regarding archaeological resources be received now? As posed earlier in this chapter, the following questions remain: Is it the right time to be thinking about funneling more of the city’s resources away from the city’s socioeconomic challenges? If not, will there ever be an appropriate time? Efforts to inform Baltimore’s citizens and government officials about the threats to its archaeological resources and why their protection matters must be thoughtfully undertaken with the help of preservation and archaeology advocacy groups before any changes to the historic preservation ordinance are brought to the table. But the city’s state of affairs and its priorities can and will change, and in order to take advantage of the “right time” – if that does present itself in the future – Baltimore’s archaeological resource advocates must be ready with an army of interested, informed, and engaged citizens in their corner. To garner this support, public involvement, engagement, and

education regarding the plight of archaeological resource protection at the local level must be an immediate and ongoing effort in Baltimore – and in all municipalities.

CHAPTER V CONCLUSION: LOOKING DOWN BEFORE BUILDING UP

Introduction

Before outlining next steps for Baltimore City to take towards stronger local archaeological resource protection, this final chapter will address two topics that can provide additional insight into the subject of local archaeological resource protection: local archaeological resource protection in other countries and historic cemetery protection. This chapter will also examine recent efforts to enact local archaeological review regulations in four East Coast cities. By examining these recent efforts, the challenges and successes can provide Baltimore and any other municipality looking to pursue local regulatory avenues with lessons learned. What approaches or practices were pursued and do these seem to be effective practices for these specific cities? Finally, building on recommendations for Baltimore made in Chapter IV and the lessons learned from other cities, next steps will be presented along with other key issues warranting additional deliberation.

Additional Considerations and Avenues of Future Exploration

While this treatise analyzed local archaeological review practices used by several municipalities in the United States, it just scratched the surface not only in regard to the many other municipalities employing local archaeological resource protection in this country but also in regard to the many counties, cities, and towns around the world doing the same. Local

archaeological regulations and programs employed in municipalities outside of the United States could be sources of additional effective practices not used by the illuminators in this study but that could be suitable for cities like Baltimore. London, England, is explored here as an example of such a city that also faces challenges protecting its archaeological resources from local and private development but has found solutions through various partnerships and advocacy networks.

The second topic deserving of additional exploration is the protection of unknown burial grounds and historic cemeteries in Baltimore and beyond. While historic and prehistoric Native American burials and cemeteries can be considered a type of archaeological resource, they do not fit neatly into the categories of active cemeteries, archaeological sites, or historic properties – they fall somewhere in between. Unfortunately, that means that many state and local regulations fall short in protecting them from private development. In this sense, historic cemeteries, particularly those long forgotten and now unmarked, face the same threats as unknown archaeological resources. Gaining public and political support for historic burial ground protection may be one of the most effective means of promoting local archaeological resource protection. A few examples of threatened historic cemeteries in Baltimore and recent efforts focused on historic cemetery protection in Montgomery County, Maryland, will be discussed in this section.

Local Archaeological Resource Protection Beyond Our Borders

Because local archaeological review can be carried out in a variety of ways, the search for new and innovative practices, policies, and other regulatory tools is never-ending. An analysis of local archaeological review regulations enacted abroad can potentially offer

additional regulatory options for municipalities here in the United States. A comparison of how local governments around the world play a role in the protection of their archaeological resources – or fall short of this task – can provide new solutions or cautionary advice. What can be learned from local archaeological protection beyond our borders?

Urban Archaeology, Municipal Government and Local Planning, co-edited by Baugher, Appler, and Moss, divides its focus on local archaeological regulations between municipalities in the United States and the Commonwealth of Nations, specifically in the United Kingdom, Canada, Australia, and India.⁴⁸⁵ A brief examination of the relationship between local government and archaeological resources in London, England will provide a glimpse into the possibilities of future research on this topic.

Unlike many European cities, London does not have a municipal archaeology program or a central, state-funded national archaeological service. Instead, it manages the protection of its archaeological resources through various institutional relationships and a combination of local and central government controls. The City of London is part of Greater London, comprised of thirty-three boroughs. It is at the borough council level that local government services are provided, including housing, planning, social services, and others.

Generally, archaeological planning advice in England is provided by county-level archaeologists; however, over the past decade, the number of these local archaeology advisors are dwindling.⁴⁸⁶ Local archaeology advisors assess the potential archaeological impact of

⁴⁸⁵ Baugher, Appler, and Moss, *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States*.

⁴⁸⁶ Henry Rothwell, "The Future of Local Government Archaeology Services," *Digital Digging* (blog), January 20, 2014, <http://www.digitaldigging.net/future-local-government-archaeology-services/>.

proposed development and advise on mitigation or treatment of the archaeological resource.

Some cities like York and Birmingham even have City Archaeologists independent of the County Archaeologists. But because London lacks a county structure, there is not even a County Archaeologist position. As an alternative, the Greater London Archaeology Advisory Service (GLAAS) is operated and funded by England's national heritage advisory service – Heritage England. GLAAS provides archaeological advice to most of London's boroughs, some of which are too small to employ a dedicated local-level archaeologist.⁴⁸⁷

Enacted in 1990, Planning Policy Guidance 16: Archaeology and Planning (PPG 16) integrated archaeological review into the planning process for the first time by requiring the pre-development assessment of a project site for its archaeological potential at the expense of the developer.⁴⁸⁸ PPG 16 was replaced in 2010 by Planning Policy Statement 5: Planning for the Historic Environment, which in turn was replaced in 2012 by the National Planning Policy Framework (NPPF). Presently, all national planning policies in England, including those pertaining to archaeological resources and built heritage, are provided through the NPPF. It was enacted as a way to streamline the planning process into a single policy that would support development and economic growth. However, opponents of the legislation argue that this accelerated process erodes the existing 'checks and balances' of previous legislation.⁴⁸⁹ While NPPF heritage and archaeology policies "stress the need to assess the significance of any

⁴⁸⁷ Hana Morel, Joseph Flatman, and Kim Stabler, "Planning Archaeology in World Cities: Looking at London," in *Urban Archaeology, Municipal Government and Local Planning: Preserving Heritage Within the Commonwealth of Nations and the United States*, ed. Sherene Baugher, Douglas R. Appler, and William Moss (Cham, Switzerland: Springer International Publishing, 2017), 18–20.

⁴⁸⁸ Rob Armour Chelu, "25 Years of Developer Funded Archaeology," *Armour Heritage* (blog), March 2, 2016, <https://www.armourheritage.co.uk/blog/2016/3/2/25-years-of-developer-funded-archaeology>.

⁴⁸⁹ Morel, Flatman, and Stabler, "Planning Archaeology in World Cities: Looking at London," 20, 27–28.

heritage asset in order to fully understand the impact of development proposals and inform on how to manage change, using local historic environment records and expert advice,” developers in England are able to find loopholes in the current law as a result of its vagueness and the sidelining of environmental and cultural considerations during the streamlined planning process.⁴⁹⁰

Partnerships and networks formed between local societies and other advocates working alongside development-led archaeology in London are what make archaeological resource protection possible, despite there being legislative frameworks requiring local authorities to work with commercial archaeologists that have proved to be partially ineffective. London’s archaeological archive is one of the greatest accomplishments of London’s archaeology. The London Archaeological Archive and Research Centre (LAARC) is a central location for field notes, photos, site reports, and artifacts. LAARC encourages public involvement in archaeology through its strong relationships with local archaeological societies and dedicated volunteers who help with the analysis and treatment of the collections.⁴⁹¹ London has also created successful and innovative programs that help fill the gaps in the City’s archaeological resource protection.⁴⁹² Any municipality pursuing local archaeological resource protection can benefit from further study into policies and practices used in London and other cities worldwide.

⁴⁹⁰ Morel, Flatman, and Stabler, 20–21.

⁴⁹¹ Morel, Flatman, and Stabler, 28–29.

⁴⁹² Morel, Flatman, and Stabler, 29–30.

Historic Cemetery Protection in Baltimore City and Beyond

Like Philadelphia and many other cities and municipalities, Baltimore City is home to countless historic cemeteries and private burial plots. Because historic burials were sometimes unmarked, have since lost their markers and been abandoned, or thought to have been previously moved, these sacred places are regularly overlooked in the development process. Private development projects disturbing and destroying historic burials, as discussed in Chapter II, is a major concern in Philadelphia and unfortunately, Baltimore is also faced with this issue.

While the legislation passed in Maryland in 2018 made some strides towards increased protection of historic cemeteries and burial sites, it falls short and still leaves many historic cemeteries threatened by private development. For example, the Real Property Section of the Annotated Code of Maryland requires owners of properties containing burial sites over fifty years old to consult with the MHT about the proper treatment of grave markers, human remains, and the area surrounding the burial site; however, the advice provided by the MHT is not binding to the owner.⁴⁹³

As seen in Philadelphia and beyond, an overwhelming number of unknown burial grounds threatened by private development projects are African American. Two very recent examples of rediscovered African American cemeteries illustrate just how widespread the problem is: a forgotten burial ground for enslaved African Americans, both former and freed, was documented by university students in Middletown, Virginia, in January 2020 and ground-penetrating radar detected more than 120 burials, the remains of what is believed to be

⁴⁹³ "Title 14. Miscellaneous Rules Subtitle 1. Miscellaneous Rules," Annotated Code of Maryland: Real Property § 14-121.1 (2018), https://mht.maryland.gov/documents/PDF/research/Burial_Law.pdf.

Tampa, Florida's first African American burial ground, under an apartment complex in the summer of 2019.⁴⁹⁴ This is mainly due to centuries of segregation – most black residents were not permitted to be buried in public cemeteries so they were forced to establish their own burial grounds. Further, because private black cemeteries as well as potter's fields were not often officially documented by the city or town in which they were located, not many records exist.⁴⁹⁵ Many historic cemeteries or burial plots of all kinds were simply bulldozed, leveled, and paved over in the name of progress, particularly during mid-twentieth-century urban renewal.

One such long-forgotten African American cemetery in Baltimore is the Laurel Cemetery. Located in the Bel-Air neighborhood, Laurel Cemetery opened in 1852 as a secular cemetery for African Americans. By the early twentieth century, the cemetery had become neglected – it deteriorated into a local dumping ground and an eye-sore to the community. The state dissolved the cemetery in 1957. Out of a total of approximately 5,000 graves, only about three hundred were relocated before it was bulldozed. The property has since been paved over and is now home to a large shopping center. When the shopping center was sold in 2014 and the property gained some attention, a University of Baltimore professor learned of the Laurel Cemetery's location from a historic map. Excavations conducted on the edge of the property in

⁴⁹⁴ Melissa Topey, "Students Help Map Rediscovered Former Slave, Freed Slave Cemetery," *The Northern Virginia Daily*, January 24, 2020, https://www.nvdaily.com/nvdaily/students-help-map-rediscovered-former-slave-freed-slave-cemetery/article_c92438ca-f9e6-5d5f-b3a6-befc002bd3fd.html; Paul Guzzo, "Radar Finds More than 120 Coffins Buried beneath Tampa Apartment Complex," *Tampa Bay Times*, August 30, 2019, <https://www.tampabay.com/news/tampa/2019/08/30/more-than-120-coffins-found-buried-at-forgotten-zion-cemetery-now-an-apartment-complex/>.

⁴⁹⁵ Winberg, "Philly's Black Burial Grounds and the Battle for Preservation."

2015 with permission from the new owner confirmed the existence of intact burials.⁴⁹⁶ Another local professor at Coppin State University has joined in the effort to remember Laurel Cemetery and promote its preservation, encourage its proper treatment, and prevent any further destruction through the formation of the Laurel Cemetery Memorial Task Force.⁴⁹⁷ While the future of the Laurel Cemetery is uncertain and its preservation is not guaranteed in the event that it is threatened by additional development, the fact that the community is now being reminded of or introduced to this once forgotten sacred space is a step in the right direction. A community cannot stand up and fight for the protection of a historic cemetery, or any archaeological or historic resource, if they are not aware of its existence.

Another example of a threatened historic cemetery is the early-nineteenth-century Christopher Family Cemetery in the Westfield neighborhood of Northeast Baltimore (Figure 14). The cemetery is located on land purchased by a private developer who plans to build five houses on the property. The developer plans to fence off and avoid the cemetery area; however, the outcry from members of the surrounding neighborhood prompted the developer to conduct ground-penetrating radar on a portion of the property in order to determine the actual boundaries of the cemetery. This survey identified seven or eight graves and the community believes there are likely more. The 2018 updates to the Maryland burial laws requiring owners of historic burial sites to consult with the MHT on proper treatment of the

⁴⁹⁶ Christina Tkacik, "Rediscovering the African-American Graveyard beneath a Baltimore Shopping Center," *The Baltimore Sun*, March 20, 2018, <https://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-laurel-cemetery-excavation-20180313-story.html>.

⁴⁹⁷ "Remembering Baltimore's Laurel Cemetery," Coppin State University, September 26, 2019, https://www.coppin.edu/news/article/275/remembering_baltimores_laurel_cemetery.



Figure 14: The Christopher Cemetery, Northeast Baltimore. [Source: Photo by Barbara Haddock Taylor in Lillian Reed, “Developer, Neighbors Battle over Boundaries of Old Family Graveyard in Northeast Baltimore,” *The Baltimore Sun*, January 28, 2019.]

remains and associated burial items applied to the situation at the Christopher Cemetery; however, the legislation’s failing was glaring. The developer submitted development plans to the MHT which, in turn, recommended that a historical background search of the property and the Christopher family be conducted and that an archaeologist be hired to investigate the property and monitor any excavations.⁴⁹⁸ But, according to the burial law, the “advice provided by the Maryland Historical Trust...is not binding on the owner of the burial site.”⁴⁹⁹ To say the

⁴⁹⁸ Lillian Reed, “Developer, Neighbors Battle over Boundaries of Old Family Graveyard in Northeast Baltimore,” *The Baltimore Sun*, January 28, 2019, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-christopher-cemetery-20190117-story.html>.

⁴⁹⁹ “Title 14. Miscellaneous Rules Subtitle 1. Miscellaneous Rules,” Annotated Code of Maryland: Real Property § 14-121.1 (2018), https://mht.maryland.gov/documents/PDF/research/Burial_Law.pdf.

surrounding community and descendants of the Christopher family were upset by the proposed development and its potential impact to this sacred space would be an understatement.

Supporters of historic cemetery protection are natural allies in the fight for stronger legislation regarding the protection of burials and archaeological resources in general.

When historic cemeteries and burial sites are recorded with municipal governments, they can then be considered during planning and development activities and are more likely to be protected. Ongoing treatment and management plans can be developed once a cemetery has been relocated. Baltimore can look to Philadelphia and the Philadelphia Archaeological Forum (PAF) for a starting point to addressing this problem. The PAF has begun mapping historic cemeteries and burial sites citywide and making this data available to the public, the development community, and city officials via a user-friendly, online GIS tool.⁵⁰⁰ While much more effort is required and more data needs to be added to the database, it is a starting point. If a private development project does not trigger any level of archaeological review, at least city officials, the developer, and the public would have access to a tool – while not foolproof – that could help determine if there is the potential for unmarked burials to be present and open the door to discussions regarding a preemptive plan to handle the discovery.

Fortunately, a statewide effort to document one hundred cemeteries and burial sites across the state of Maryland was initiated in 2019 by Preservation Maryland in partnership with the Maryland Department of Transportation (MDOT) and the State Highway Administration (SHA). This project focuses on documenting cemeteries or burials within or adjacent to MDOT

⁵⁰⁰ “Historic Philadelphia Burial Places Map.”

and/or SHA rights-of-way that have never been recorded or are abandoned. A mobile app was developed for this project to record burial data that will then be added to the statewide GIS database and mapping tool. This data will be used when planning possible future highway projects.⁵⁰¹ A number of workshops were held throughout the state to educate the public about cemetery preservation and provide training for the mobile app so the public can learn how to document historic cemeteries in their own neighborhoods. While the focus of this particular project may not impact a large number of cemeteries within Baltimore City, SHA's innovative mobile app could be replicated within the City. While volunteers and local students could assist with a survey to document Baltimore's historic cemeteries in order to keep costs down, a user-friendly mobile app in the hands of the public could be even more efficient, effective, and, most importantly, empowering to the community. The Coalition to Protect Maryland Burial Sites, a statewide nonprofit organization comprised of volunteers dedicated to the protection and preservation of the state's cemeteries and burial sites, is involved in cemetery preservation and documentation efforts across Maryland and would be a great resource and partner for historic cemetery advocates in Baltimore.⁵⁰²

A number of nearby counties in Maryland have initiated historic cemetery inventory and documentation programs. Future research into these efforts and others in Maryland and beyond will provide Baltimore with a variety of resources and options for how to efficiently implement a citywide cemetery survey and effectively incorporate it into its planning and

⁵⁰¹ Elly Colmers Cowan, "New Statewide Cemetery Documentation Project Underway," Preservation Maryland, March 19, 2019, <https://www.preservationmaryland.org/new-statewide-cemetery-documentation-project-underway/>.

⁵⁰² Coalition to Protect Maryland Burial Sites, 2019, <https://cpmbs.org/>.

development review processes. Efforts undertaken by Anne Arundel and Prince George's Counties, both of which have taken steps to involve the public, were introduced in Chapter III.

To supplement its comprehensive countywide survey, Prince George's County has created a simple questionnaire designed to be completed by any citizen with information on historic cemeteries.⁵⁰³ The county's Planning Department has also published a cemetery preservation manual that provides a wealth of information on the history of burial and cemetery types in the county, recommendations on how to preserve and maintain cemeteries, and guidance on how to conduct cemetery surveys and research. It also includes cemetery access agreement templates and survey forms for the recordation of historic cemeteries and individual markers. The manual was developed to be used by cemetery owners, local government agencies, community organizations, descendants, and other interested members of the public.⁵⁰⁴

Montgomery County, Maryland, is an example of a municipality that not only took on the task of inventorying its historic cemeteries and burial grounds over the course of many years using volunteers, but also passed two laws in 2017 that specifically help preserve and protect these resources. Ordinance 33A-17 requires the County Planning Board to maintain an inventory of human burial sites in the county and Ordinance 18-31 requires that these burial sites be preserved and protected as a condition of the preliminary plan or subdivision review

⁵⁰³ See <http://www.pgparcs.com/DocumentCenter/View/1123/Cemetery-Survey-Questionnaire-PDF>.

⁵⁰⁴ "Prince George's County, Maryland, Cemetery Preservation Manual" (The Maryland-National Capital Park and Planning Commission, Prince George's County Planning Department, December 2010), <http://www.mncppcapps.org/planning/publications/pdfs/232/Cemetery%20Preservation%20Manual.pdf>.

and approval process.⁵⁰⁵ Developers are required to document cemetery elements that are located on the property and must develop a long-term maintenance plan.⁵⁰⁶ The County Planning Board adopted the *Burial Sites Inventory and Guidelines* document in May of 2019 to support the recent legislation.⁵⁰⁷ This document is a fantastic resource for any municipality pursuing a more structured historic cemetery documentation and protection program.

Montgomery County hired an archaeologist to lead the recent cemetery documentation effort and to draft the cemetery preservation guidelines. Unlike Prince George's County, Montgomery County lacks effective archaeological resource protection from most private development. County archaeological resource advocates and planning officials decided to start with a focus on historic cemetery protection, not only because of its own controversial instances of cemeteries threatened by private development – for example, an African-American burial ground located in the Westbard neighborhood of Bethesda, Maryland⁵⁰⁸ – but also because gaining public and political support for cemetery resources may pave the way for more effective archaeological resource protection.

⁵⁰⁵ "Burial Sites Inventory and Guidelines Report" (Montgomery County, Maryland: Montgomery County Planning Department, The Maryland-National Capital Park and Planning Commission, May 16, 2019).

⁵⁰⁶ Caitlynn Peetz, "15-Year Effort to Document County Cemeteries Uncovers 50 New Sites; County Planning Board to Review New Guidelines to Preserve Burial Grounds," *Coalition to Protect Maryland Burial Sites* (blog), February 17, 2019, <https://cpmbs.org/15-year-effort-to-document-county-cemeteries-uncovers-50-new-sites/>.

⁵⁰⁷ "Montgomery County Planning Board Guidelines for Burial Sites" (Montgomery Planning, The Maryland-National Capital Park and Planning Commission, May 16, 2019), https://montgomeryplanning.org/wp-content/uploads/2019/06/PB-Guidelines-for-Burial-Sites_final.pdf.

⁵⁰⁸ Dick Uliano, "Church Fears Montgomery Co.'s Handling of Historic Cemetery," WTOP, April 3, 2017, <https://wtop.com/montgomery-county/2017/04/montgomery-co-historic-cemetery/>; Bill Turque, "'Battlefield of Memory': Asphalt Where a Black Cemetery Is Said to Have Stood - The Washington Post," *The Washington Post*, February 23, 2017, https://www.washingtonpost.com/local/a-battlefield-of-memory-asphalt-where-a-black-cemetery-is-said-to-have-stood/2017/02/23/af01ba42-efa2-11e6-9973-c5efb7ccfb0d_story.html.

Recent Efforts to Enact Municipal-Level Archaeological Resource Protection

Chapter II reinforced the need for archaeological resource protection at the local level through unfortunate examples of significant archaeological losses from a number of East Coast cities. Recent attempts to enact local archaeological review regulations have been undertaken in two of these previously-discussed cities, Savannah, Georgia, and Charleston, South Carolina as well in Richmond, Virginia, and Fredericksburg, Virginia. These examples convey both unsuccessful and potentially successful efforts as well as two that are still in progress at the time of this writing.

Savannah, Georgia

Chapter II describes the peril that Savannah's archaeological resources face due to its lack of local archaeological review procedures and some of the many attempts made by archaeological resource advocates over the last thirty years to adopt an archaeological ordinance. Major roadblocks to passing an ordinance have been indifference or disinterest on behalf of the public, reluctant legislators, the absence of a champion for archaeological resources in the City Council, and developers concerned about increased project costs, restrictions, and delays.⁵⁰⁹

Very recently, during the course of this research, yet another attempt was set into motion. The renewed interest from Savannahians in pursuing archaeological review at the local level was spurred in part by the discovery of an early-nineteenth-century family cemetery during the construction of an auto parts store. The development project was located on private

⁵⁰⁹ Edmondson, "Archaeologists Are Worried About Savannah's Building Boom"; Curl, "Petition Urges Protection of Savannah's Buried Past."

property. After construction activities began, a nearby resident alerted the city that grave markers had been present on the property at one time. A review of historic maps of the area confirmed this. The previous property owner moved the markers to another cemetery about twenty years ago but did not move any remains. When the property was recently purchased, the developer was not aware that a cemetery was present. The developer stated that the graves would be relocated before construction activities resumed. The unanticipated discovery of the cemetery during construction activities proved that significant resources could remain underground even in areas outside of the historic downtown.⁵¹⁰ It reinforced the need for pre-development consideration of archaeological resources and historic burials.

Two public meetings were held in the fall of 2019 at which an online survey was launched to gauge the interest in creating and adopting an archaeological ordinance. Based on the survey results and feedback, the City determined it would move forward with drafting an ordinance. The survey, which was open to the public for less than twenty days, received 567 responses. Several multiple-choice questions were posed. To the over-arching question “Do you support the creation of an archaeological ordinance?”, 85.01% responded “Yes” and 14.99% responded “No.” The survey also asked whether the archaeology program should be applicable to private development, public development, or both, to which 83.83% responded that both private and public development should be covered.⁵¹¹

⁵¹⁰ Eric Curl, “Developer Plans to Relocate 19th-Century Graves Found at Savannah Worksite,” *Savannah Morning News*, April 3, 2019, <https://www.savannahnow.com/news/20190402/developer-plans-to-relocate-19th-century-graves-found-at-savannah-worksite>.

⁵¹¹ “Proposed Archaeology Resource Protection Ordinance” (Savannah City Council, Savannah, Georgia, December 5, 2019), http://agenda.savannahga.gov/content/files/council-archeology-presentation_1.pdf.

In anticipation of the effort to craft an ordinance, local archaeologist, archaeological resource advocate, and Education Coordinator for the LAMAR Institute, an archaeological non-profit organization, Rita Elliott, expressed concerns over the comprehensiveness of the ordinance. She was concerned that “if it’s not [comprehensive], it’s going to be worthless. It needs to have teeth. It needs to cover not just city-owned property, but also other large-scale developments, and other properties as well. So, it’s really important that this is done right. After thirty years, it’s time to have it done right.”⁵¹²

The ordinance was introduced to the Savannah Metropolitan Planning Commission on November 19, 2019 and was approved by the City Council one month later in the final Council meeting of Mayor Eddie DeLoach’s administration, making it the first municipal archaeological resource protection ordinance in the State of Georgia. The ordinance amends Part 8, Planning and Regulation of Development, of the Code of the City of Savannah by adding a new chapter entitled “Archaeology Resource Protection Ordinance.”⁵¹³ The approved ordinance does not appear to meet Elliott’s above definition of ‘comprehensive,’ as it applies only to public projects undertaken by the City or on city-owned properties. The City will be required to conduct an archaeological assessment on projects with more than 1,500 square feet of ground disturbance. Archaeological assessments will also be required prior to all sales of surplus city property. The ordinance will not apply to projects proposed on private property. Further, another advocate,

⁵¹² “City of Savannah Considering Archaeology Ordinance,” MSN, September 27, 2019, <https://www.msn.com/en-us/news/us/city-of-savannah-considering-archaeology-ordinance/ar-AAHVcMf>.

⁵¹³ “An Ordinance to Be Entitled ‘An Ordinance to Amend Part 8, Planning and Regulation of Development, of the Code of the City of Savannah, Georgia (2003) to Provide for Archaeology Resource Protections; to Provide for Effective Dates; to Repeal All Ordinances in Conflict Herewith and for Other Purposes.’” (City of Savannah, 2019), <http://agenda.savannahga.gov/content/files/archaeology-resource-protection-ordinance.pdf>.

Rebecca Fenwick of Ethos Preservation, a Savannah-based preservation consulting firm, does not believe that the ordinance is the best option as it would likely apply to less than one percent of development projects undertaken in the City.⁵¹⁴ While not uncommon, the ordinance also fails to include a public outreach requirement or the consideration of educational programs – another missed opportunity.⁵¹⁵ Nevertheless, then-Mayor DeLoach felt that it was necessary to get the ordinance passed while Council support was unanimous. It is the City’s plan to continue discussions with an archaeology task force to determine if any changes are needed to strengthen the ordinance – a process estimated to take an additional twelve to eighteen months.⁵¹⁶

Savannah’s ordinance follows the standard phased archaeological investigation process as described in Chapter II. Like Alexandria and Prince George’s County, Savannah’s ordinance will use research value, rarity, public value, site integrity, presence of materials, and impact on resources to determine the significance of its archaeological resources as opposed to following the National Register criteria. Savannah’s ordinance also states that the City Manager will be responsible for determining the appropriate repository for the long-term storage of artifact

⁵¹⁴ Nick Robertson, “Savannah City Council Passes Archaeology Ordinance in Final Meeting of DeLoach Administration,” *Savannah Now, Savannah Morning News*, December 19, 2019, <https://www.savannahnow.com/news/20191219/savannah-city-council-passes-archaeology-ordinance-in-final-meeting-of-deloch-administration>.

⁵¹⁵ Ellen I. Harris, “Preservation Perspectives Column: Savannah’s Archaeology Ordinance a Missed Opportunity,” *Savannah Morning News*, November 7, 2019, <https://www.savannahnow.com/business/20191107/preservation-perspectives-column-savannahs-archaeology-ordinance-missed-opportunity>.

⁵¹⁶ “City of Savannah Creates Archaeology Ordinance” (Savannah, Georgia: WTOC, December 20, 2019), <https://www.wtoc.com/2019/12/20/city-savannah-creates-archaeology-ordinance/>.

collections and associated paperwork to ensure future access by researchers and the public.⁵¹⁷ However, a specific repository has not yet been confirmed.

Charleston, South Carolina

The archaeological ordinance issue has been debated in Charleston, South Carolina for decades. One of the main reasons that an archaeological ordinance had not previously been presented to the City Council is timing – it “never seemed right”, according to Katherine Pemberton of the Historic Charleston Foundation (HCF). “Either the city had a hiring freeze or had other things going on and it wasn’t a priority.”⁵¹⁸ The HCF has continuously expressed its eagerness to create an ordinance that will reduce bureaucracy by being connected to existing city government procedures through the permitting and design review process. It understands the importance of preserving a balance between archaeological resource protection and business development and providing as much certainty and predictability in the review process as possible by setting timetables and fees in advance.⁵¹⁹

In October 2019, the City announced that an archaeological ordinance had been drafted. The HCF sought input from archaeologists, developers, and local historians in order to craft an ordinance with effective yet reasonable requirements. Many archaeological resource

⁵¹⁷ “An Ordinance to Be Entitled ‘An Ordinance to Amend Part 8, Planning and Regulation of Development, of the Code of the City of Savannah, Georgia (2003) to Provide for Archaeology Resource Protections; to Provide for Effective Dates; to Repeal All Ordinances in Conflict Herewith and for Other Purposes.’”

⁵¹⁸ Robert Behre, “After Years of Quiet Debate, Charleston Sees Draft of a New Archaeology Ordinance,” *The Post and Courier*, October 19, 2019, https://www.postandcourier.com/news/after-years-of-quiet-debate-charleston-sees-draft-of-a/article_28925b8c-f01d-11e9-85ad-bf44840763c2.html.

⁵¹⁹ “HCF Pushes for Archaeology Ordinance,” *Archaeology: Uncover Historic Through Artifacts Left Behind (Historic Charleston Foundation)* (blog), October 23, 2017, <https://www.historiccharleston.org/blog/hcf-pushes-archaeological-ordinance/>.

advocates wanted the ordinance to cover the entire city but its scope was scaled back to include only the most historically significant areas.⁵²⁰

The City of Charleston’s Planning Commission prepared an amendment to Chapter 54 of the Code of the City of Charleston, the city’s zoning ordinance, by adding a new part titled “Archaeological Preservation.”⁵²¹ Because the amendment is situated in the zoning ordinance, it incorporates archaeological resource protection into the land development process. This ordinance amendment was prepared at the request of the HCF and was introduced to the Planning Commission at its October 16, 2019 meeting. A vote on the amendment was not taken at this meeting – it was up for discussion only.

The proposed ordinance amendment defines what constitutes an archaeological resource – the material remains must be at least seventy-five years old in order to be considered significant. This differs from many other municipalities that mirror the federal criteria for significance and National Register eligibility by requiring materials to be at least fifty years old to be considered significant resources. Regarding criteria for determining significance, only the criteria set forth by the Department of the Interior are referenced – no attempt to tailor these criteria to the City of Charleston has been included in the draft ordinance. The amendment also creates the position of City Archaeologist. The Department of Planning, Preservation, and Sustainability pursued approximately \$60,000 in its 2020 budget to fund the

⁵²⁰ Behre, “After Years of Quiet Debate, Charleston Sees Draft of a New Archaeology Ordinance.”

⁵²¹ “City of Charleston Planning Commission Agenda Package” (City of Charleston Department of Planning, Preservation and Sustainability, October 16, 2019), https://www.charleston-sc.gov/AgendaCenter/ViewFile/ArchivedAgenda/_10162019-2538.

position.⁵²² In addition to establishing requirements for archaeological surveys, reports, and mitigation, this ordinance amendment also provides a protocol for the unexpected discovery of archaeological resources during construction activities.

There are two main developmental actions that trigger the ordinance's archaeological requirements, both of which only apply to properties located within the Old and Historic District, one of three historic districts in the city, or the Landmark Overlay Zone. The Old and Historic District covers most of the southern half of the peninsula. The first trigger applies to proposed improvements that involve new development, redevelopment, or changes to a building that would require approval from the Technical Review Committee (TRC). The TRC reviews site plans and subdivisions to ensure compliance with the city's many codes and coordinates the development review process across multiple city departments. The second trigger applies to single-family and two- to three-family properties. Improvements that involve new development, redevelopment, or changes to a building resulting in a footprint increase of 1,000 square feet or more require compliance. In these cases, projects are reviewed by the Board of Architectural Review (BAR) application process. The amendment encourages applicants to consult with the City Archaeologist before starting the TRC or BAR review processes. If an archaeological investigation is required by the City Archaeologist, the applicant is responsible for hiring a qualified archaeologist to conduct the survey and prepare a report. The amendment also establishes that artifacts recovered from private property shall be returned to the property owner; however, property owners will be encouraged to donate the

⁵²² Behre, "After Years of Quiet Debate, Charleston Sees Draft of a New Archaeology Ordinance."

artifacts to a museum or other repository for long-term storage and preservation. If artifacts are not donated and made available to the public for educational and research purposes, the owners will be encouraged to display some artifacts or other information within the new development project.

In December of 2019, it was reported that funds to hire a city archaeologist would not be included in the next year's budget due to current fiscal restraints. Other priorities within the Planning Department include the need to update the city's comprehensive plan, to address traffic and flooding problems, and to update the city's historic building classifications. Yet, it is expected that fees, details of which are not currently available, from the archaeological ordinance will generate funds that would likely offset most of the cost of a city archaeologist. Regardless of the delay, the draft ordinance is being revised and will go before the City Council in early 2020.⁵²³

Richmond, Virginia

In 2013, the City of Richmond proposed an economic development project known as *Revitalize RVA* comprised of the construction of a minor league baseball stadium and associated private development such as an apartment complex, retail stores, and parking. This proposal sparked public interest in and support for local archaeological resource protection in Richmond. The development area was located in Shockoe Bottom, a historically and archaeologically significant area of downtown Richmond once central to the region's domestic slave trade. The

⁵²³ The Editorial Staff, "Editorial: Move Ahead with Charleston Archaeology Ordinance next Year," *The Post and Courier*, December 11, 2019, https://www.postandcourier.com/opinion/editorial-move-ahead-with-charleston-archaeologyordinance-next-year/article_273ac524-1c57-11ea-b37c-67aecb030a5c.html.

City of Richmond requires archaeological review for projects located within areas designated as “Old and Historic Districts”; however, Shockoe Bottom is not located in any of these districts and the federal Section 106 review process either did not apply or was not applied correctly⁵²⁴ – one of many points of disagreement between the City and local preservation advocates regarding the development project.

In response to this threat to known and unknown archaeological resources in Shockoe Bottom, a community archaeological advocacy group formed called RVA Archaeology. This group was created in early 2014 by a number of professional archaeologists local to the Richmond area with the goal of promoting opportunities for public engagement with and research of the City’s archaeological resources.⁵²⁵ RVA Archaeology organized a symposium held on March 29, 2014 titled *Before It’s Too Late: An Educational Symposium on the Archaeology and History of Shockoe Bottom*. Archaeologists, preservationists, planners, students, educators, and members of the general public gathered to support the protection of Shockoe Bottom’s archaeological resources and comprehensive archaeological research and excavation prior to development.⁵²⁶

One result of the controversial development project was a new interest in creating an archaeological commission in Richmond as a step towards increasing local archaeological

⁵²⁴ Terry P. Brock, “Below the Bottom: Historical Significance, Archaeology, and Public Engagement at Shockoe Bottom,” terrybrock.com, December 6, 2013, <http://terrybrock.com/2013/12/below-the-bottom-historical-significance-archaeology-and-public-engagement-at-shockoe-bottom/>.

⁵²⁵ Ellen L. Chapman, Terry P. Brock, and Kim Allen, “RVA Archaeology Press Statement,” May 27, 2014, <https://richmondarchaeology.webs.com/in-the-news>.

⁵²⁶ “Before It’s Too Late, An Educational Symposium on the Archaeology and History of Shockoe Bottom (Symposium Proceedings)” (Richmond, Virginia, March 29, 2014), <https://richmondarchaeology.webs.com/Before%20It's%20Too%20Late%20Symposium%20Proceedings-4.pdf>.

resource protection. But when the *Revitalize RVA* proposal was withdrawn as a result of public outcry, the momentum for forming an archaeological commission also petered out, in part because city staff and resources were already overwhelmed and the creation of another city commission was not attractive or practical.⁵²⁷ In the end, this attempt to expand local archaeological resource protection failed in Richmond. However, RVA Archaeology and other local preservation advocates continue to rally for the protection of Richmond's archaeological resources as the threat from potential development in the Shockoe Bottom area remains. In spring 2019, the city announced the preparation of the Shockoe Small Area Plan, a tool for designing a sensitive development of the area that includes the interests of the public and stakeholders. Because Richmond still lacks a local archaeological ordinance, the city has received many comments requesting that the protection of the area's archaeological resources be included in the Shockoe Small Area Plan.⁵²⁸ As of December 2019, public meetings and workshops on the plan were still being held and it is not certain whether archaeological resource protection will be considered.

Fredericksburg, Virginia

The pursuit of a local archaeological resource protection ordinance has been a preservation goal in Fredericksburg, Virginia for a number of years. As is the case with many municipalities, instances of private or city development projects exposing and sometimes destroying archaeological resources have established the need for local archaeological

⁵²⁷ Ellen L. Chapman, e-mail to the author, February 14, 2019.

⁵²⁸ "Shockoe Small Area Plan," Richmond, Virginia: Planning and Development Review, 2019, <http://www.richmondgov.com/PlanningAndDevelopmentReview/ShockoeSmallAreaPlan.aspx>.

resources protection in Fredericksburg. For example, evidence of the Marshall-Bell stoneware kiln, in operation during the 1820s and 1830s, was discovered in 2012 during the construction of a private mixed-use development project. Despite there being no laws or regulations requiring the property owner to stop the project, they recognized the historical significance of the find and chose to pause their work to allow local archaeologists and volunteers to conduct salvage excavations. While much of the archaeological context of the artifacts was already lost, data from this site has added tremendously to the knowledge of the City's pottery industry and will aid archaeologists in identifying stoneware manufactured in Fredericksburg.⁵²⁹ This significant site was investigated only because of the voluntary cooperation of the site owner and could have legally been destroyed with no documentation whatsoever.

The City Council created a working group in 2013 and again in 2014, but little progress was made. Draft ordinances were started by interns in the City Attorney's office in the summers of 2015 and 2016 but a solid plan for administering an archaeology program was lacking. When Fredericksburg hired a Historic Resources Planner in March 2016, attention was refocused on this issue. Beginning in January 2017, the Archaeology Working Group, comprised of cultural resource professionals, individuals from stakeholder groups including the National Park Service, the Fredericksburg Area Museum, Historic Fredericksburg Foundation, Inc., the University of Mary Washington, and local development groups, met monthly to develop a plan for the implementation of a comprehensive archaeology program and ordinance. The creation of an

⁵²⁹ "Out of Sight, Out of Mind: Archaeological Resources in Fredericksburg, VA, Implementing a City-Wide Archaeological Ordinance," ArcGIS Story Map, 2019, <https://fredericksburg.maps.arcgis.com/apps/Cascade/index.html?appid=5aebdb0d925547e785c0e602ca0a89a0>.

archaeological ordinance was formally recognized as a community priority by Fredericksburg's City Council by resolution 17-28 on April 11, 2017.⁵³⁰

The Archaeology Working Group identified five action steps for the implementation of the ordinance and its supporting program based on an eighteen-month timeline. These steps include conducting a city-wide archaeological assessment and creating a predictive model for archaeological resources; evaluating ordinances, policies, and procedures in other jurisdictions; drafting the ordinance text; establishing procedures for implementing the ordinance and carrying out archaeological investigations; and making recommendations about public education and outreach programs including city-sponsored archaeological investigations. As the first action step, the city-wide assessment and predictive model will be the primary planning tool for the ordinance and will be the basis for applying the ordinance to development actions in archaeologically sensitive areas. A CLG grant from the Virginia SHPO, the Department of Historic Resources, provided a portion of the funding to hire a consultant to perform the assessment and produce a final report and predictive model. A total of \$13,000 of grant funds were matched by \$7,000 allocated from the City's budget.⁵³¹

The city-wide archaeological assessment included an analysis of previously recorded archaeological sites, documentary and map research, environmental attributes, and other resources. The predictive model, which accounts for both prehistoric and historic archaeological potential, transformed this data into defined areas of archaeological sensitivity.

⁵³⁰ "REQUEST FOR PROPOSAL (RFP) # CoF18-0113: Archaeological Assessment and Predictive Model" (City of Fredericksburg, October 16, 2017), [https://www.fredericksburgva.gov/DocumentCenter/View/9354/18-0113_Archaeology-Predictive-Model_101617_FINAL_Combined?bidId=.](https://www.fredericksburgva.gov/DocumentCenter/View/9354/18-0113_Archaeology-Predictive-Model_101617_FINAL_Combined?bidId=)

⁵³¹ "REQUEST FOR PROPOSAL (RFP) # CoF18-0113: Archaeological Assessment and Predictive Model."

The resulting map shows a range of five probability levels: low (blue), medium-low (green), medium (light orange), medium-high (orange), and high (red) (Figure 15).⁵³² The predictive model will provide a preliminary understanding of the potential distribution of archaeological sites across the city. As more archaeological investigations are undertaken, the Archaeology Working Group will make recommendations for testing the model's accuracy and making any necessary revisions.⁵³³ In January 2018, the consultant held its first public meeting to introduce the assessment and predictive model process and methodology.⁵³⁴

Before the ordinance could be introduced to the City Council, extensive public engagement was undertaken to attempt to gain the public's support, particularly because the ordinance is expected to impact the private development community and will require the allocation of city funds for implementation.⁵³⁵ Instrumental to the City's ability to communicate with the public is the interactive, GIS-based story map entitled *Out of Sight, Out of Mind: Archaeological Resources in Fredericksburg, Virginia*. The story map shares the recent efforts of the Archaeology Working Group, showcases a number of Fredericksburg's significant archaeological sites, and presents the results of the archaeological assessment and predictive model.⁵³⁶

⁵³² Kate S. Schwartz to Chairman Rodriguez and Planning Commission Members, "The City of Fredericksburg Proposes to Amend the Unified Development Ordinance to Preserve and Accommodate Archaeological Resources," Memorandum, December 6, 2019.

⁵³³ "REQUEST FOR PROPOSAL (RFP) # CoF18-0113: Archaeological Assessment and Predictive Model."

⁵³⁴ Cathy Jett, "Fredericksburg to Hold Public Meeting on Creating an Archaeological Ordinance," *The Free Lance-Star*, January 16, 2018, https://www.fredericksburg.com/business/fredericksburg-to-hold-public-meeting-on-creating-an-archaeologicalordinance/article_e853eef2-68df-53b7-bc6e-12e691ff4d1c.html.

⁵³⁵ Kate S. Schwartz, e-mail to the author, March 19, 2019.

⁵³⁶ "Out of Sight, Out of Mind: Archaeological Resources in Fredericksburg, VA, Implementing a City-Wide Archaeological Ordinance."

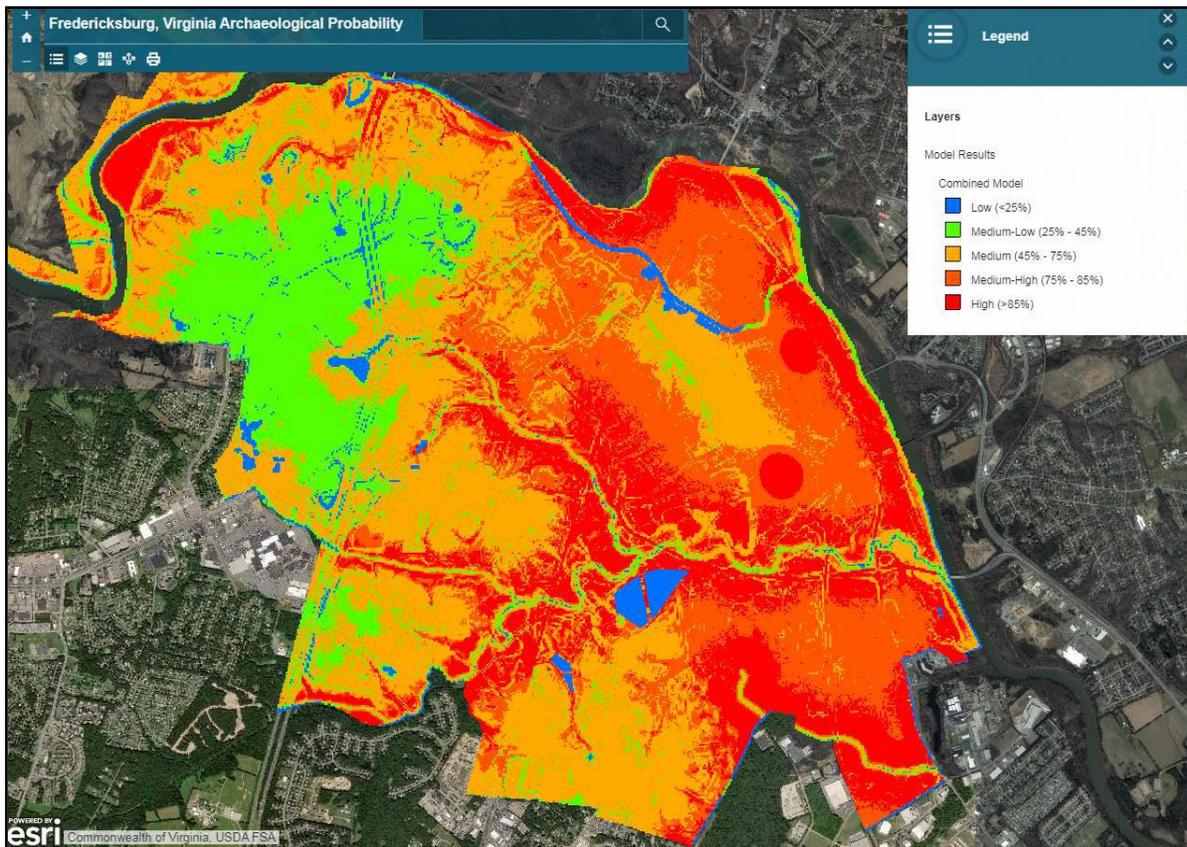


Figure 15: Archaeological probability map for Fredericksburg, Virginia. [Source: “Out of Sight, Out of Mind: Archaeological Resources in Fredericksburg, VA...,” ArcGIS Story Map, 2019.]

After the ordinance amendment text was drafted, it was presented at several public hearings held by the Planning Commission in the fall of 2019. The proposed amendment evolved over the course of these meetings, particularly regarding its place within the existing land development ordinance, City Code Chapter 72, “Unified Development Ordinance”. This chapter establishes the City’s planning, subdivision, and zoning regulations. In the September 2019 version, Section 72-34 of the Unified Development Ordinance, “Overlay Zoning Districts,” would be amended by adding a new section, “Archaeological Preservation District.” The Archaeological Preservation District would include areas within the City that have been

designated as having either a medium-high or high probability for archaeological resources as shown on the predictive model map. The City's official zoning map would also be amended to show these areas as an overlay district.⁵³⁷

Prior to the November 2019 public hearing, a question arose regarding whether it would be more appropriate to codify the ordinance as a general 'text amendment' rather than as an overlay district.⁵³⁸ A zoning ordinance text amendment is a bill approved by the Planning Commission and enacted by the City Council that changes an existing zoning ordinance without having to go through the cumbersome and lengthy zoning process. Unfortunately, these fast-track zoning changes are sometimes used by developers in a site-specific manner as a way to undertake otherwise incompatible development projects.⁵³⁹ By the December 2019 public hearing, the ordinance was proposed as a general text amendment to Article 72-5 of the Unified Development Ordinance, "Development Standards," and no longer included the creation of an archaeological overlay district. The proposal will amend Section 72-50 by adding a new section: 72-50.5, "Archaeological Resources."⁵⁴⁰ The remaining regulatory aspects of the ordinance text amendment did not change much over the course of the draft revisions. In early

⁵³⁷ Kate S. Schwartz to Chairman Gantt and Planning Commissioners, "Discussion of the Proposed Archaeological Preservation District and Ordinance," Memorandum, September 3, 2019.

⁵³⁸ Kate S. Schwartz to Chairman Rodriguez and Planning Commission Members, "The City of Fredericksburg Proposes to Amend the Unified Development Ordinance and the Official Zoning Map to Designate the Archaeological Preservation Overlay District," Memorandum, November 8, 2019.

⁵³⁹ Rachel Chason, "An Amazon Warehouse Instead of Offices. Townhouses in Place of an Airport. Zoning 'Tool' Allows Changes with Little Scrutiny.," The Washington Post, September 3, 2019, https://www.washingtonpost.com/local/md-politics/an-amazon-warehouse-instead-of-offices-townhouses-in-place-of-an-airport-zoning-tool-allows-changes-with-little-scrutiny/2019/09/02/f8c39c92-bdf2-11e9-9b73-fd3c65ef8f9c_story.html.

⁵⁴⁰ Schwartz to Chairman Rodriguez and Planning Commission Members, "The City of Fredericksburg Proposes to Amend the Unified Development Ordinance to Preserve and Accommodate Archaeological Resources," December 6, 2019.

January 2020, the City Council unanimously approved the amendment to the Unified Development Ordinance and a second and final vote on the ordinance will take place at a later meeting.⁵⁴¹

The proposed regulations apply to the whole city but only require archaeological investigations in areas that have special public value, or are likely to yield significant archaeological resources, based on the archaeological assessment and predictive model. There are two levels of development actions that trigger the ordinance based on the City's existing land development review process: large-scale development projects that involve more than 2,500 square feet of ground disturbance and require major site plan approval and smaller projects with ground disturbance of less than 2,500 square feet that require a minor site plan, residential lot grading, or a certificate of appropriateness.⁵⁴²

For large-scale projects that trigger the ordinance, a reconnaissance-level Phase IA archaeological study must be conducted by a professional archaeologist and submitted by the developer with the site plan application. If appropriate, the developer may need to begin the application process with a Phase IB, II, or III investigation, for example, if a known archaeological site is present and previous archaeological survey has been conducted on the property. Fredericksburg's ordinance follows the standard phased archaeological investigation process as described in Chapter II. There are three exemptions provided for large-scale

⁵⁴¹ Cathy Jett, "City Council Takes Step to Preserve, Publicize Fredericksburg's Past," *The Free Lance-Star*, January 19, 2020, https://www.fredericksburg.com/news/local/city-council-takes-step-to-preserve-publicize-fredericksburg-s-past/article_9a73a72f-7a56-522c-9eae-2a043e9aef1a.html.

⁵⁴² Schwartz to Chairman Rodriguez and Planning Commission Members, "The City of Fredericksburg Proposes to Amend the Unified Development Ordinance to Preserve and Accommodate Archaeological Resources," December 6, 2019.

development projects proposed on properties unlikely to contain archaeological resources. The Phase IA requirement will likely be waived if the property is depicted on the predictive model map as a low, medium-low, or medium archaeological potential; if the property has been previously graded or disturbed; or if the development has complied with Section 106 of the NHPA.⁵⁴³

Projects that require a minor site plan, residential lot grading, or a certificate of appropriateness only trigger the ordinance when they are located in areas of medium-high or high archaeological potential as depicted on the predictive model map. However, these small-scale projects will undergo an evaluation by city staff to determine archaeological impacts – applicants do not need to hire an archaeological consultant. If it is determined that archaeological resources are likely to exist, the City would coordinate with the property owner to have a professional archaeologist monitor the ground disturbance at the cost of the city through its general fund. The ordinance allows the City to take up to one week to further study the site if archaeological resources are discovered. Because Fredericksburg does not currently have a staff archaeologist, the City will establish an on-call contract with one or more professional archaeologists to conduct evaluations, monitor development actions when required, and review reports, among other tasks.⁵⁴⁴

The annual budget for the proposed archaeology program is estimated to be \$100,000, with the on-call archaeologist contracts constituting most of the expense. The need for a permanent staff archaeologist will be considered in the future when actual program costs can

⁵⁴³ Schwartz to Chairman Rodriguez and Planning Commission Members.

⁵⁴⁴ Schwartz to Chairman Rodriguez and Planning Commission Members.

be analyzed. Also included in the budget are public education efforts such as annual publications, workshops, and exhibits. A five-percent portion of all building and development application fees will cover approximately one-third of the program's budget while the City's general fund will cover the rest.

In regard to criteria for determining significance of its archaeological resources, Fredericksburg, like Savannah above, will use research value, rarity, public value, site integrity, presence of materials, and impact on resources as opposed to strictly following the National Register criteria. However, In the process of drafting its archaeological ordinance, Fredericksburg has identified a number of research priorities to help guide the ordinance when archaeological investigations are required in order to “dig with purpose.”⁵⁴⁵ These research priorities are those categories and periods that have not been studied in great detail, including resources associated with African Americans, women, Native Americans, immigrants, and other underrepresented groups; urban slavery; the free black community; antebellum domestic life; the Reconstruction period; stone quarrying and gold mining; and the canal systems. These research priorities will be reviewed at least every five years. Developing a plan for communicating the information learned from local archaeological research to the public was considered an issue of high importance during the drafting process. Currently, the City of Fredericksburg is focused on telling a more comprehensive story of its African American history and recognizes the important role that archaeological data can play in completing this narrative. As archaeological sites are investigated, various types of interpretation will be

⁵⁴⁵ “Out of Sight, Out of Mind: Archaeological Resources in Fredericksburg, VA, Implementing a City-Wide Archaeological Ordinance.”

incorporated which “will advance the City’s heritage tourism efforts and contribute to Fredericksburg’s unique sense of place.”⁵⁴⁶

Key Factors for Deliberation

Chapter IV provided several recommendations for Baltimore based on the examination of effective practices used in other municipalities. Several next steps that can be undertaken in Baltimore, immediately or in the very near future, will be suggested in this section. But first, additional deliberation is warranted in order to address some of the broader, “big picture” issues such as timing in regard to the political and social climate of the city. It will be difficult enough for archaeology advocates in Baltimore, including CHAP staff and Commission members, to determine when the time is “right” to move forward with proposing changes to the *Historic Preservation Design Guidelines* or to the existing historic preservation ordinance to increase archaeological resource protection for private development located outside of local historic districts. If the right time does present itself, advocates for regulatory change, stakeholders, and city staff must then determine their thresholds for compromise. Is it worth pursuing a regulatory avenue that will be less effective simply to get something on the books with the hopes of being able to propose revisions in the future? CHAP Historic Preservation Planner, Lauren Schiszik, has warned that if revisions are proposed to Article Six, Baltimore’s historic preservation ordinance, the ordinance in its entirety is put at risk.

⁵⁴⁶ Schwartz to Chairman Rodriguez and Planning Commission Members, “The City of Fredericksburg Proposes to Amend the Unified Development Ordinance to Preserve and Accommodate Archaeological Resources,” December 6, 2019.

The same concern has thwarted potential efforts to increase archaeological review requirements in Prince George’s County. The County Zoning Ordinance was very recently updated and during this process, the County’s Archaeologist and Historic Preservation staff discussed the possibility of expanding archaeological review requirements from subdivision applications to other development projects. However, the consensus was that given the opportunity, developers would not only push back against an increase in regulations but would fight to have the current regulations eliminated altogether.⁵⁴⁷ That was not a risk that archaeological resource advocates were willing to take. However, the decision to step back from pursuing the expansion of archaeological review requirements was made by the County’s Historic Preservation staff, many of whom have been working with the existing ordinance since its initial enactment. Long-standing relationships and dealings with the development community and, in turn, being familiar with their current priorities and motivations, guided this particular decision. As with most aspects of local archaeological review regulations, this was determined to be the best decision for the county at the time. This does not suggest that expanding existing archaeological regulations will always be discouraged – it is a decision to be made by each individual municipality.

Time will tell if the decision to pass an ordinance that does not apply to private development was the best for Savannah’s archaeological resources. While this decision was unpopular in the local archaeology and preservation community, it is possible, likely even, that an ordinance requiring archaeological review for private development on private property may

⁵⁴⁷ Jennifer Stabler, e-mail to the author, January 1, 2020.

not have obtained City Council approval. Despite criticism from the archaeology and preservation community that the ordinance was not comprehensive enough, the Mayor, among others, felt it best to strike while the iron was hot. Further, to accomplish this, the timeline for the ordinance approval process was extremely compressed – City Council approval occurred less than three months after the first public meeting was held. While a local archaeological ordinance has been discussed many times by advocates over the last few decades, the public was not formally engaged in this recent effort until less than three months before the City Council voted on the ordinance.

Compared to the efforts undertaken in Fredericksburg, Savannah proceeded on a very tight schedule. Beginning in early 2017, Fredericksburg formed a working group which identified action steps based on an eighteen-month timeline, such as conducting an initial city-wide archaeological assessment and predictive model, establishing procedures for implementing the ordinance, making recommendations about public education and outreach, and creating a “dig with purpose” approach through the development of meaningful research topics. The interactive GIS-based story map was instrumental in disseminating information to the public during this time. The fact that the proposed ordinance amendment evolved over the course of multiple public hearings shows that at least some compromise occurred. Perhaps if Savannah’s timeline was not so hurried so as to present the ordinance for a vote by a supportive City Council and Mayor before the end of his term, support from the public and developers for archaeological review of private development projects may have been gained through a more engaging public involvement effort.

Next Steps for Baltimore

Table 9 offers a summary of the recommended next steps presented in this section. One action that Baltimore's Department of Recreation and Parks can take right away is to terminate the permit program allowing metal detecting in city parks. This action would make a clear statement of the city's respect for its historic and archaeological resources and end the contradictory nature in which it currently operates where one city agency allows the undocumented removal of artifacts from city property while CHAP staff and Commissioners attempt to convey to the public that these resources are worth protecting. At the very least, the city must review the current permit application rules and require the reporting of all finds to the Department of Recreation and Parks and CHAP.

A major first step to be taken in Baltimore is for CHAP staff and Commission members to create a local advisory board or group for archaeological issues, similar to Fredericksburg's working group mentioned above or to the Alexandria Archaeological Commission (AAC). Alexandria formed the AAC before beginning discussions about an ordinance. By that time, residents, archaeologists, the AAC, and developers had learned a great deal about community archaeology and had begun to see and reap its benefits. Because the AAC was focused on public engagement in its early years, it was able to build credibility and establish a strong political foundation for the group and for archaeology in Alexandria.⁵⁴⁸ While the act of creating a local archaeology commission well before pursuing regulations does not intrinsically guarantee success, it does provide archaeological resource advocates with a more authoritative

⁵⁴⁸ Appler, "The Formation of the Alexandria Archaeological Commission," 35–36.

Next Step	Implementation Factors and Key Players	Timing / Priority
Create local archaeology advisory group by building on existing interest in archaeology and existing partnerships	<ul style="list-style-type: none"> ♦ CHAP staff to reach out to local and state preservation and archaeology advocacy groups for potential members (i.e. the Council for Maryland Archaeology, the Baltimore Archaeology Forum, and the Herring Run Archaeology Project) ♦ Continue to foster strong relationships with these groups and public officials and prioritize the creation of a community archaeology program ♦ CHAP staff and advisory group to pursue CLG grants for various archaeology-related projects in the city 	Immediate / High
Draft text for revisions to Chapter 5, Guidelines for Archaeology, in the <i>Design Guidelines</i>	<ul style="list-style-type: none"> ♦ To include standards of archaeological resource identification procedures and field documentation and report requirements ♦ Utilize MHT’s <i>Standards and Guidelines</i> as guidance template; customize later, if needed ♦ CHAP staff and newly formed advisory group to rely on other local advocacy groups and/or college/university students to draft text 	First action step after local advisory group is formed / High
Draft text or general outline in advance of possible revision of Article Six in the future (To be undertaken preemptively should an opportune time come to move forward with proposing revisions to the City Code)	<ul style="list-style-type: none"> ♦ Regulatory factors to consider: apply to private property in some manner; review triggers; how to fill the position of City Archaeologist; explore potential tax credits and other incentives for archaeology; etc. ♦ Special attention to be given to crafting criteria for determining significance ♦ CHAP staff to rely on local advocacy groups and/or college/university students to draft text ♦ Public meetings and other forms of engagement should be undertaken during this process 	Only to be done after Chapter 5 revisions / Medium
Develop a citywide archaeological database, comprehensive historic context, and sensitivity maps	<ul style="list-style-type: none"> ♦ Build from archaeological survey and site data from the MHT ♦ CHAP staff to use partnerships with local advocacy groups or college/university students or pursue CLG grant to hire a consultant 	Immediate – can be done independent of any regulatory pursuits / High
Terminate the city metal detecting permit program; or review permit application rules	<ul style="list-style-type: none"> ♦ CHAP staff or local advocacy groups to connect with local metal detectorist clubs ♦ Add a reporting requirement to the permit application rules 	Immediate / Medium
Identify an artifact repository space or other solution for long-term collections storage	<ul style="list-style-type: none"> ♦ CHAP staff or local advocacy groups to consider partnerships with local museums ♦ Establish appropriate artifact discard and sampling protocols to keep collection sizes down 	Should be a first step after local advisory group is formed / High

Table 9: Next steps for prioritizing local archaeological resource protection in Baltimore City. [Compiled by the author].

platform. Advisory group members, which can be mined from the various local and state preservation and archaeology partners, must be able to present ideas that are appropriate for the city's specific circumstances and be able to effectively convey to the public the benefits of enacting local archaeological regulations.⁵⁴⁹ The obvious candidates for advisory group members are those from the local and state advocacy groups introduced in Chapter IV.

Once a local archaeology advisory group is formed, efforts to draft revisions to Chapter 5, *Guidelines for Archaeology*, in the *Design Guidelines* should begin immediately, as detailed in the previous chapter. While it is uncertain that changes to Article Six of the City Code should or could be made in the future, revision text for this document should also be drafted in a preemptive manner. Because proposed revisions to preservation ordinances or guidelines should be a collaborative effort, engaging with the public and other stakeholders as early as possible is critical for drumming up support from citizens and public officials, as necessary.

Another issue that should be addressed very early on is the city's lack of long-term storage space for archaeological collections, as this consideration is sometimes overlooked. Because the city cannot fund the construction of a state-of-the-art curation facility, local advisory group members must reach out to local museums and other cultural facilities that could serve as artifact repository space for projects undertaken in the city, whether through local regulations or through community archaeology projects. Although many museums are likely facing space issues of their own, some possibilities include the Baltimore Museum of Art,

⁵⁴⁹ Appler, 35–36.

the American Visionary Art Museum, the Reginald F. Lewis Museum of Maryland African American History & Culture, or the Peabody Library.

Having a local archaeology program in support of an ordinance or other regulatory tool creates the potential to go beyond public involvement, which typically ends when a project ends, and allows for civic engagement – a long-term sustained relationship with local communities that requires ongoing effort and the sharing of power.⁵⁵⁰ This is absolutely necessary in order to successfully employ a values-centered approach to local archaeological resource protection in Baltimore that can result in reintroducing its citizens to their own heritage and defining and strengthening personal and community identity. The work being done by the Herring Run Archaeology Project at the Eutaw Manor site as well as the investigations at the Caulker’s Houses in Fell’s Point – and additional archaeological research the Project is likely to undertake as it continues to serve the City of Baltimore – is an example of the values-centered research, community-building, and public engagement and outreach that is needed to promote the importance of archaeology from the grassroots level.

Baltimore must take advantage of the support and resources provided by the many allies of archaeological resource protection – local and state preservation and archaeology advocacy groups and the interested public – regarding both the development and implementation of local archaeological review practices. It is important for local and state archaeology advocacy groups to continue to – or begin to – support archaeological research and promote archaeological resource protection in Baltimore City. One such opportunity comes

⁵⁵⁰ Little, “Archaeology and Civic Engagement,” 5.

every April with Maryland Archaeology Month. Archaeology weeks and months at both the state and local level are organized to promote archaeology to the public.⁵⁵¹ Maryland Archaeology Month celebrates a new theme or facet of Maryland archaeology each year. Advocates for Baltimore archaeology as well as CHAP staff and CHAP Commission members should work with the Maryland Historical Trust and the Council for Maryland Archaeology on developing a Baltimore-specific theme to showcase its rich archaeological history and potential.

To jumpstart public engagement efforts and prepare Baltimore for potential future pursuits to increase local archaeological resource protection, CHAP staff and the MHT should pursue CLG grants for archaeology-related projects within the City to raise awareness and to accomplish some of the cursory research and data collection needed to support a local regulatory program. These projects include the development of a comprehensive prehistoric and historic context for Baltimore and the development of a predictive model for the city to create archaeological sensitivity maps to guide future local regulatory review as well as to benefit current state and federal compliance archaeological investigations. The development of these tools is essential to crafting strategies that will ensure investigations required under local archaeological resource regulations are conducted with purpose and guided by public values.

Conclusion

The regulatory gap created when federal and state cultural resource management laws do not apply to local or private development actions threatens and destroys archaeological

⁵⁵¹ George S. Smith and John E. Ehrenhard, "Protecting the Past to Benefit the Public," in *Public Benefits of Archaeology*, ed. Barbara J. Little (Gainesville, Florida: University Press of Florida, 2002), 121–29.

resources in municipalities across the United States, as seen in Philadelphia, Savannah, and Charleston. Incorporating archaeological review into the local development process is the most efficient and practical way to ensure impacts to archaeological resources are considered prior to private development activities. If archaeological investigations are necessary, they can be conducted at the same time as other required development-related studies such as traffic impact analyses or stormwater management reviews. When incorporated into the local development review process, archaeological review becomes predictable – another “cost of doing business,” as Francine Bromberg, former City Archaeologist of Alexandria, pragmatically explained.⁵⁵²

Further, local archaeological review regulations and procedures, as products of municipal government, can be crafted and guided by the priorities and values of its local citizens. The driving force of local archaeological resource protection must demonstrate the social benefit that archaeological research can provide the community over the long run.⁵⁵³ To gain support for local archaeological review regulations in Baltimore and elsewhere, advocates must be able to successfully convey the many benefits that archaeology and archaeological research can bring to their communities. Undoubtedly, through material culture, archaeology can augment data provided by the historical record and the built environment by telling the stories of the underrepresented and marginalized peoples of the past – it gives a voice to the voiceless. But most importantly, archaeological research conducted through local regulatory avenues should enrich the lives of contemporary citizens, participate in community building,

⁵⁵² Edmondson, “Archaeologists Are Worried About Savannah’s Building Boom.”

⁵⁵³ Williams, “Archaeology: Reading the City through Time.”

and promote civic engagement by using archaeology as a road to restorative justice, all through making personal and collective connections to the past, or it is simply not worth doing. Ideally, with proper and meaningful planning efforts from the city and advocacy groups, local regulatory investigations will successfully fill data gaps in Baltimore’s archaeological record while also serving the public. As Lipe explains, “programs of archaeological preservation need to consider both the means (preservation [or investigations]) and the ends (increased public understanding and appreciation of the past), and not assume that the latter will somehow take care of itself.”⁵⁵⁴ To get to these “ends” in Baltimore, particularly in regard to its African American communities, a local regulatory archaeology program in partnership with its citizens must be willing to tackle difficult aspects of its past through archaeology, including the generational stress stemming from free black communities living in Baltimore during slavery to their struggles of segregation from the postbellum period continuing into the twentieth century as context to the structural and systemic racism that persists today. Taking the community archaeology project undertaken on the campus of Indiana University-Purdue University Indianapolis as an example, a regulatory archaeology program in Baltimore has the opportunity to not only explore how African Americans were disempowered by racism but also highlight evidence of how the community has persevered and endured, historically and in the present. Further, I would argue that in Baltimore and similar urban areas, the “ends” must go beyond a public appreciation of the past and focus on what values archaeology can provide to citizens – an enhanced sense of identity and community, and appreciation and pride for place, and

⁵⁵⁴ Lipe, “In Defense of Digging: Archeological Preservation as a Means, Not an End.”

recognition that all of its citizens, inclusive of African Americans, the low-income or working class, and immigrant groups, have played an immeasurably important role in contributing to our collective heritage, in hopes of creating a more plural, accepting, and tolerant society.

While we may take some comfort in knowing that federal and state archaeological review regulations are protecting at least a portion of archaeological resources in municipalities lacking protection from local and private development, we must not take those federal or state regulatory mechanisms for granted. Existing environmental compliance regulations for federal projects are increasingly being threatened. President Donald Trump very recently proposed changes to regulations that would accelerate the review and approval process for new highways, pipelines, mines, and other projects, allowing them to be constructed in a “small fraction of the time.” Specifically, the proposed changes would narrow the scope of the National Environmental Policy Act (NEPA) which includes consideration of cultural and archaeological resources.⁵⁵⁵ As we move forward into the future, one where environmental regulations are eroding and political pressures threaten their effectiveness, regulatory archaeological review at the local level, in the hands of the municipal government, will be critical to the preservation of our historic and archaeological resources – of our heritage and history underfoot.

⁵⁵⁵ Juliet Eilperin and Brady Dennis, “Trump Plans to Change Environmental Regulations to Speed up Approvals for Pipelines; Highway and Airport Expansion,” *The Washington Post*, January 9, 2020, https://www.washingtonpost.com/climate-environment/white-house-wants-to-change-rules-to-speed-up-highway-projects-pipelines-drilling/2020/01/08/4e248fda-325a-11ea-9313-6c8a89b1b9fb_story.html.

**APPENDIX I
LIST OF ACRONYMS**

AAC – Alexandria Archaeological Commission

ACHP – Advisory Council on Historic Preservation

APE – area of potential effects

APO – Archaeological Preservation Ordinance (St. Augustine)

ARPA – Archaeological Resources Protection Act

ASM – Archaeological Society of Maryland

BAF – Baltimore Archaeology Forum

BAR – Board of Architectural Review (Charleston)

BCHS – Baltimore City Historical Society

BCLM – Baltimore City Life Museums

BCUA – Baltimore Center for Urban Archaeology

CfMA – Council for Maryland Archaeology

CHAP – Commission for Historical and Architectural Preservation (Baltimore)

CLG – Certified Local Government

CRM – cultural resource management

DOT – Department of Transportation

EA – Environmental Assessment

EIS – Environmental Impact Statement

GIS – Geographic Information Systems

GLAAS – Greater London Archaeology Advisory Service

GSA – U.S. General Services Administration

HCF – Historic Charleston Foundation

HPC – historic preservation commission

HSAPB – Historic St. Augustine Preservation Board

JPPM – Jefferson Patterson Park Museum

LAARC – London Archaeological Archive and Research Centre

MAC Lab – Maryland Archaeological Conservation Laboratory

MDOT – Maryland Department of Transportation

MHT – Maryland Historical Trust

MIHP – Maryland Inventory of Historic Places

National Register – National Register of Historic Places

NAGPRA – Native American Graves Protection and Repatriation Act

NEPA – National Environmental Policy Act

NHPA – National Historic Preservation Act

NHSM – Natural History Society of Maryland

NPPF – National Planning Policy Framework

NPS – National Park Service

NTHP – National Trust for Historic Preservation

PAF – Philadelphia Archaeological Forum

PHC – Philadelphia Historical Commission

PHMC – Pennsylvania Historical and Museum Commission

PPG 16 – Planning Policy Guidance 16: Archaeology and Planning

SAAA – St. Augustine Archaeological Association

SEPA – State Environmental Policy Act

SHA – State Highway Administration

SHPO – State Historic Preservation Office

THPO – Tribal Historic Preservation Office

TRC – Technical Review Committee (Charleston)

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