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## V. ENVIRONMENTAL IMPACT ANALYSIS

### D. CULTURAL RESOURCES

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Incorporated into this section are the findings and conclusions of two archaeological investigations conducted on the Project Site: a site survey by Chester King of Topanga Anthropological Consultants, was conducted in June, 1994, and a subsequent report prepared in June 1995; a follow-up site survey was conducted by E. Gary Stickel, Ph.D., of Environmental Research Archaeologists (ERA), in February, 1999. In addition to these studies, Christopher A. Joseph & Associates (CAJA) initiated an archaeological records search in February 2003 to update any prior records that may have been cited in either of the two site-specific reports identified above. The findings and conclusions of these studies are provided below.

#### REGIONAL AND ENVIRONMENTAL SETTING

##### Historical Overview

Cultural resources in the City of Malibu include archaeological sites of the Chumash Indians and their ancestors, sacred places of the Chumash, and historic buildings. The Chumash Indians are believed to have inhabited areas of the Santa Monica Mountains, including a portion of territory encompassing the Project Site and extending mainly northward.

The ancestors of the Chumash appear to have settled along the coast of central and southern California over 10,000 years ago. Prior to the Spanish seizure and colonization of Alta California in the late 18<sup>th</sup> Century, the coastal region, including Solstice Canyon, fell within the territory historically occupied by the Ventureño, the southernmost of the Chumash speaking Indians of California (Heizer 1978, Kroeber 1953). When the Spanish arrived in 1769 A.D., the territories occupied by the Chumash groups extended from Malibu to Carpojo Creek and Ragged Point in San Luis Obispo County (Gibson 1983:94). Chumash people lived in the western San Fernando Valley and also in areas as far inland as Gorman and the Carrizo Plain. Their political and economic influence, however, extended into other areas.

Humaliwo, located in the Malibu Lagoon, was the southern capital of the Chumash and, with a population of several hundred families, it dominated the politics and economic life of most of the Chumash population of the Santa Monica Mountains and the San Fernando Valley. For this reason, the Chumash are a very important and sensitive cultural resource to Malibu, particularly near Malibu Lagoon.

The Chumash society encountered in the late 18<sup>th</sup> Century was both complex and highly stratified, and was based upon a combination of fishing, hunting, and harvesting of wild plants and grains. Early Spanish explorers observed that the Chumash differed from surrounding nationalities in their emphasis on manufacturing and trade which was facilitated by a bead money economy. Large and small communities were linked together by long standing sociopolitical ties and economic relationships, a reflection of patterns which existed for many thousands of years (King 1982, Landberg 1965). Due to the complexity

of Chumash society, studies of the society are highly relevant to the development of anthropological theory concerning the evolution of complex societies.

Soon after the arrival of the Spanish, and the introduction of European epidemic diseases, the Native American populations of California began a rapid decline and many aboriginal cultures disintegrated. Coastal peoples who survived the Mission Period, and the subsequent Mexican and American Colonial Periods, did so largely by assimilation into the larger Hispanic community. Most had no land base or reservation, and the majority of Chumash are still not recognized by Federal or State authorities. The Ventureño area Chumash have no reservations and now live in various parts of Los Angeles, Ventura, and Kern Counties. Many more Chumash live in other areas, particularly in Santa Barbara and San Luis Obispo Counties.

Contemporary Chumash maintain their cultural identity in several ways, including membership in one or more political or social organizations, and through the practice of traditional arts and medicine which are experiencing a strong revival. Many Native Americans have begun to take a more active political role in an attempt to further preserve their cultural heritage, a large part of which consists of prehistoric archaeological deposits.

## **REGULATORY SETTING**

Several laws, rules, guidelines and policies govern the conduct of cultural resource assessments in the City of Malibu. The following applicable laws and guidelines describe the regulatory environment for cultural and historic resources on the Project Site.

***California Environmental Quality Act (CEQA).*** The regulatory requirements for addressing archaeological and historical resources within the scope of an EIR are contained in CEQA Sections 21083.2 and 21084.1, respectively. For purposes of determining whether a project will result in a significant impact upon archaeological resources, CEQA makes the distinction between “unique Archaeological resources and “nonunique archaeological resources.” The definition of these terms are provided as follows:

*“..’unique archaeological resource’ means an archaeological artifact, object or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria: (1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information. (2) It has a special and particular quality such as being the oldest of its type or the best available example of its type. (3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.” (CEQA Section 21083.2(g)); and*

*“...’nonunique archaeological resource’ means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g).” (CEQA Section 21083.2(h)).*

CEQA also requires the lead agency to determine whether a project will have a significant effect upon historical resources. CEQA provides the following definition of an historical resource:

*“...an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.”* (CEQA Section 21084.1).

The CEQA thresholds for determining impacts upon cultural resources are discussed under the Thresholds of Significance subsection, presented later in this Section of the ~~Draft~~ Final EIR.

**California Coastal Act.** The California Coastal Act of 1976 has a basic goal of protecting and maintaining the overall quality of the coastal zone environment and its natural and artificial resources (Section 30001.5). Sections 30240 to 30244 (Article 5) address Land Resources. Section 30244 states the following:

*“Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.”* (Section 30244).

Within the Coastal Zone, the Coastal Commission is responsible for the protection of California's man-made resources and reviews and adopts mitigation measures for cultural resources. On December 16, 1982, the Commission adopted guidelines for review of archaeological projects within the Coastal Zone. The guidelines include: (1) guidelines related to mitigating impacts of coastal development, and (2) guidelines for conducting archaeological studies. According to the guidelines for impact mitigation, all resources that may be affected are to be located through surface survey and if necessary subsurface testing. To define site boundaries and composition and to evaluate site significance, further field work, including excavation, is to be conducted (Section 1.3). Subsequently the project's potential impacts are assessed, and a mitigation plan is prepared.

**Native American Heritage Commission.** The Native American Heritage Commission was established in 1976 to protect the heritage of California Indians and make recommendations with regard to heritage sites (Section 5097.9 of Division 5 of the Public Resources Code). The scope of the Commission's legal authority includes assisting state agencies in protecting Native American sacred places and making recommendations on Indian heritage in accordance with environmental law and policy. In 1982, Senate Bill 297 was passed into law addressing the disposition of Native American human burial and skeletal

remains. SB 297 amended various sections of the state's Government Code, Health and Safety Code, and Public Resources Code. The amended regulations provide for the protection of burials from disturbance, vandalism, and inadvertent destruction. They provide for punishment of vandals, and establish procedures for encouraging private property owners to comply with the recommended treatment of burials. The statutes empower the Native American Heritage Commission to catalogue existing burials and to resolve disputes related to the treatment and disposition of Native American Burials and associated items. Finally, the codes as amended stipulate specific procedures to be implemented if a Native American burial is discovered during project construction.

**California Office of Historic Preservation.** The Office of Historic Preservation has published a series of preservation planning bulletins which provide guidance for preparation and review of cultural resource management reports. These include Bulletin 4(a), Archaeological Resource Management Reports (ARMR): Recommended Contents and Format and Bulletin 5, Guidelines for Archaeological Research Design (GARD).

**City of Malibu Zoning Ordinance.** Section 17.54.010 of the Zoning Title of the Municipal Code addresses the purpose of the Ordinance (Ord.221, 133, and prior code 9380). The purpose states: "To avoid the damage to or destruction of important cultural resources within the city." Section 9.1.02 of the Zoning Ordinance addresses the vision and mission of the Ordinance.

Section 17.54.030 (Applicability) 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~~Manager of the discovery. Once important cultural resources are discovered, no further excavation shall be permitted without approval of the Planning ~~Director~~Manager."

### **Archaeological Records Search**

An archaeological records search was conducted at the South Central Coastal Information Center, UCLA Institute of Archaeology, Regional Information Center at the request of Chester King of Topanga Anthropological Consultants in April 1995. The findings of the records search identified all recorded surveys and archaeological sites recorded within a half-mile of the project area. The findings indicated seven prehistoric archaeological sites had been recorded within a half-mile radius of the Project Site, none of which occur on the Project Site. The records survey report further concluded that two historic archaeological sites had been recorded within a half-mile radius of the subject site, neither of which are within the Proposed Project area. In addition, the National Register of Historic Places listed two sites within a half-mile radius of the Project Site, but neither are located on the Project Site.

An additional records search was conducted at the South Central Coastal Information Center, UCLA Institute of Archaeology, Regional Information Center at the request of Christopher A. Joseph & Associates (CAJA) in February 2003. The findings indicated eight prehistoric archaeological sites within a half-mile radius of the Project Site, none of which occur on the Project Site. This is one additional site as compared with the initial records search conducted for King in 1995. The site newly identified in the 2003 survey is not located on the Project Site.

The California State Historic Resources Inventory, the California Historical Landmarks (1990) of the Office of Historic Preservation, California Department of Parks and Recreation, and the California Points of Historical Interest (1992), Office of Historic Preservation of the California Department of Parks and Recreation, were searched for records recorded within a half-mile radius of the project area. No such cultural resources were found to have been recorded on any of these respective lists during either the 1995 or 2003 records searches.

### **Archaeological Field Surveys**

The Project Site was initially surveyed by Chester King on June 7, 1994. King conducted his survey by walking transects spaced between 5 and 8 meters apart. King's only observation was of small weathered pieces of shell in the southern portion of the Project Site, which do not indicate prehistoric human occupation, but were likely deposited by modern activities. King concluded by stating "No artifacts or altered soil indicating presence of prehistoric archaeological remains were observed. My observations indicate that construction projects at the parcel will not affect prehistoric site deposits" (King 1995, p. 10). King did not mention the presence of or absence of historic remains but presumably they were absent as well.

Dr. E. Stickel and a team of two highly experienced and qualified assistants conducted a second site survey of the Project Site on February 4, 1999. Conditions for the site survey were noted as exceptional due to the increased ground visibility provided by recent rain washing the soil tilling activities which exposed rock material from down to a depth of 10-15 centimeters below the present surface. The ERA survey team found the parcel as was described in the King's 1995 survey. The ERA survey team supplemented King's survey by walking the Project Site in 2 meter transects beginning at the northeastern sector of the Project Site at the base of the graded terrace. Along the upper north-central area of the Project Site a house pad was encountered along with brick litter from a burned structure near which several associated items, including several shell fragments, were found near the pad. The associated home items dated to the late 1970s and early 1980s and therefore, as stated by Chester King, indicate that the shell pieces are of recent origin. Despite a thorough site survey of the entire Project Site, no evidence of either prehistoric or historic artifacts or features were found. Given these results, ERA concluded that King's 1995 assessment was accurate in that the parcel does not contain any cultural resources of concern.

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## ENVIRONMENTAL IMPACTS

### Thresholds of Significance

The City of Malibu General Plan EIR thresholds for cultural resources states that a significant impact would result when the following occurs:

- The damage to, or destruction of, important cultural resources within the City, including prehistoric and ethnohistoric Native American archaeological sites and historic archaeological sites, or
- Significant adverse physical or aesthetic impacts on a prehistoric or historic building or structure.

The significance of a project should also be evaluated in accordance with the CEQA Guidelines. CEQA Appendix G provides the following criteria for determining significance. A proposed project is considered to have significant impacts if it would:

- Cause a substantial adverse change in the significance of a historical resource defined in Section 15064.5, or
- Directly or indirectly destroy a unique paleontological resource or site or unique feature, or
- Disturb any human remains, including those interred outside of formal cemeteries.

CEQA Section 15064.5, "Determining the Significance of Impacts to Archaeological and Historical Resources," specifically states that a project would have a significant impact if it would substantially damage or destroy a resource that:

- Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage, or
- Is associated with the lives of persons important to our past, or
- 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.

### Project Impacts

Archaeological field surveys conducted by Chester King (1995) and ERA (1999) concluded that there are no observable cultural resources, including artifacts or altered soil indicating the presence of prehistoric archaeological remains on the Project Site. Archeological records searches, conducted by Chester King in 1995 and by CAJA in 2003, revealed that no archaeological or historic sites exist on the Project Site.

Therefore, damage to or destruction or disturbance of known important cultural, paleontological, or archaeological resources would not occur. Additionally, no adverse physical or aesthetic impacts will occur to prehistoric or historic building or structures as no such structures exist on the Project Site. Nevertheless, the potential still exists to uncover unknown archaeological remains during excavation and/or surface grading activities. Such unforeseen impacts can be avoided by implementing preventative mitigation measures during the construction phase (See recommended mitigation measures below). Based on the available evidence, construction and operation associated with the Proposed Project (inclusive of Parcels A, B and C) would not result in any adverse impacts upon cultural resources on the Project Site.

## **CUMULATIVE IMPACTS**

Excavation associated with the development of related projects in the surrounding locale could contribute to the progressive loss of fossil remains, as-yet unrecorded fossil sites, associated geologic and geographic site data, and fossil-bearing strata of the alluvium. For each individual project, the appropriate jurisdiction would be responsible for the development of appropriate mitigation in the event of discovery of remains. There are no cumulative impacts to cultural resources associated with the Proposed Project.

## **MITIGATION MEASURES**

As the Proposed Project would not result in significant impacts, no mitigation measures are necessary. However, the following mitigation measures are recommended in order to ensure that the Proposed Project would not result in any significant impacts to cultural resources. These measures are consistent with the recommendations provided by the Native American Heritage Commission in response to the NOP for the Draft EIR:

1. In the event that archaeological resources are encountered during the course of grading or construction, all development must temporarily cease in these areas until the resources are properly assessed and subsequent recommendations are determined by a qualified consultant.
2. In the event that human remains are discovered, there shall be no disposition of such human remains, other than in accordance with the procedures and requirements set forth in California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98. These code provisions require notification of the County Coroner and the Native American Heritage Commission, who in turn must notify those persons believed to be most likely descended from the deceased Native American for appropriate disposition of the remains. Excavation or disturbance may continue in other areas of the Project Site that are not reasonably suspected to overlie adjacent remains or cultural resources. If undiscovered evidence of prehistoric artifacts is discovered construction activities in the affected areas shall not proceed until written authorization is granted by the City of Malibu Planning ~~Director~~Manager.

## **LEVEL OF SIGNIFICANCE AFTER MITIGATION**

The Proposed Project would not result in any significant impacts to cultural resources. Nevertheless, in the unlikely event that any human remains or other unidentifiable potential archaeological or historic materials are unearthed during the construction phase, implementation of the mitigation measures presented above would ensure impact to archaeological resources are mitigated to less than significant levels.