

### 5.4 CULTURAL RESOURCES

Cultural resources include places, object, 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 Hyatt Regency Newport Beach (proposed project) to impact cultural resources in the City of Newport Beach. The analysis in this section is based, in part, on the following report:

- *Cultural Resources Assessment Report for Hyatt Regency Addition*, Cogstone Resource Management, December 2006.

A copy of this report in its entirety is included in Appendix E of this DEIR.

#### 5.4.1 Environmental Setting

##### Study Methodology

A literature search and review for archaeological and historical records were completed at the South Central Coastal Information Center at California State University, Fullerton. The research included a review of site maps, site records, survey reports, mitigation reports, historical maps, California Points of Historical Interest, the California Historical Landmarks, the California Register of Historic Places, the National Register of Historic Places, and the California State Historic Resources Inventory. A search of in-house vertebrate paleontology collection records was conducted by Cogstone Resource Management personnel at the Natural History Museum of Los Angeles County. Research included a review of the locality and specimen data for the proposed project area. A cultural resources reconnaissance survey of the proposed project area was conducted by Cogstone Resource Management on November 6, 2006.



##### Environmental Context

###### Natural Setting

###### Geology

The proposed project area lies within the Los Angeles Basin. The basin is formed by the Santa Monica Mountains on the northwest, the San Gabriel and Santa Ana Mountains on the north and east, and the San Joaquin Hills on the south.

The north coastal area of Orange County was an ocean bottom until the Santa Ana River area uplifted, forming the Santa Ana Canyon. As it fanned out, the river isolated Newport Mesa, cutting it off from the San Joaquin Hills to the south. Heavy clays, silts, and shell deposits are evidence of that ancient ocean bottom.

Surface deposits in the proposed project area consist of exposures of Quaternary terrace deposits, both marine and terrestrial, in the low-lying areas to the west and south. In the east-central area of the project, there are exposures of the marine Miocene Monterey Formations that underlie the Quaternary terrace deposits.

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#### *Vegetation*

In the San Joaquin Hills to the southeast, a southern Oak Woodland Community exists. To the north is the Upper Newport Bay, which is comprised of approximately 1,000 acres of tidelands and salt white marsh, bordered by steep cliffs and cliffs at heights of up to 100 feet above the waterway. The marshes are inhabited by various species, including amphibians and birds. To the north of the project area is a valley grassland environment.

#### **Cultural Setting**

Three prehistoric periods are defined.

*Milling Stone Period.* This period dates from 6,000 to 2,000 BC. Sites from this period appear to be part of a settlement expansion to take advantage of new habitats and resources that became available as sea levels stabilized between about six and five thousand years ago. Gores were used for fishing and mano/metate pairs were used to process plant materials. Most sites were in coastal areas.

*Intermediate Period.* This period dates from 2000 BC to AD 600. The first circular fish hooks appear in the tool kit in this period and use of plant-grinding tools increases. Hunting tools consist of the atlatl and dart. Most sites were in coastal areas.

*Late Prehistoric Period.* The period dates from AD 600 to 1769. In this period the atlatl and dart hunting tools are replaced by the bow and arrow. Manos/metates were gradually replaced by pestle/mortars. Use of other traditional tools continues. Settlement was expanded inland into the hills and canyons.

#### *Ethnography*

Orange County is within the ethnographic territory that was occupied, at the influx of Spanish missionaries, by the Native American group who called themselves the Tongva and were renamed the Gabrielino by missionaries. Their settlement and subsistence systems may extend back to the beginning of the Late Prehistoric period, about AD 750. The Gabrielino were semisedentary hunters and gatherers. One of the most important food resources for inland groups was acorns gathered from oak groves in canyons, drainages, and foothills. The nuts were pounded into flour using stone mortars and pestles, and then cooked as soup or gruel. Seeds from sage, grasses, goosefoot, and buckwheat were collected and ground with stone manos and metates. Protein was supplied by hunting deer, rabbits, and other animals using the bow and arrow, and various traps and snares. Coastal Gabrielino collected shellfish and fished for estuary, near-shore, and kelp-bed species. Dried fish and shellfish were exchanged for inland products such as acorns.

The Gabrielino lived in villages of up to 150 people near permanent water sources and a range of food resources. The village acted as the center of a territory from which resources were gathered. Small groups left the village for short periods to hunt, fish, and gather plants for food, as well as collect raw materials for tools, housing, and other needs. While away from the village, they established temporary camps and resource processing locations. Archaeologically, such locations are marked by bedrock mortars for acorn processing, manos and metates for seed processing, and flaked lithic scatters indicating the manufacturing or maintenance of stone tools (usually chert) used in hunting or butchering. Overnight stays in these field camps are indicated by fire-accented rock resulting from hearths.

#### *Historic Period*

In 1769, Spanish settlers began to enter and colonize Alta California. Thus began the Spanish Period (1760–1821). These settlers introduced missions, presidios, pueblos, and ranchos. Starting in 1784, the government of New Spain (as California was called at the time) began handing out private land grants called “ranchos.” This land was assigned to the colonists regardless of the presence of Native Americans.

The Mexican Period (1821–1848) included the retention of many Spanish institutions and laws. The mission system was secularized in 1834, which dispossessed many Native Americans and increased Mexican settlement. After secularization, mission lands were granted to individuals and families in large tracts, greatly enlarging the rancho system. Cattle ranching dominated other agricultural activities and the development of the hide and tallow trade with the United States to the east increased during the early part of this period. The Mexican Period ended when Mexico ceded California to the United States after the Mexican-American War of 1846–48.

Soon after American control was established, gold was discovered in California. The tremendous influx of Americans and Europeans that resulted quickly drowned out much of the Spanish and Mexican cultural influence and eliminated the last vestiges of de facto Native American control. Few Mexican ranchos remained intact due to land claim disputes.

#### **City of Newport Beach**

Newport Bay was named Bolsa de San Joaquin in early historic times and the Lower Bay was the estuary of the Santa Ana River. In the 1870s a landing was established for offloading supplies from boats and the place was officially renamed Newport. Navigation was difficult in the shallow waters and in 1888 a wharf was built out into the bay so that large ships could dock. There were only a few residents of Newport until the turn of the century when the railroad and its Red Cars made Newport a beach destination. The communities of West Newport, East Newport, Bay Island, and Balboa were laid out. In 1906 these communities were incorporated as the City of Newport Beach with a combined total population of 205. The reclamation of lower Newport Bay, a large-scale municipal project of the 1930s, gave the City its present contours. Fishing and canning were the major industries until World War II when Newport became an important center for repairing and refurbishing Navy vessels. The building of the Santa Ana Freeway in the 1950s opened up Newport Beach and other areas of Orange County for permanent residents rather than just summer beachgoers. The 1970s saw explosive growth and the development of Newport Beach as a prestige address for residents and businesses.



#### **Archaeological and Historical Resources**

##### **Recorded Archaeological Sites**

As indicated in the cultural resources assessment report (see Appendix E of this DEIR) and shown in table 5.4-1, two archaeological sites are known within the project boundaries, CA-ORA-99 (Shell Scatter) and CA-ORA-50 (Shell Midden). Only the Shell Midden site would be impacted by the proposed project. The shell midden was observed in a roadway near the existing ballroom and in the landscape areas and rodent holes in the areas of the proposed timeshare buildings 1-4. Shell middens are places where the debris from eating shellfish and other food has accumulated over time and are the result of a clearly recognizable single-activity event. They can contain:

- Shellfish remains
- Bones of fish, birds, and land and sea mammals used for food
- Tools made from stone, shell, and bone

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There are also 38 recorded archaeological sites located within a one-mile radius of the project area. These sites are listed in Table 5.4-1. The literature search of projects completed within a one-mile radius of the project site yielded 46 previous archaeological/historical studies.

**Table 5.4-1  
Recorded Sites within a One-Mile Radius of the  
Project Area**

<i>Trinomial</i>	<i>Site Type</i>	<i>Date</i>
CA-ORA-46	Shell Midden	1949
CA-ORA-47	Shell Midden	1949
CA-ORA-48	Shell Midden	1949
CA-ORA-49	Shell Midden	1949
<b>CA-ORA-50</b>	Shell Midden	1949
CA-ORA-51	Shell Midden	1949
CA-ORA-52	Shell Midden	1949
CA-ORA-64	Habitation Site	1965
CA-ORA-65	Historic and Prehistoric Artifact Scatter	1980
CA-ORA-66	Shell Scatter	1985
CA-ORA-68	Shell Midden	1966
CA-ORA-70	Shell Midden	1966
CA-ORA-89	Shell Midden	1965
<b>CA-ORA-99</b>	Shell Scatter	1965
CA-ORA-100	Shell Scatter	1965
CA-ORA-137	Shell Midden	1965
CA-ORA-138	Shell Midden	1965
CA-ORA-139	Shell and Artifacts Scatter	1965
CA-ORA-140	Shell Midden	1965
CA-ORA-141	Shell Midden	1965
CA-ORA-146	Habitation Site	1965
CA-ORA-150	Shell Midden	1965
CA-ORA-151	Shell Midden	1965
CA-ORA-152	Shell Midden	1965
CA-ORA-153	Shell Midden	1965
CA-ORA-154	Shell Midden	1965
CA-ORA-155	Shell Midden	1965
CA-ORA-156	Shell Scatter	1965
CA-ORA-158	Shell Midden	1966
CA-ORA-186	Shell Scatter	1965
CA-ORA-187	Shell Scatter	1965
CA-ORA-518	Shell Midden	1976
CA-ORA-1098	Shell Midden	1985
CA-ORA-1117	Shell Midden	1980
CA-ORA-1451	Artifact Scatter	1995

Source: Cultural Resources Assessment Report, 2006

Shell midden was also observed during the cultural resource reconnaissance survey for the proposed project. Shell midden, indicative of a potential archaeological site, was observed in a roadway near the existing ballroom and in landscape areas and rodent holes on the future sites of timeshare Buildings 1–4. No other types of archaeological resources were observed during the survey.

### **Historical Resources**

Based on the cultural resources reconnaissance survey conducted by Cogstone Resource Management, none of the existing structures slated for demolition meet significance criteria under CEQA and there are no known historical resources in the project area.

### **Native American Consultation**

The Native American Heritage Commission (NAHC) was consulted to determine if any known sacred lands exist in or near the project area. The NAHC responded that no sacred lands are known in the vicinity of the project site. Letters were then sent to each tribe or person recommended by the NAHC. Ms. Joyce Perry, a Juaneño, responded that she believed the area to be sensitive for prehistoric archaeological resources and to state that the tribe has a reburial area nearby. No other responses were received.

### **Paleontological Resources**

#### ***Paleontological Setting***

Surface deposits in the proposed project area consist of exposures of Quaternary terrace deposits, both marine and terrestrial, in the low-lying areas to the west and south. In the east-central area of the project site, there are exposures of the marine Miocene Monterey Formations that underlie the Quaternary terrace deposits.

#### ***Quaternary Terraces***

Quaternary Terrace deposits date from 1.8 million to 10,000 years before present and contain Pleistocene fossils. In Orange County these sediments yield marine mammals and fishes plus terrestrial fossils such as sloth, bison, horse, camel, and mammoth. These sediments generally contain significant, nonrenewable paleontological resources and are considered to have high paleontological significance.

#### ***Monterey Formation***

The Miocene (17 to 13.5 million years before present) Monterey Formation is mapped as the deep sediments in the project area. The Monterey Formation is well known for its rich fossil assemblage of marine algae, plankton, leaves, invertebrates, bony fish, marine turtles, birds, and marine mammals. These sediments generally contain significant, nonrenewable paleontological resources and are considered to have high paleontological significance.

### **Reconnaissance Survey**

No paleontological resources were observed during the site survey conducted by Cogstone Resource Management.

### **Regulatory Background**

Federal, state, and local laws, regulations, plans, or guidelines that are potentially applicable to the proposed project are summarized below.



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#### **Federal**

##### *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 historical 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.

##### *Archaeological Resources Protection Act*

The Archaeological Resources Protection Act of 1979 regulates the protection of archaeological resources and sites that are on federal 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.

#### **State**

##### *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 nonrenewable resources and therefore receive protection under the California Public Resources Code and CEQA.

- California Public Resources Code Sections 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 Sections 5079–5079.65 define 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 Sections 5097.9–5097.998 provide protection to Native American historical and cultural resources and sacred sites and identifies the powers and duties of the NAHC. They also require notification of descendants regarding discoveries of Native American human remains, and provide for treatment and disposition of human remains and associated grave goods.

#### Local

##### *City of Newport Beach General Plan*

Cultural resources are addressed in the Natural Resources Element of the City's General Plan. Of particular application to the proposed project is Goal NR 18, *Protection and Preservation of Important Paleontological and Archaeological Resources*, of this element. The goal is supported by the following policies:

- NR 18.1**      **New Development (page 10-34).** Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources in accordance with the requirements of CEQA. Through planning policies and permit conditions, ensure the preservation of significant archeological and paleontological resources and require that the impact caused by any development be mitigated in accordance with CEQA.
- NR 18.3**      **Potential for New Development to Impact Resources (page 10-34).** Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.
- NR 18.4**      **New Development Requirements (page 10-34).** Require new development, where on site preservation and avoidance are not feasible, to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.

#### **5.4.2**      **Thresholds of Significance**

CEQA Guidelines Section 15064.4 provides direction for determining significance of impacts to archaeological and historical resources. Typically, a resource shall be considered “historically significant” if the resource meets the criteria for listing, 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 with the 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 a 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.



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- 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 A, substantiates that impacts associated with the following threshold would be less than significant: C-1.

This impact 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.

#### **IMPACT 5.4-1: DEVELOPMENT OF THE PROPOSED PROJECT COULD IMPACT ARCHAEOLOGICAL RESOURCES. [THRESHOLD C-2]**

**Impact Analysis:** Implementation of the proposed project is not anticipated to result in significant impacts on archaeological resources. However, given the potential to unearth archaeological resources in the project area during excavation and grading activities, the proposed project could impact significant prehistoric resources. Additionally, as mentioned under Section 5.4.1, *Environmental Setting*, two archeological sites are known within the project boundaries. However, the project site has previously been disturbed and is developed with the existing Hyatt Regency Hotel and its ancillary uses. Additionally, in the event of an unanticipated discovery of archaeological resources during grading and excavation of the site, a qualified archaeologist would assess the find and develop a course of action to preserve the find, as indicated in Mitigation Measure 4-1.

#### **IMPACT 5.4-2: THE PROPOSED PROJECT COULD DESTROY PALEONTOLOGICAL RESOURCES OR A UNIQUE GEOLOGIC FEATURE. [THRESHOLD C-3]**

**Impact Analysis:** Implementation of the proposed project is not anticipated to result in significant impacts to paleontological resources. While no paleontological resources were observed during the survey performed as a part of the Cultural Resources Assessment, the sediments that underlie the project site are well known to contain significant nonrenewable paleontological resources. Excavations anywhere in the proposed project area could encounter significant fossil vertebrates from the marine (and terrestrial) quaternary Terrace deposits. In the event of an unanticipated discovery of paleontological resources during grading and excavation of the site, a qualified paleontologist would be brought in to assess the find and develop a course of action to preserve the find, as indicated in Mitigation Measure 4-3.

**IMPACT 5.4-3: THE PROPOSED PROJECT'S GRADING ACTIVITIES COULD RESULT IN THE DISTURBANCE OF HUMAN REMAINS. [THRESHOLD C-4]**

**Impact Analysis:** The project site has been previously disturbed and has not been identified for a high likelihood of containing human remains. No known human burial sites have been reported on the project site. Implementation of the proposed project is not anticipated to result in significant impacts on human remains. However, the excavation and grading activities of the proposed project could result on impacts to human remains.

Health and Safety Code Section 7050.5, CEQA Section 15064.5, and Public Resources Code Section 5097.98 mandate the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery. The Health and Safety Code Section 7050.5 states:

In the event of discovery and recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains...

If the coroner determines that the remains are not subject to his or her authority and if the coroner recognized the human remains to be those of a Native American, or had reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

To ensure that Health and Safety Code Section 7050.5 is implemented during all project-related excavation and grading activities, a mitigation measure has been provided at the end of this section. Compliance with the above-stated regulation and Mitigation Measure 4-4 would ensure that any impacts from disturbance of human remains as a result of the proposed project would not occur.

### **5.4.4 Cumulative Impacts**

Future construction projects in the City of Newport Beach, as identified in Chapter 4, *Environmental Setting*, could lead to accelerated degradation of the cultural and paleontological resources. However, each development proposal received by the City is required to undergo environmental review. If there is a potential for significant impacts on cultural or paleontological resources, an investigation will be required to determine the nature and extent of the resources and identify appropriate mitigation measures. Neither the proposed project nor cumulative development in accordance with the City's General Plan is expected to result in significant impacts to cultural or paleontological resources, provided site-specific surveys and test and evaluation excavations are conducted to determine whether the resources are unique archaeological resources or historical resources, and appropriate mitigation including are implemented prior to grading. Implementation of the appropriate mitigation measures would reduce cumulative impacts to a level of less than significant.



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#### 5.4.5 Existing Regulations and Standard Conditions

##### Existing Regulations

###### California Public Resources Code 5097.98

Notification of discovery of Native American human remains, descendants, disposition of human remains, and associated grave goods:

- (a) Whenever the commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendants may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site.
- (b) Upon the discovery of Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section, with the most likely descendants regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment.
  - (1) The descendants preferences for treatment may include the following:
    - (A) The nondestructive removal and analysis of human remains and items associated with Native American human remains.
    - (B) Preservation of Native American human remains and associated items in place.
    - (C) Relinquishment of Native American human remains and associated items to the descendants for treatment.
    - (D) Other culturally appropriate treatment.
  - (2) The parties may also mutually agree to extend discussions, taking into account the possibility that additional or multiple Native American human remains, as defined in this section, are located in the project area providing a basis for additional treatment measures.
- (c) For the purposes of this section, "conferral" or "discuss and confer" means the meaningful and timely discussion and careful consideration of the views of each party, in a manner that is cognizant of all parties' cultural values, and where feasible, seeking agreement. Each party shall recognize the other's needs and concerns for confidentiality of information provided to the other.

- (d)
- (1) Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness.
  - (2) Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains.
- (e) Whenever the commission is unable to identify a descendent, or the descendants identified fail to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect these sites, the landowner shall do one or more of the following:
- (1) Record the site with the commission or the appropriate Information Center.
  - (2) Utilize an open-space or conservation zoning designation or easement.
  - (3) Record a document with the county in which the property is located.
- (f) Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with the descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from a review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and items associated and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to subdivision (e).
- (g) Notwithstanding the provisions of Section 5097.9, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).
- (h) Notwithstanding the provisions of Section 30244, this section, including those actions taken by the landowner or his or her authorized representative to implement this section, and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94 shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).



### **City of Newport Beach Standard Conditions**

- The City of Newport Beach has standard conditions requiring a qualified archaeologist and a paleontologist to observe construction activities and to establish procedures for redirecting work, evaluating resources, and recommending appropriate actions. More specific requirements have

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been prepared for this project by the cultural resources consultant, and in lieu of the standard conditions, are included in the mitigation measures.

#### 5.4.6 Level of Significance Before Mitigation

Without mitigation, the following impacts would be **potentially significant**: 5.4-1, 5.4-2, and 5.4-3.

#### 5.4.7 Mitigation Measures

##### Impacts 5.4-1

4-1 Prior to the issuance of a grading permit, the project applicant shall provide written evidence to the City of Newport Beach that the project applicant has retained an Orange County Certified Professional Archaeologist. The archeologist shall be retained for the duration of the excavation and grading activities to provide professional services and monitoring during all such activities. The archaeologist shall comply with the following tasks.

- 1) The archaeologist shall determine the extent of monitoring that is required during excavation and grading activities. The qualified archaeologist must have knowledge of both prehistoric and historical archaeology. The methods of archaeological monitoring, including timing, location, types of artifacts anticipated, and procedures for additional analysis, if necessary, shall be described in an archaeological monitoring plan. The extent and duration of the monitoring program shall be dependent upon the City-approved grading plans. The construction manager shall adhere to the stipulations of the archaeological monitoring plan.
- 2) The archaeological monitoring plan shall be developed prior to commencement of on-site grading activities.
- 3) Should any subsurface cultural resources be encountered, the archaeological monitor shall have the authority to halt grading activities until uncovered resources are evaluated and a determination of significance is made. If cultural resources are encountered, a Native American monitor with a Tongva/Gabrielino lineage, the project applicant, and the City of Newport Beach shall evaluate the significance of the resources and, if appropriate, shall determine appropriate treatment and mitigation of the resources. If cultural artifacts are recovered, any eligibility testing and/or determination of additional mitigation should be done in consultation with the Native American monitor.
- 4) During construction, if buried cultural resources, such as chipped or ground stone, historical artifacts, specimens, fossils, or human bone, are inadvertently discovered during ground-disturbing activities, the contractor shall ensure that all work will stop in that area and within 100 feet of the find until the qualified on-call archaeologist arrives on-site and can assess the significance of the find and, if necessary, develop appropriate treatment measures in consultation with the City.
- 5) Suspension of ground disturbances in the vicinity of the discoveries shall not be lifted until the archaeological monitor has evaluated discoveries to assess whether they are classified as historical resources or unique archaeological sites, pursuant to the California Environmental Quality Act (CEQA).

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- 6) A report that documents the findings of the program shall be prepared. The report shall provide an itemized inventory of the recovered specimens. Submission of the final report and inventory to the City of Newport Beach shall represent completion of the mitigation monitoring program for archeological resources. The report shall include a list of resources recovered, documentation of each site/locality, and interpretation of resources recovered and shall include all specialists' reports as appendices. All project documents, including field records and the report itself, should be included on a CD in portable document format. The CD shall be included a pocket at the rear of each copy of the report.

4-2 Prior to the issuance of grading permits, a preconstruction testing plan for cultural resources shall be implemented. Testing may be conducted during the same period as demolition activities. However, ample time shall be allowed for the results of the testing to be evaluated and for possible redesign to avoid the findings sites or mitigation of destructive construction impacts on the sites. Testing shall be conducted as follows:

- Proposals to conduct testing shall include construction fencing and warning signs to protect patrons of the Hyatt Regency and the shoring of deep units and/or trenches to meet Occupational Safety and Health Administration (OSHA) standards.
- A trench at least 20 meters in length within the footprints of Timeshare Buildings 1, 2, 4, and 5, for a total of four trenches. The depth of the trenches shall be 20 centimeters below any cultural or potential cultural levels and must be sufficient to determine site stratigraphy. Soil profiles and stratigraphic columns are required to document the site integrity or lack thereof.
- If intact site deposits are demonstrated to be present within the footprints of Timeshare Buildings 1, 2, 4, and 5, then a minimum of two 1-meter-square units shall be placed in intact site areas, to be determined by the principal investigator. The units shall be dug in natural stratigraphic levels if possible and in 10-centimeter levels otherwise. These units will document the potential of the site to contribute new information to prehistory. Documentation shall be thorough and detailed.
- A minimum of 10 to a maximum of 50 test pits shall be utilized to determine the boundaries of the site. The test pits should test the limits of the site at the limits of the project along the project footprint in the vicinity of timeshare buildings 1–7, the timeshare clubhouse, the new ballroom, and the new spa facility.
- Limited testing of the new ballroom area shall be conducted to determine if resources exist in the area in order to avoid construction delays caused by unanticipated finds.
- Artifacts recovered will be in the custody of the principal investigator until they are transported to the designated accredited repository and will be prepared, identified, and cataloged prior to transport.



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### CULTURAL RESOURCES

#### **Impact 5.4-2**

- 4-3 Prior to the issuance of a grading permit, the project applicant shall provide written evidence to the City of Newport Beach that the applicant has retained an Orange County Certified Professional Paleontologist. The paleontologist shall be retained for the duration of the excavation and grading activities to provide professional services and monitoring during all such activities. The paleontologist shall comply with the following tasks.
- 1) The paleontologist shall be responsible for implementing the mitigation plan and maintaining professional standards of work at all times.
  - 2) The paleontologist shall attend the pregrade construction meeting and shall be invited to briefly define paleontological resources, discuss cooperation with the paleontological monitor, and outline the on-call procedures to be followed in the event of a discovery when the monitor is not present.
  - 3) The paleontologist shall prepare monthly progress reports to be filed with the City. The principle investigator shall prepare a final report to be filed with the City. The report shall include a list of resources recovered, documentation for each locality, and interpretation of resources recovered. All specialists' reports shall be included as appendices.
  - 4) Monitoring shall include inspection of exposed surfaces and microscopic examination of matrix.
  - 5) The monitor will have authority to temporarily divert grading from exposed resources in order to recover the specimens and contextual data.
  - 6) If the discovery of paleontological resources meets the criteria for fossil locality, formal locality documentation activities shall be performed. In addition, samples shall be submitted for dating and other special analyses.
  - 7) If microfossil localities are discovered, the monitor shall collect matrix for processing. To limit downtime, the monitor may request heavy machinery assistance to move large quantities of matrix out of the path of construction to designated stockpile areas. Testing of stockpiles shall consist of screen washing small samples (200 pounds) to determine if fossils are present. Productive tests shall result in screen washing of additional matrix from the stockpiles to a maximum of 6,000 pounds per locality.
  - 8) Fossils recovered shall be prepared, identified, and cataloged before donation to the accredited repository that will maintain the collection for future scientific study and exhibition within Orange County, to be designated by the City. Such fossils shall be prepared, prior to donation, to the point of dedication. The project proponent shall be prepared to pay potential curation fees to the county or other suitable repository for long-term curation and maintenance of the donated collection. Any resources determined not to meet the significance criteria can be used in school education programs.

### Impact 5.4-3

- 4-4 Prior to issuance of grading permits, the project applicant shall place the following note on all grading plans: "If human remains are encountered, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his or her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 24 hours of notification by the NAHC. The MLD may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials." This requirement shall also be discussed at the pregrade meeting(s).

### 5.4.8 Level of Significance After Mitigation

The mitigation measures identified above 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 on either a project-specific or cumulative basis.



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