4.3 BIOLOGICAL RESOURCES

4.3.1 INTRODUCTION

This section describes the biological resources on the proposed site and evaluates the potential impacts of the proposed project on biological resources. This section is based on an updated reconnaissance-level botanical and sensitive species survey, conducted on December 4, 2012, and a Tree Survey conducted by Rios Clementi Hale Studios in 2011 (Appendix D).

4.3.2 METHODOLOGY

A reconnaissance-level botanical and sensitive species survey was conducted on the project site on December 4, 2012. The purpose of this survey was to confirm previous surveys and identify vegetation communities located on site and to ascertain the presence or absence of sensitive plants and animals or the likelihood of their occurring on site based on the availability of suitable habitat, as documented in this section.

4.3.3 EXISTING ENVIRONMENTAL SETTING

The project site is generally flat and is in a developed, urban area within the City of West Hollywood. The project site is currently developed with office buildings, light industrial uses, a parking structure, and commercial uses. Beverly Gardens Park is northwest of the project site across Santa Monica Boulevard. The project site is primarily composed of buildings and paved surfaces with very little existing vegetation. The only vegetation present on the proposed site is ornamental landscaping. Rows of ornamental non-native street trees are planted along the public sidewalks on Santa Monica Boulevard, Almont Drive, and Melrose Avenue. A total of 67 ornamental trees were identified within the public sidewalks, around the site perimeter, and planted in small areas within the parking lots and entryways of businesses in the area. The landscaping on the project site is generally well-maintained, and no open fields or weedy areas are present. The original site reconnaissance survey indicated that rainfall and runoff from the project site are conveyed through an existing storm drain system, and no wetlands or natural drainage areas occur on the project site.

4.3.4 REGULATORY SETTING

Federal Migratory Bird Treaty Act/California Fish and Game Code

The Federal Migratory Bird Treaty Act (MBTA) regulations and the California Fish and Game Code 3700, et seq.) prohibit the "take" of nearly all native bird species and their nests. While these laws and regulations were originally intended to control the intentional take of birds and/or their eggs and nests by collectors, falconers, etc., they can nevertheless be applied to unintentional take (e.g., destroying an active nest by cutting down a tree). Therefore, removal or destruction of active nests for most avian species is legally prohibited by the MBTA.

United States Army Corps of Engineers. The United States Army Corps of Engineers (ACOE) regulates discharges of dredged or fill material into waters of the US. These waters include wetlands and nonwetland bodies of water that meet specific criteria. The ACOE regulatory jurisdiction pursuant to Section 404 of the federal CWA is founded on a connection, or nexus, between the water body in question and interstate commerce. This connection may be direct, through a tributary system linking a stream channel with traditional navigable waters used in interstate or foreign commerce, or may be indirect, through a nexus identified in the ACOE regulations.

The ACOE and United States Environmental Protection Agency (EPA) define wetlands as follows:

"Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions."

In order to be considered a jurisdictional wetland under Section 404, an area must possess three wetland characteristics: hydrophytic vegetation, hydric soils, and wetland hydrology.

United States Fish and Wildlife Service. The USFWS, pursuant to the FESA, protects endangered and threatened species. An endangered species is defined as a species "in danger of extinction throughout all or a significant portion of its range" and a threatened species is one that is likely to become an endangered species in the foreseeable future. The USFWS also identifies species that are proposed for listing as endangered or threatened. Other than for federal actions, there is no formal protection for these species under the FESA. However, consultation with the USFWS regarding proposed species can prevent project delays that could occur if a species is listed prior to project completion.

"Take" of a listed species is prohibited under Section 9 of the FESA. "Take" is to harass, harm, pursue, hunt, shoot, wound, trap, capture, collect, or attempt to engage in any such conduct. "Take" of a listed species incidental to otherwise lawful activities can be authorized by the USFWS. The take of federally listed species can be authorized under Section 10(a) of the FESA, with development of a Habitat Conservation Plan (HCP) or as part of a Section 7 consultation between the USFWS and another federal agency if the project is subject to federal action (e.g., a Section 404 Permit).

California Endangered Species Act. The California Department of Fish and Wildlife (CDFW), via policies formulated by the California Fish and Game Commission (Commission), regulates species of plants and animals that are in danger of, or threatened with, extinction. The Commission has established a list of endangered, threatened, and candidate species that are regulated by the CDFW.

City of West Hollywood Municipal Code

WHMC Chapter 11.36 (Street Trees and Other Plants), and in particular Section 11.36.010, requires any person, firm, or corporation to obtain a permit to remove any shade or ornamental tree, hedge, plant, shrub, or flower growing or planted to grow on any public highway, public ground, or public property within the City.

4.3.5 THRESHOLDS OF SIGNIFICANCE

The following thresholds of significance criteria are based on Appendix G of the CEQA Guidelines. Based on these thresholds, implementation of the proposed project would have a significant adverse impact on biological resources if it would:

Threshold 4.3.1: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game (CDFG) or the United States Fish and Wildlife Service (USFWS);

Threshold 4.3.2: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFG or the USFWS;

Threshold 4.3.3: Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (CWA) (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;

Threshold 4.3.4: Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;

Threshold 4.3.5: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or

Threshold 4.3.6: Conflict with the provisions of an adopted Habitat or Natural Communities Conservation Plan, or other approved local, regional, or state habitat conservation plan.

4.3.6 PROJECT IMPACTS

Threshold 4.3.1: Would the proposed project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game (CDFG) or the United States Fish and Wildlife Service (USFWS)?

Potentially Significant Impact

Wildlife. Construction of the proposed project would involve the removal of the existing ornamental trees and shrubs on and immediately adjacent to the project site. Due to the fact that all trees identified within the study are nonnative ornamental species, their removal would not affect sensitive species. While the loss of ornamental, non-native trees is not considered a significant adverse biological impact, destruction of active nests for most avian species is legally prohibited by the federal Migratory Bird Treaty Act (MBTA) and California Fish and Game Code. Migratory birds such as the house finch (*Carpodacus mexicanus*) and Anna's hummingbird (*Selasphorus sasin*) are

expected to use the trees and shrubs on the project site for nesting during the likely active breeding season (March 1 to August 31) for these species. Nest disturbance of migratory bird species during project construction is considered a potentially significant adverse impact of the proposed project. Implementation of Mitigation Measure BIO-1, provided below, which requires preconstruction clearance surveys for active bird nesting and restrictions for tree removals, would ensure that the potential project impacts to nesting migratory birds would be reduced to below a level of significance.

Less than Significant Impact

Sensitive Species. The project site is heavily urbanized and consists primarily of paved surfaces. Vegetation on site is limited to small areas of non-native ornamental landscaping and street trees. The site does not support suitable habitat for any candidate, sensitive, or special status plant or animal species. Therefore, the proposed project would not result in adverse impacts related to sensitive species.

Threshold 4.3.2: Would the proposed project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFG or the USFWS?

No Impact

The project site is heavily urbanized and consists primarily of paved or covered surfaces. Vegetation on site is limited to small areas of non-native ornamental landscaping and street trees. The project site does not support riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations, or by the CDFW (formerly known as the CDFG) or the USFWS. Therefore, the proposed project would not result in adverse impacts related to sensitive natural communities.

Threshold 4.3.3: Would the proposed project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (CWA) (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

No Impact

The project site consists primarily of paved and covered surfaces. No wetlands vegetation is present on site. Storm water collected on the project site is conveyed to the existing public storm drain system, and no natural drainages occur on the project site. The project site does not contain any federally protected wetlands as defined by Section 404 of the Clean Water Act (CWA). Therefore, the proposed project would not result in adverse impacts related to wetlands.

Threshold 4.3.4: Would the proposed project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

No Impact

The project site is in an urban area that is not connected to any large blocks of contiguous native habitat. Terrestrial movement to and from the project site is severely limited by vehicle traffic on the roads surrounding the project site. The proposed project would not interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors. Therefore, the proposed project would not result in adverse impacts related to wildlife movement.

Threshold 4.3.5: Would the proposed project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Less than Significant Impact

Implementation of the proposed project would require demolition of all of the existing structures and removal of the existing vegetation on the project site. As stated above, a total of 67 ornamental street trees are presently located within the project site. The preliminary landscape plans indicate that 35 of the existing street trees along Santa Monica Boulevard, Almont Drive, and Melrose Avenue adjacent to the project site would be removed and replaced with new landscaping, and that 32 of the existing street trees would remain. The species and number of trees to be removed are listed in Table 4.3.A.

Table 4.3.A: Tree Survey Results (2012)

Ornamental Tree Species	Existing Number	To Be Removed	Existing Trees To Remain – Location
Chinese Elm (*Ulmus parvifolia*)	25	4	21 – Along Santa Monica Boulevard
Water gum (*Tristaniopsis laurina*)	5	0	5 – Along Melrose Avenue
Jacaranda (*Jacaranda mimosifolia*)	5	1	4 – Along Almont Avenue
Mexican fan palm (*Washingtonia robusta*)	7	7	0
Peppermint tree (*Agonis flexuosa*)	4	4	0
Floss silk tree (*Chorisia speciosa*)	2	2	0
Indian laurel fig (*Ficus microcarpa*)	9	9	0
King palm (*Archontophoenix cunninghamiana*)	3	3	0
Canary Island date palm (*Phoenix Canariensis*)	2	0	2 – Along Almont Avenue
Brazilian pepper tree (*Schinus terebinthifolius*)	2	2	0
Spanish bayonet (*Yucca* sp.)	2	2	0
Edible fig (*Ficus carica*)	1	1	0
Total	**67**	**35**	**32**

Source: Tree Survey (Appendix D).

As part of the proposed project, the City will review and approve landscape plans consistent with City policies and ordinances. The applicant would be required to obtain a tree removal permit as part of the project permitting process. Therefore, impacts related to local policies or ordinances protecting biological resources are considered less than significant. No mitigation is required.

Threshold 4.3.6: Would the proposed project conflict with the provisions of an adopted Habitat or Natural Communities Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No Impact

HCPs and NCCPs. The project site is in an urban area that is not subject to any existing local, regional, or State HCPs or NCCPS. Therefore, the proposed project would not result in adverse impacts related to HCPs or NCCPs.

4.3.7 MITIGATION MEASURE

BIO-1 Prior to approval of demolition permits, the project applicant shall retain a qualified biologist, subject to approval by the Community Development Director, to conduct preconstruction clearance surveys for active bird nesting prior to any clearing of vegetation or tree removal. The location of any active migratory bird nests shall be mapped by the biologist and reported immediately to the project construction manager and the City of West Hollywood Community Development Director. If protected migratory birds are present, vegetation clearing and tree removal shall be restricted to outside the likely active breeding season (March 1 to August 31) for migratory bird species potentially occurring on site. If it becomes necessary to clear vegetation during the active breeding season (March 1 to August 31), all construction activities in proximity to active nests shall be delayed or otherwise modified as determined necessary by the biologist to prevent nest failure caused by demolition or construction activities.

4.3.8 CUMULATIVE IMPACTS

As defined in the CEQA Guidelines, cumulative impacts are the incremental effects of an individual project when viewed in connection with the effects of past, current, and probable future projects within the cumulative impact area for biological resources. The proposed project would redevelop an existing urban area in the City of West Hollywood. The cumulative area for biological impacts is the City of West Hollywood and the adjacent portions of the City of Beverly Hills. The project would not contribute to the loss of natural habitat in the region or either City. There are no wetlands on or adjacent to the project site. The area does not provide potential habitat for sensitive plant or wildlife communities and is not a wildlife movement corridor. Therefore, the proposed project would not contribute to the loss of biological resources and would not contribute to cumulative adverse impacts on biological resources.

4.3.9 LEVEL OF SIGNIFICANCE AFTER MITIGATION

Implementation of Mitigation Measure BIO-1 would ensure that potential adverse project impacts to nesting sensitive wildlife species would be reduced to below a level of significance. With implementation of Mitigation Measure BIO-1, the proposed project would not result in any significant unavoidable adverse impacts on biological resources.

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