

### 5.4 CULTURAL RESOURCES

Cultural resources include places, objects, and settlements that reflect group or individual religious, archaeological, architectural, or paleontological activities. Such resources provide information on scientific progress, environmental adaptations, group ideology, or other human advancements. This section of the Draft Environmental Impact Report (DEIR) evaluates the potential for implementation of the Crummer Site Subdivision project to impact cultural resources in the City of Malibu. The analysis in this section is based, in part, upon the following information:

- *Phase 1 Archaeological Study For A 24-Acre parcel located at 24200 Pacific Coast Highway (APN No's 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California*, Heart, July 2007
- *Vertebrate Paleontology Records Check for paleontological resources for the proposed 24 acres at 24120 Pacific Coast Highway Project, in the City of Malibu, Los Angeles County*, Natural History Museum of Los Angeles County, Vertebrate Paleontology Section, March 2013.

#### 5.4.1 Environmental Setting

##### Study Methodology

**Phase I Archaeological Study.** A Phase I Archaeological Study was prepared for the project site and included an on-foot surface reconnaissance of the entire project area and a records search at the South Central Coastal Information Center at California State University, Fullerton. The study is confidential, but findings of this study are discussed in Section 5.4.3, *Environmental Impacts*.

**Paleontology Collection Records Search.** The Natural History Museum (NHM) of Los Angeles County was contacted regarding the potential presence of paleontological resources such as fossils on the project site. The NHM performed a search of their paleontology collection records, which catalogs finds throughout southern California. The NHM also reviewed the geology of the project site to determine the project site's potential to contain paleontological resources. The determination of the NHM and the results of their records search are discussed in Section 5.3.3. The correspondence with the NHM can be found in Appendix I of this Draft EIR.

##### Regulatory Background

###### Federal and State Regulations

###### *National Historic Preservation Act*

The National Historic Preservation Act of 1966 authorized the National Register of Historic Places and coordinates public and private efforts to identify, evaluate, and protect the Nation's historic and archaeological resources. The National Register includes districts, sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture.

Section 106 (Protection of Historic Properties) of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties. Section 106 Review refers to the Federal review process designed to ensure that historic properties are considered during Federal project planning and implementation. The Advisory Council on Historic Preservation, an independent Federal agency, administers the review process, with assistance from State Historic Preservation Offices.

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#### *Archaeological Resources Protection Act*

The Archaeological Resources Protection Act of 1979 regulates the protection of archaeological resources and sites which are on Federal lands and Indian lands.

#### *Native American Graves Protection and Repatriation Act*

The Native American Graves Protection and Repatriation Act (NAGPRA) is a Federal law passed in 1990 that provides a process for museums and Federal agencies to return certain Native American cultural items, such as human remains, funerary objects, sacred objects, or objects of cultural patrimony, to lineal descendants, and culturally affiliated Indian tribes.

#### *California Public Resources Code*

Archaeological, paleontological, and historical sites are protected pursuant to a wide variety of state policies and regulations enumerated under the California Public Resources Code. In addition, cultural and paleontological resources are recognized as a non-renewable resource and therefore receive protection under the California Public Resources Code and CEQA.

- California Public Resources Code 5020–5029.5 continued the former Historical Landmarks Advisory Committee as the State Historical Resources Commission. The Commission oversees the administration of the California Register of Historical Resources, and is responsible for the designation of State Historical Landmarks and Historical Points of Interest.
- California Public Resources Code 5079–5079.65 defines the functions and duties of the Office of Historic Preservation (OHP). The OHP is responsible for the administration of federally and state mandated historic preservation programs in California and the California Heritage Fund.
- California Public Resources Code 5097.9–5097.991 provides protection to Native American historical and cultural resources, and sacred sites and identifies the powers and duties of the Native American Heritage Commission (NAHC). It also requires notification of discoveries of Native American human remains, descendants and provides for treatment and disposition of human remains and associated grave goods.

#### *California Senate Bill 18*

Existing law provides limited protection for Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places. These places may include sanctified cemeteries, religious, ceremonial sites, shrines, burial grounds, prehistoric ruins, archaeological or historic sites, Native American rock art inscriptions, or features of Native American historic, cultural, and sacred sites.

Senate Bill 18: This bill on Traditional Tribal Cultural Places was signed into law in September 2004 and went into effect on March 1, 2005. It places new requirements upon local governments for developments within or near Traditional Tribal Cultural Places (TTCP). Per SB 18, the law requires local jurisdictions to provide opportunities for involvement of California Native Americans tribes in the land planning process for the purpose of preserving traditional tribal cultural places. The Final Tribal Guidelines recommends that the NAHC provide written information as soon as possible but no later than 30 days to inform the Lead Agency if the proposed project is determined to be in proximity to a TTCP and another 90 days for tribes to respond to a local government if they want to consult with the local government to determine whether the project would have an adverse impact on the TTCP. There is no statutory limit on the consultation duration. Forty-five days before the action is publicly

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considered by the local government council, the local government refers action to agencies, following the CEQA public review time frame. The CEQA public distribution list may include tribes listed by the NAHC who have requested consultation or it may not. If the NAHC, the tribe, and interested parties agree upon the mitigation measures necessary for the proposed project, it would be included in the project's EIR. If both the City and the tribe agree that adequate mitigation or preservation measures cannot be taken, then neither party is obligated to take action.

Per SB 18, the law institutes a process which would require a city or county to consult with the NAHC and any appropriate Native American tribe for the purpose of preserving relevant TTCP prior to the adoption, revision, amendment, or update of a city's or county's general plan. While SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, the Final Tribal Guidelines advises that SB 18 requirements extend to specific plans as well, as State planning law requires local governments to use the same process for amendment or adoption of specific plans as general plans (defined in Government Code § 65453). In addition, SB 18 provides a new definition of TTCP requiring a traditional association of the site with Native American traditional beliefs, cultural practices, or ceremonies or the site must be shown to actually have been used for activities related to traditional beliefs, cultural practices, or ceremonies. Previously, the site was defined to require only an association with traditional beliefs, practices, lifeways, and ceremonial activities. In addition, SB 18 law also amended Civil Code §815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements for the purpose of protecting their cultural places.

#### *California Government Code*

Title 3, Division 2, Chapter 10 of the California Government Code describes the duties and procedures of the coroner. It describes procedures to be performed by the coroner in the event of the discovery of human remains. Section 27491 of the California Government Code requires the coroner to inquire into and determine the manner of death in several cases, including violent death, known or suspected homicide, suicide, or accidental poisoning.

#### *California Health and Safety Code*

Section 7050.5 of the California Health and Safety Code includes regulations concerning the discovery of human remains. It states that, in the event of the discovery of human remains, no further excavation or disturbance of the site can occur until an appropriate determination is made by the coroner, as described by Title 3, Division 2, Chapter 10 of the California Government Code. If the coroner has reason to believe that the remains are those of a Native American, he or she shall contact by telephone the NAHC within 24 hours.

#### *California Coastal Act*

The California Coastal Act includes rules and regulations for the "coastal zone," roughly defined as any area of California land within 1,000 feet of the Pacific Ocean, or ocean within three miles of the California shore. Section 30244 of the California Coastal Act states, "Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required."

#### **Local**

#### *City of Malibu General Plan*

The City of Malibu General Plan specifies the preservation and protection of cultural resources as a goal of the City. The Conservation (CON) Element of the General Plan includes the following policies intended to preserve historic, cultural, and archaeological resources:

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| CON Policy 2.1.1 | The City shall identify, designate, protect, and preserve areas, sites, or structures of historic, cultural, paleontological, and/or archaeological significance. |
| CON Policy 2.1.2 | The City shall avoid the destruction or alteration of cultural resources.   |
| CON Policy 2.1.3 | The City shall provide incentives to property owners of historical structures to encourage preservation of designated cultural resources.                         |

#### *City of Malibu Municipal Code*

Malibu Municipal Code (MMC) Chapter 17.54 regulates cultural resource protection. MMC Section 17.54.010 states that the purpose of that chapter is “To avoid the damage to or destruction of important cultural resources within the city.” MMC Section 17.02.030 addresses the vision and mission of the ordinance.

Section 17.54.030 states, “A cultural resource review pursuant to this chapter shall be required for all projects prior to the issuance of a planning approval, development permit, geological/geotechnical exploratory excavation permit, sewer permit, building permit, grading permit, or prior to the commencement of government-initiated or funded works except those projects necessary for emergency purposes.”

Section 17.54.060, Archaeological Discoveries, states, “Any person who discovers important cultural resources during the course of construction for a project shall notify the Planning Director of the discovery. Once important cultural resources are discovered, no further excavation shall be permitted without the approval of the Planning Director.”

#### *City of Malibu Local Coastal Program Land Use Plan*

City of Malibu Local Coastal Program (LCP) Land Use Plan (LUP) Policies 5.60 through 5.65 address archaeological resources in the City of Malibu. They require “reasonable mitigation measures” for any developments that would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer. These policies state that the City shall coordinate with appropriate agencies to identify archaeologically sensitive sites, and that grading, excavation, and site preparation for development on identified sites shall be monitored by a qualified archaeologist and an appropriate Native American consultant.

#### *City of Malibu LCP Local Implementation Plan*

LCP Local Implementation Plan (LIP), Chapter 11, contains provisions intended to avoid damage to or destruction of important cultural resources within the City. It includes requirements for cultural resource reviews of project sites and the cataloging and filing of information. LIP Section 11.5 includes the following requirement concerning the discovery of archaeological resources:

Any person who discovers important cultural resources during the course of construction for a project shall notify the Planning Director of the discovery. Once important cultural resources are discovered, no further excavation shall be permitted without approval of the Planning Director.

#### *Standard Conditions of Approval*

All coastal development permits processed within the City include the following standard conditions of approval:

If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the

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Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to LIP Section 11.3(F).

If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by telephone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

#### Natural Setting

According to the City of Malibu General Plan, Los Angeles County is one of the richest areas in the world for both fossil marine and land vertebrates. Fossils have been recovered near the project site from the sedimentary units that also underlie the project site. Alluvium is deposited along the axis of Winter Canyon and along the gently sloping portions of the project site. Younger alluvium deposits, in the upper layers of earth, generally do not contain fossils. However, fossils have been discovered in older alluvium deposits in the Point Dume neighborhood, approximately six miles west of the project site. Fossils collected from that area include specimens of deer, moles, rabbits, horses, tapirs, deer mice, pocket gophers, and several species of birds.

The Monterey Formation is a bedrock formation exposed along the slope at the western edge of the site. Locally, the Monterey Formation consists of siltstone, mudstone, and shale of mid-Miocene age. Fossils have been discovered in the Monterey Formation approximately six miles east of the project site. Fossils collected from this locality include specimens of herrings, Clupeidae, mackerels or tuna, Scombridae, and other unidentified fish.

#### Cultural Setting

##### Archaeological Resources

A records search performed by professional archaeologist, Wayne Bonner on July 12, 2007 at the South Central Coastal Information Center (SCCIC) indicated that no previously recorded prehistoric or historic archaeological site lie within the project area.

##### Paleontological Resources

The NHM of Los Angeles County was contacted regarding the potential presence of paleontological resources such as fossils on the project site. There are no vertebrate fossil localities that lie within the project boundaries. There are localities nearby from the same sedimentary units that occur in the project area. In most of the project area, on top of the bluff, the surface deposits consist of older Quaternary Alluvium. Towards the base of the bluff, on the eastern and southern sides of the proposed project site, there are exposures of the marine late Miocene Monterey Formation and it is believed that type of rock unit almost certainly underlies the older Quaternary Alluvium in the rest of the project area. The closest vertebrate fossil localities from the older Quaternary Alluvium and from the Monterey Formation respectively are LACM 1754 and 7396, both localities just south of due west of the proposed project area in the Point Dume neighborhood around PCH. Locality LACM 1754 produced an extensive fossil fauna of late Pleistocene vertebrates (see Appendix I). Of particular note, two fossil specimens from locality LACM 1754 have been published in the scientific literature: J.H. Hutchison (1987. Moles of the *Scapanus latimanus* group (Talpidae, Insectivora) from the Pliocene and Pleistocene of California. LACM Contributions in Science, 386:1-15) published on the mole, *Scapanus latimanus*, and G.T. Jefferson (1989. Late Cenozoic Tapirs (Mammalia: Perissodactyla) of Western North America. LACM Contributions in Science, 406:1-

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21) published on the tapir, *Tapirus californicus*. Fossil specimens of herrings, Clupeidae, and mackerels or tuna, Scombridae, along with other as yet unidentified fish, were collected from locality LACM 7396.

#### 5.4.2 Thresholds of Significance

CEQA Guidelines Section 15064.5 provides direction on determining significance of impacts to archaeological and historical resources. Generally, a resource shall be considered “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852), including the following:

- Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage;
- Is associated the with lives of persons important in our past;
- Embodies the distinctive characteristics of a type, period, region or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- Has yielded, or may be likely to yield, information important in prehistory or history.

The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, or is not included in a local register of historical resources, does not preclude a lead agency from determining that the resource may be an historical resource.

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

- C-1 Cause a substantial adverse change in the significance of an historical resource pursuant to Section 15064.5.
- C-2 Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.
- C-3 Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.
- C-4 Disturb any human remains, including those interred outside of formal cemeteries.

The Initial Study, included as Appendix C, substantiates that impacts associated with the following thresholds would be less than significant:

- Threshold C-1
- Threshold C-4

These impacts will not be addressed in the following analysis.

### 5.4.3 Environmental Impacts

The following impact analysis addresses thresholds of significance for which the Initial Study disclosed potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

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**Impact 5.5-1: Development of the project could impact archaeological resources. [Threshold C-2]**

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**Impact Analysis:** The Malibu area was historically occupied by the Chumash Indians. Prehistoric sites connected to the Chumash Indians have been recorded throughout the City. The proposed project site is vacant, and the area proposed for development generally flat. The northwestern portion of the site was previously developed with a baseball field, which was removed in the 1990s. The project site has been continually disturbed by weed abatement activities; a majority of the site consists of exposed soil.

A Phase I Archaeological Study was prepared for the proposed project by the Historical Environmental Archaeological Research Team. As part of the study, a records search was performed at the South Central Coastal Information Center at California State University, Fullerton (SCCIC-Fullerton), and an on-foot surface reconnaissance of the project site was conducted. The records search did not identify any archaeological sites on the project site, the field reconnaissance yielded no indications of archaeological resources on the site, and the Phase I Archaeological Study recommended no additional studies.

Although no archaeological resources are known to exist on the project site, and the site has been previously developed, the proposed project would entail ground-disturbing activities in a general area within the City that has yielded archaeological resources in the past. This may result in the unearthing of previously undiscovered resources. Due to the historic occupation of Chumash in the project vicinity, as a condition of project approval, the City will require archaeological monitoring of all ground-disturbing activities, including but not limited to grading, excavation, and site preparation. A qualified archaeologist meeting the Secretary of the Interior’s Professional Qualifications Standards (48 Federal Register 44739-39) would be retained to provide these services. A Native American Monitor would also be retained should Native American artifacts or resources be uncovered. Any significant archaeological resources found would be preserved as determined necessary by the archaeologist and offered to a local museum or repository willing to accept the resource. In accordance with Section 11.4 of the LCP LIP, all reports and artifacts would be catalogued and curated in accordance with standards set by the US Secretary of the Interior at SCCIC-Fullerton, the designated repository for Los Angeles County. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor would determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98.

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**Impact 5.5-3: The proposed project could destroy paleontological resources or a unique geologic feature. [Threshold C-3]**

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**Impact Analysis:** There are no known paleontological resources or unique geologic features on the project site and portions of the site have been previously graded. However, fossils have been recovered from the same sedimentary units that occur in the project area. The proposed project would involve ground-disturbing activities, which could affect previously undiscovered paleontological resources. Even relative shallow excavations in the older Quaternary alluvial sediments exposed on top of the bluff may uncover significant fossil vertebrate remains. Any Monterey Formation deposits, either at depth in most of the proposed project area or exposed toward the base of the bluff, also may encounter vertebrate fossils. Compliance with Section 17.54.040(D)(4)(b) of the City of

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Malibu Municipal Code and Section 11.5 of the LCP LIP, as provided above, would require earth-moving activities to halt in the event of a discovery of cultural resources would reduce impacts to paleontological resources to a level below significance.

#### 5.4.4 Cumulative Impacts

Impacts on cultural resources tend to be site-specific and are assessed on a site-by-site basis. Excavation associated with the development of related projects in the surrounding locale could contribute to the progressive loss of archaeological and fossil remains and unrecorded archaeological and fossil sites. Where resources exist, implementation of cumulative development in the region would represent an incremental adverse impact to cultural resources. However, provided that proper mitigation, as defined and required by CEQA, is implemented in conjunction with cumulative project development in the area, the proposed project development would not contribute to a cumulative impact.

#### 5.4.5 Existing Regulations and Standard Conditions

- National Historic Preservation Act
- Archaeological Resources Protection Act
- Native American Graves Protection and Repatriation Act
- California Public Resources Code
- California Government Code
- California Health and Safety Code
- California Coastal Act
- City of Malibu General Plan
- City of Malibu Municipal Code
- City of Malibu Local Coastal Program Land Use Plan
- City of Malibu Local Coastal Program Local Implementation Plan
- Standard Conditions of Approval

#### 5.4.6 Level of Significance Before Mitigation

Without mitigation, the following impacts would be **potentially significant**:

- Impact 5.4-1 Construction activities may impact previously undiscovered archaeological resources
- Impact 5.4-2 Construction activities may impact previously undiscovered paleontological resources.

#### 5.4.7 Mitigation Measures

##### Impact 5.5-1

- 4-1 For adequate coverage and the protection of potentially significant buried resources, a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (48 Federal Register 44738-39) shall be retained by the applicant to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. The project

archaeologist shall have the authority to halt any activities adversely impacting potentially significant resources. Any significant archaeological resources found shall be preserved as determined necessary by the project archaeologist and offered to the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura and Orange Counties. Any resulting reports shall also be forwarded to the South Central Coastal Information Center at California State University, Fullerton.

Should paleontological soils be uncovered during grading, a paleontological monitor shall also be retained by the applicant, upon the archaeological monitor's request, to oversee ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. The paleontological monitor shall have the authority to halt any activities adversely impacting potentially significant resources. Should fossil-bearing formations be uncovered, the monitor shall professionally collect any specimens without impeding development. Any paleontological artifacts recovered shall be preserved, as determined necessary by the project paleontologist, and offered to an accredited and permanent scientific institution for the benefit of current and future generations. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

- 4-2 A Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's standard conditions of approval. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

#### 5.4.8 Level of Significance After Mitigation

The aforementioned mitigation measures would reduce potential impacts associated with cultural resources to a level that is less than significant. Therefore, no significant unavoidable adverse impacts relating to cultural resources have been identified.

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