4.0 Environmental Impact Analysis

4.2 Biological Resources

4.2.1 Introduction

The Project's potential impacts to biological resources, including bats, were fully addressed in the Initial Study prepared for the Project (included in Appendix A of this Draft EIR) and such impacts were determined to be less than significant. The California Department of Fish and Wildlife (CDFW), in a comment letter to the NOP, recommended further evaluation of the Project's potential impacts to bats during construction. This section discusses the additional analysis prepared in response to CDFW's comment. Specifically, this section identifies sensitive biological resources with regard to bats and their roosts that are known to occur or have the potential to occur on or near the Project Site, assesses the potential significant impacts to these biological resources from the Project during construction and operation, and recommends mitigation measures to avoid, minimize, or reduce the significance of any potential impacts. This analysis is primarily based on the Bat Habitat Assessment Memorandum prepared for the project by GPA Consulting and dated September 2021, which is included in Appendix C of this Draft EIR.

4.2.2 Environmental Setting

4.2.2.1 Regulatory Framework

Provided below is a summary of the regulations applicable to the topic of biological resources under CEQA. While not all of the listed regulations apply to bats specifically, the list below was provided to capture the individual topics covered by CEQA under biological resources.

4.2.2.1.1 Federal Endangered Species Act

The Federal Endangered Species Act (FESA) of 1973, as amended (16 U.S.C. 1531 et seq.), provides the regulatory framework for the protection of plant and animal species (and their associated critical habitats), which are formally listed, proposed for listing, or candidates for listing as endangered or threatened under the FESA. The FESA has four major components: (1) provisions for listing species; (2) requirements for consultation with the United States Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries

Service; (3) prohibitions against "taking" of listed species; and (4) provisions for permits that allow an incidental "take."[1] The FESA also discusses recovery plans and the designation of critical habitat for listed species. Both the USFWS and the National Marine Fisheries Service share the responsibility for administration of the FESA.

FESA (16 United States Code [U.S.C.] 1531 et seq.) is implemented by USFWS through a program that identifies and provides for protection of various species of fish, wildlife, and plants deemed to be in danger of or threatened with extinction. As part of this regulatory act, FESA provides for designation of critical habitat, defined in FESA Section 3(5)(A) as specific areas within the geographical range occupied by a species where physical or biological features "essential to the conservation of the species" are found and that "may require special management considerations or protection." Critical habitat may also include areas outside the current geographical area occupied by the species that are nonetheless "essential for the conservation of the species."

4.2.2.1.2 Migratory Bird Treaty Act

All migratory bird species that are native to the United States or its territories are protected under the federal Migratory Bird Treaty Act (MBTA).[2] The MBTA prohibits any person unless permitted by regulations, to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention… for the protection of migratory birds… or any part, nest, or egg of any such bird" (16 U.S.C. 703).

The list of migratory birds protected by the MBTA includes nearly all bird species native to the United States. The statute was extended in 1974 to include parts of birds, as well as eggs and nests. Thus, it is illegal under the MBTA to take (including killing, capturing, selling, trading, and transport) protected migratory bird species without prior authorization by the Department of Interior U.S. Fish and Wildlife Service.[3] Activities that result in removal or destruction of an active nest (a nest with eggs or young being attended by one or more adults) would violate the MBTA. While destruction of a nest by itself is not

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[1] *The Federal Endangered Species Act defines a "take" as follows: "Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C., §1532 (19).*

[2] *16 U.S.C. Sections 703 et seq.; Title 50 C.F.R. Part 10.*

[3] *U.S. Fish and Wildlife Service, Migratory Bird Treaty Act, www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php, accessed May 25, 2021.*

prohibited under the MBTA, nest destruction that results in the unpermitted take of migratory birds or their eggs, is illegal and prosecutable under the MBTA.

With respect to nesting birds, although the MBTA does not itself provide specific take avoidance measures, the United States Fish and Wildlife Service and California Department of Fish and Wildlife, over time, have developed a set of measures sufficient to demonstrate take avoidance, included during construction activities, which include conducting brush removal, tree trimming, building demolition and/or construction, or grading activities outside of the nesting season. California Department of Fish and Wildlife biologists have defined the nesting season as February 15 through August 31 (January 15 to August 31 for raptors). If the nesting season cannot be avoided, prior to issuance of a grading, construction or building permit including demolition permit, the following measures are required as described below:

1. Vegetation removal activities shall be scheduled outside the nesting season (September 1 to February 14 for songbirds; September 1 to January 14 for raptors) to the extent feasible to avoid potential impacts to nesting birds. This includes vegetation removal associated with on-going fuel modification activities.

2. Any construction activities or fuel modification activities that occur during the nesting season (February 15 to August 31 for songbirds; January 15 to August 31 for raptors) shall require that all suitable habitat be thoroughly surveyed for the presence or absence of nesting birds by a qualified biologist monitor (i.e., a professional biologist with a minimum of two years of avian survey experience or equivalent) before the commencement of clearing. If any active nests are detected, a buffer of at least 300 feet (500 feet for raptors), or as determined appropriate by the qualified biologist monitor, shall be delineated, flagged, and avoided until the nesting cycle is complete as determined by the qualified biologist monitor.

4.2.2.1.3 Bald and Golden Eagle Protection Act

Enacted in 1940, and amended several times since, the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*) prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

"Disturb" means: “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death, or nest abandonment.[4]

4.2.2.1.4 California Endangered Species Act

Under the California Endangered Species Act, the California Department of Fish and Wildlife (CDFW) is responsible for maintaining a list of threatened and endangered species (California Department of Fish and Game (CFG) Code Section 2070).[5] The CDFW also maintains a list of candidate species, which are species formally under review for addition to either the list of endangered species or the list of threatened species.

The California Endangered Species Act prohibits the take of plant and animal species that the California Fish and Game Commission has designated as either threatened, rare, or endangered in California. “Take” in the context of this regulation means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill a listed species (CFG Code Sections 86 and 2080). The take prohibitions also apply to candidates for listing under the California Endangered Species Act. However, Section 2081 of the act allows the CDFW to issue permits for the minor and incidental take of species by an individual or permitted activity listed under the Act.

In accordance with the requirements of the California Endangered Species Act, an agency reviewing a project within its jurisdiction must determine if any state-listed endangered, rare, threatened or candidate species could be present in the project area. The agency also must determine if the project could have a potentially significant impact on

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[4] *United States Fish and Wildlife Service, Bald and Golden Eagle Protection Act, www.fws.gov/birds/policies-and-regulations/laws-legislations/bald-and-golden-eagle-protection-act.php, accessed June 28, 2021.*

[5] *“The commission shall establish a list of endangered species and a list of threatened species. The commission shall add or remove species from either list if it finds, upon the receipt of sufficient scientific information pursuant to this article, and based solely upon the best available scientific information, that the action is warranted.” (Amended by Stats. 2018, Ch. 329, Sec. 4. (SB 473), Effective January 1, 2019.)*

such species. In addition, the CDFW encourages informal consultation on any project that could affect any state-listed endangered, rare, threatened or candidate species.

4.2.2.1.5 California Fish and Game Code Section 4150 and California Code of Regulations Section 251.1 – Protection of Nongame Mammal Species

Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment. Specifically, Title 14, Section 251.1 of the California Code of Regulations, prohibits harassment (defined in that section as an intentional act that disrupts an animal's normal behavior patterns, including breeding, feeding, or sheltering) of nongame mammals, and CFG Code Section 4150 prohibits "take" or possession of all nongame mammals or parts thereof. Any activities resulting in bat mortality, such as the destruction of an occupied bat roost that results in the death of bats; or disturbance that causes the loss of a maternity colony of bats, which may also result in the death of young bats; or various modes of nonlethal pursuit or capture may be considered "take" as defined in Section 86 of the CFG Code. As such, Project construction and activities, including (but not limited to) vegetation removal, increased noise, and ground disturbing activities, may have direct and/or indirect impacts on bats and roosts.

4.2.2.1.6 California Migratory Bird Protection Act

Assembly Bill 454 (AB 454), the California Migratory Bird Protection Act, which expires on January 20, 2025, makes unlawful the taking or possession of any migratory nongame bird designated in the federal act before January 1, 2017, any additional migratory nongame bird that may be designated in the federal act after that date, or any part of those migratory nongame birds, except as provided by rules and regulations adopted by the United States Secretary of the Interior under the federal act before January 1, 2017, or subsequent rules or regulations adopted pursuant to the federal act, unless those rules or regulations are inconsistent with the Fish and Game Code.

AB 454, also reenacted, operative January 20, 2025, the existing provisions of law regarding the taking or possession of any migratory nongame bird as designated in the federal act, or any part of such migratory nongame bird, except as specified.

4.2.2.1.7 California Fish and Game Code—Fully Protected Species and Species of Special Concern

The classification of "fully protected species" was the CDFW's initial effort to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, amphibians and reptiles, birds, and mammals. Most of the species on these lists have subsequently been listed under the California Endangered Species Act and/or the Federal Endangered Species Act. The CFG Code

Sections (fish at Section 5515, amphibians and reptiles at Section 5050, birds at Section 3511(b), and mammals at Section 4700) dealing with "fully protected" species state that these species "may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected species," although take may be authorized for necessary scientific research. This language makes the "fully protected" designation the strongest and most restrictive regarding the "take" of these species. In 2003, the CFG Code sections dealing with fully protected species were amended to allow the CDFW to authorize takings resulting from recovery activities for state-listed species.

Species of "special concern" are broadly defined as animals not listed under the Federal Endangered Species Act or the California Endangered Species Act, but that are nonetheless of concern to the CDFW because they are declining at a rate that could result in listing or because they historically occurred in low numbers and known threats to their persistence currently exist.[6] This designation is intended to result in special consideration for these animals by the CDFW, land managers, consulting biologists, and others, and is intended to focus attention on the species to help avert the need for listing under the Federal Endangered Species Act and the California Endangered Species Act, and recovery efforts that might ultimately be required. This designation is also intended to stimulate collection of additional information on the biology, distribution, and status of poorly known at-risk species, and focus research and management attention on them. Although these species generally have no special legal status, they may require consideration under CEQA during project review if they meet the definition of endangered, rare, or threatened species in CEQA Guidelines Section 15380 which is not limited to listed species.

4.2.2.1.8 Fish and Game Code Sections 3503 and 3513

According to Section 3503 of the CFG Code, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird (except English sparrows (*Passer domesticus*) and European starlings (*Sturnus vulgaris*)). Section 3503.5 specifically protects birds in the orders Falconiformes and Strigiformes (birds-of-prey). Section 3513 essentially overlaps with the MBTA, prohibiting the take or possession of any migratory non-game bird. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered a "take" by the CDFW. The same procedures identified above to avoid a violation of the Federal MBTA are recognized by the CDFW to avoid a take in violation of these provisions.

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[6] *California Department of Fish and Wildlife, Species of Special Concern, https://wildlife.ca.gov/Conservation/SSC, accessed May 25, 2021.*

4.2.2.1.9 California Native Plant Society

The California Native Plant Society (CNPS) maintains a list of special status plant species based on collected scientific information. CNPS designations are defined as List 1A (plants presumed extinct); List 1B (plants rare, threatened, or endangered in California and elsewhere); List 2 (plants rare, threatened, or endangered in California, but more numerous elsewhere); List 3 (plants about which more information is needed—a review list); and List 4 (plants of limited distribution—a watch list). Designation of these species by CNPS has no legal status or protection under federal or state endangered species legislation. Nonetheless, plants appearing on CNPS List 1A, 1B, or 2 meet the criteria of Section 15380 of the CEQA Guidelines; thus, substantial adverse effects to these species would be considered significant. Additionally, plants constituting CNPS List 1A, 1B, or 2 meet the definitions of CFG Code Section 1901 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act).

4.2.2.1.10 California Fish and Game Code Section 1600

Under sections 1600 et. seq. of California Fish and Game Code, CDFW regulates activities that would divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake that supports fish or wildlife and requires a Streambed Alteration Agreement for such activities. The CDFW issues a Streambed Alteration Agreement with any necessary mitigation to ensure protection of the State's fish and wildlife resources. The CDFW has jurisdiction over riparian habitats associated with watercourses.

4.2.2.1.11 Los Angeles County Significant Ecological Areas

The Los Angeles County Significant Ecological Area (SEA) Program was originally established as a part of the 1980 County General Plan to help conserve the genetic and physical diversity within Los Angeles County by designating biological resource areas capable of sustaining themselves into the future. The Los Angeles County General Plan 2035 updated the SEA boundary map, goals and policies in 2015.[7]

SEAs are places where the County deems it important to facilitate a balance between development and biological resource conservation. Where occurring within SEAs, development activities are carefully guided and reviewed with a key focus on site design as a means for conserving fragile resources such as streams, woodlands, and threatened or endangered species and their habitats. The SEA Program does not change the land use

[7] *Los Angeles County Regional Planning, Significant Ecological Areas (SEA) Ordinance Implementation Guide, Effective January 16, 2020, pp. 5–6.*

designation or the zoning of a property; rather it uses guidance and biological review and the application of certain development standards to balance the preservation of the County's natural biodiversity with private property rights.[8]

There are no areas identified within the County's SEA that are located within the City of Beverly Hills jurisdiction.

4.2.2.1.12 City of Beverly Hills General Plan

The Open Space Element of the City's General Plan is the principal guide for the maintenance and conservation of natural resources, open space, and recreation and park lands in the City of Beverly Hills.

Twelve primary goals and associated policies are identified in the Open Space Element to support the element's primary purposes. Biological resources are specifically addressed in the General Plan Open Space Element, which contains the following policies specific to biological resources.

- **Policy OS 1.1 Resource Preservation.** Preserve the City's biological diversity, remaining natural habitat and aesthetic character. Encourage new development on hillsides and in canyon areas to preserve natural land formations and native vegetation, and to set aside areas as greenbelts and wildlife corridors when feasible.

- **Policy OS 2.1 Trees of Significance.** Require the retention of trees of significance (such as heritage trees) by promoting stewardship of such trees and ensuring that the design of development and reuse projects provide for the retention of these trees wherever possible. Where tree removal cannot be avoided, require replacements with an appropriate species.

- **Policy OS 2.2 Manage and Enhance.** Continue to ensure that new construction incorporates trees where appropriate, and manages and cares for all publicly owned trees, works to retain healthy trees, and encourages planting appropriate species in appropriate locations. Maintain Tree City USA accreditation on an annual basis.

[8] *Los Angeles County Regional Planning, Significant Ecological Areas (SEA) ordinance Implementation Guide, Effective January 16, 2020, p. 6.*

4.2.2.1.13 City of Beverly Hills Municipal Code—Protected Trees

Beverly Hills Municipal Code Section 5-6.1001 regulates the protection of street trees. Beverly Hills Municipal Code Sections 10-3-2900 through 10-3-2906 regulate the protection of trees on private single-family residential property, and thus do not apply to the Project, which is located on commercially zoned property. The existing landscaping within the Project Site is sparse and consists of ornamental shrubs in planters and 15 trees lining the sidewalks. Street trees are protected by Beverly Hills Municipal Code Section 5-6.1001 as follows: "It is illegal for parties who are not official representatives or authorized agents of the City of Beverly Hills to prune, remove, make attachment to, or otherwise damage a City street, park or protected tree."

4.2.2.2 Existing Conditions

The City of Beverly Hills is fully developed with urban uses and has little undisturbed native vegetation. The only relatively undisturbed areas within the City include those located near the foothills of the Santa Monica Mountains and the few open space areas located in a portion of the City north of Sunset Boulevard. The remaining open space within the City is located in public parks, which typically do not contain natural or native vegetation. The principal terrestrial vegetation in this highly urbanized setting consists of landscape vegetation and other cultivated species with some invasive, weedy, non-native plants in areas that are not maintained. Due to the highly urbanized nature of the City, the potential for overland wildlife movement through the majority of the City is highly restricted. Although some local movement of wildlife is expected to occur throughout the City, the nearby Santa Monica Mountains are the primary area for wildlife movement.

The Project Site is located in an urbanized area of the City of Beverly Hills and is currently developed with commercial and institutional buildings. The existing landscaping within the Project Site is sparse and consists of ornamental shrubs in planters and 15 trees lining the sidewalks. Specifically, based on the Tree Removal and Replacement Technical Memorandum prepared for the Project by Gruen Associates in August 2020 (included as part of the Initial Study provided in Appendix A of this Draft EIR), the 15 street trees that line the sidewalks adjacent to the on-site buildings, include five king palms (*Archontophoenix cunninghamiana*) along North Rodeo Drive, four Mexican fan palms (*Washingtonia robusta*) along South Santa Monica Boulevard, three Mexican fan palms along North Beverly Drive, and three Tipu trees (*Tipu tipuana*) along North Beverly Drive. There are no waterbodies or waterways on or within one mile of the Project Site.

4.2.3 Project Impacts

4.2.3.1 Thresholds of Significance

The Project would have a significant impact related to biological resources if it would:

Threshold (a): 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 Wildlife or U.S. Fish and Wildlife Service?

Threshold (b): 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 California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

Threshold (c): Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

Threshold (d): 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 (e): Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Threshold (f): Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

As previously noted, this section of the Draft EIR provides a supplemental analysis of the Project's potential impacts with regard to bats and roosts in response to a comment letter received from the CDFW during the NOP review period. The Project's potential impacts related to the balance of the biological issues described in Thresholds (a) through (f) were otherwise fully evaluated in the Initial Study included as Appendix A of this Draft EIR and were found to be less than significant without mitigation. Provided below is a summary of the impact analysis included in the Initial Study prepared for the Project.

With regard to Threshold (a), as previously stated, the Project Site is located in an urbanized area and is currently developed with commercial and institutional buildings.

Existing landscaping within the Project Site is limited and includes ornamental shrubs in planters. There are 15 trees that line the sidewalks adjacent to the on-site buildings, which would be removed as part of the Project and replaced on a 1:1 basis. Due to the urbanized and disturbed nature of the Project Site and the surrounding area, and lack of large expanses of open space in the vicinity of the Project Site, species likely to occur on-site are limited to small terrestrial and avian species typically found in urbanized developed settings. However, birds protected by the MBTA may nest within the 15 trees lining the sidewalk that would be removed as part of the Project. As set forth in the Initial Study, in accordance with the MBTA and CFG Code, the Project Applicant would be required to conduct tree removal activities associated with the Project outside of the nesting season (February 1–August 31), to the extent feasible. Should vegetation removal activities occur during the nesting season, a biological monitor would be present during the removal activities to ensure that no active nests would be impacted. If active nests are found, a buffer would be established until the fledglings have left the nest. As discussed in the Initial Study, these measures to be implemented by the Project in compliance with the MBTA and the CFG Code would be incorporated into the Project as Conditions of Approval. However, to further ensure compliance with the MBTA and the CFG Code, these Conditions of Approval will be incorporated as mitigation measures. Refer to Mitigation Measure BIO-MM-3 included below. Therefore, aside from the potential impacts to bats and roosts, which are discussed further below, with compliance with the MBTA and CFG Code, the Project would not have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations by the CDFW or USFWS. Impacts regarding Threshold (a) would be less than significant, and no mitigation measures are required.

With regard to Threshold (b), no riparian or other sensitive natural community exists on the Project Site or in the surrounding area. Furthermore, the Project Site and surroundings are not located in or adjacent to a Significant Ecological Area as defined by the County of Los Angeles, nor a terrestrial community as defined by the City of Beverly Hills. In addition, there are no sensitive natural communities identified by the CDFW or the USFWS. Therefore, the Project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community. As concluded in the Initial Study, no impact would occur, and no mitigation measures are required.

With regard to Threshold (c), no water bodies or federally protected wetlands as defined by Section 404 of the Clean Water Act exist on or near the Project Site. As such, the Project would not have an adverse effect on state or federally protected wetlands. As determined in the Initial Study, no impact would occur, and no mitigation measures are required.

With regard to Threshold (d), as previously discussed, the Project Site is located in an urbanized area and is currently developed with commercial and institutional buildings. Existing landscaping within the Project Site is limited and includes ornamental shrubs in planters. In addition, the areas surrounding the Project Site are fully developed and there are no large expanses of open space within and surrounding the Project Site that provide linkages to natural open space areas which may serve as wildlife corridors. Furthermore, the Project Site is not located in or adjacent to a Significant Ecological Area as defined by the County of Los Angeles, nor a terrestrial community as defined by the City of Beverly Hills. Additionally, the Project would comply with the MBTA and CFG Code, as previously discussed above under Threshold (a). Therefore, aside from potential impacts to bats and roosts and with compliance with the MBTA and CFG Code, which are discussed further below, , the Project would not 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. As concluded in the Initial Study, impacts would be less than significant, and no mitigation measures are required.

With regard to Threshold (e), as previously discussed, there are no existing trees within the Project Site. A total of 15 street trees were observed along the sidewalks adjacent to the on-site buildings, including 12 palm trees and 3 Tipuana Tipu/Tipu trees. The 15 street trees inventoried are of various palm species and legume trees and are not considered protected trees. As part of the Project, the existing street trees to be removed would be replaced with new palm trees at a 1:1 ratio. Replacement trees would be distributed in accordance with landscape and urban design guidelines to be adopted in connection with the Project's proposed Specific Plan. Additionally, the Project would plant seven trees on-site, for a total of 22 trees to be provided by the Project. Therefore, the Project would not conflict with any local policies or ordinances protecting biological resources. As determined in the Initial Study, impacts would be less than significant, and no mitigation measures are required.

With regard to threshold (f), no Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plans apply to the Project Site, including with regard to impacts to bats and their roosts. Thus, the Project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other related plans. No impact would occur, and no mitigation measures are required.

Based on the above, only Thresholds (a) and (d) address the potential for the Project to result in impacts bats and their roosts and are further analyzed below.

4.2.3.2 Methodology

4.2.3.2.1 Literature Review

A literature review and records search were conducted by GPA Consulting on April 29, 2021, to identify bat species recorded in and within the vicinity of the Project Site. State lists of sensitive species were examined and are included in the Bat Habitat Assessment Memorandum, which is included in its entirety in Appendix C of this Draft EIR. This review included conducting a search in the California Natural Diversity Database (CNDDB) for the Beverly Hills United States Geological Service Quadrangle (quad) and surrounding eight quads. Based on the CNDDB database search, seven bat species have been recorded within 10 miles of the Project Site, including the pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), silver-haired bat (*Lasionycteris noctivagans*), hoary bat (*Lasiurus cinereus*), western yellow bat (*Lasiurus xanthinus*), pocketed free-tailed bat (*Nyctinomops femorosaccus*), and big free-tailed bat (*Nyctinomops macrotis*). One hoary bat occurrence was recorded in 1957 from an unknown location in Beverly Hills mapped in the general vicinity of the Project Site. Four silver-haired bats were recorded in 1985 in West Los Angeles, approximately 3.7 miles from the Project Site. According to the Bat Habitat Assessment Memorandum, based on focused nighttime bat surveys performed for the One Beverly Hills Overlay Specific Plan in October 2020 by LSA Associates Inc., three species of bats, including the Yuma myotis (*Myotis yumanensis*), Mexican free-tailed bat (*Tadarida brasiliensis*), and canyon bat (*Parastrellus hesperus*), were detected approximately 0.7 mile west of the Project Site.

As discussed in the Bat Habitat Assessment Memorandum, day roosts serve to protect bats from predators and the elements during the day while resting and/or rearing their young. Bat species that commonly use anthropogenic structures for roosting include the Mexican free-tailed bat (*Tadarida brasiliensis*), big brown bat (*Eptesicus fuscus*), pallid bat (*Antrozous pallidus*), and Yuma myotis (*Myotis yumanensis*). Although bat roosts in structures can be relatively easy to identify, tree roosts are more obscure and require close examination. Some species of bats day roost in the foliage of trees while other bat species day roost in crevices or cavities found in mature trees. Some types of day roosts where bats are particularly vulnerable to disturbance include maternity colonies in which female bats congregate to give birth and raise young, and hibernacula, where bats congregate to enter a period of hibernation during the winter months. A night roost, on the other hand, refers to a structure or structural feature, whether natural or human-made, in which bats roost during the evening between foraging bouts (e.g., crevices, cavities, corners, and recessed open spaces that are sheltered from the wind). Night roosts are typically situated in or near a foraging area and play an important role in the energetics and social interaction of bats. Because bats have separate roosting and foraging habitat requirements, it is expected that some bats may use one area for foraging and another for roosting. While more extensive and direct impacts to bats occur through roost removal, destruction, or

disturbance, indirect impacts such as decline of prey base due to loss or modification of foraging habitat can also be substantial. Therefore, when assessing an area with regard to proposed alterations to habitat, a landscape-level approach is required to adequately determine potential impacts to bats (LSA Associates, Inc., 2020).

4.2.3.2.2 Field Survey

A daytime bat habitat assessment was conducted by GPA Consulting on April 29, 2021, between approximately 12:00 P.M. and 3:30 P.M. to identify existing roosting habitat in the vicinity of the Project Site, particularly in the 15 street trees lining the sidewalks. The survey area included the existing on-site buildings, 15 street trees lining the sidewalks, and an approximate 60-foot buffer around the Project Site. The survey was conducted on foot using unaided vision and binoculars. GPA Consulting inspected the 15 street trees and a 60-foot buffer area adjacent to the on-site buildings from the ground to identify suitable bat roosting habitat, including palm fronds and other foliage, crevices, and cavities, and to look for visible signs of bat presence, including guano and staining. Photographs of the survey area are included in the Bat Habitat Assessment Memorandum, which is included in Appendix C of this Draft EIR.

The survey was conducted during the bat maternity season (generally April 1 through September 15), when bats, and in particular maternal colonies, are generally easier to detect. Surveys were conducted during daylight hours during a time when bats are not active. Bat habitat assessments are performed during the day to understand the site and the potential for bats to be in the area based on habitat conditions. As previously discussed, some species of bats day roost in the foliage of trees while other bat species day roost in crevices or cavities found in mature trees. A night roost, on the other hand, refers to a structure or structural feature, whether natural or human-made, in which bats roost during the evening between foraging bouts (e.g., crevices, cavities, corners, and recessed open spaces that are sheltered from the wind). The bat habitat assessment was performed for the Project under daylight conditions in order to maximize visibility of such habitat features, including crevices, cavities, corners, and recessed open spaces. The entire survey area was accessible during the assessment; however, because the palm trees were tall and surveyed from the ground, not all areas of the palm trees (the crevices and cavities in the palm tree crowns) were visible. Nevertheless, the bat habitat assessment was able to assess the overall quality of habitat present, as discussed further below in Section 4.2.3.4.1.

4.2.3.3 Project Design Features

No specific project design features related to biological resources have been identified for the Project.

4.2.3.4 Analysis of Project Impacts

Threshold (a): 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 Wildlife or U.S. Fish and Wildlife Service?

4.2.3.4.1 Impact Analysis

Based on the CNDDB database search conducted as part of the Bat Habitat Assessment Memorandum included in Appendix C of this Draft EIR, seven bat species have been recorded within 10 miles of the Project Site, including the pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), silver-haired bat (*Lasionycteris noctivagans*), hoary bat (*Lasiurus cinereus*), western yellow bat (*Lasiurus xanthinus*), pocketed free-tailed bat (*Nyctinomops femorosaccus*), and big free-tailed bat (*Nyctinomops macrotis*). One hoary bat occurrence was recorded in 1957 from an unknown location in Beverly Hills mapped in the general vicinity of the Project Site. According to the CNDDB, there have been no recordings of bats within the Project Site or immediate vicinity within the last 10 years.

As previously discussed, GPA conducted a daytime bat habitat assessment on April 29, 2021, between approximately 12:00 P.M. and 3:30 P.M. to identify existing roosting habitat in the vicinity of the Project Site, particularly in the 15 street trees lining the sidewalks. Bat habitat assessments are performed during the day to understand the site and the potential for bats to be in the area based on habitat conditions. Daylight conditions allow for maximum visibility of such habitat features, including crevices, cavities, corners, and recessed open spaces. GPA Consulting inspected the 15 street trees and a 60-foot buffer area adjacent to the on-site buildings from the ground to identify suitable bat roosting habitat, including palm fronds and other foliage, crevices, and cavities, and to look for visible signs of bat presence, including guano and staining. No bats or visible signs of bat presence were observed within the 15 street trees, below the trees, or within the buffer area during the bat habitat assessment. Potential bat roosting habitat was observed in the palm trees, including live palm fronds and shallow crevices. Bats roosting in palms will typically do so under hanging/dead palm fronds that provide shelter and cover from predators. Because the existing palm trees are well trimmed and maintained, the existing habitat is exposed and of marginal quality. Additionally, no joints or crevices that bats could use as roosting habitat were observed on the on-site buildings or on buildings within the 60-foot buffer area.

As concluded in the Bat Habitat Assessment Memorandum, based on the results of the daytime bat habitat assessment and survey, there is marginal roosting habitat for bats in the 15 street trees that would be removed as part of the Project and no suitable habitat in

the on-site buildings to be removed or on buildings within the 60-foot buffer area. Due to the marginal quality of the roosting habitat in the 15 street trees, the potential for bats to roost in the palm trees lining the sidewalks is considered low. In addition, it is possible that bats may only use these palm trees intermittently, and evening emergence acoustic surveys may not be conclusive. As such, evening emergence acoustic surveys were not performed as they were determined not to be warranted or necessary for a thorough analysis of potential impacts to bats and their roosts.

As discussed in the Bat Habitat Assessment Memorandum, day roosts serve to protect bats from predators and the elements during the day while resting and/or rearing their young. Bat species that commonly use anthropogenic structures for roosting include the Mexican free-tailed bat (*Tadarida brasiliensis*), big brown bat (*Eptesicus fuscus*), pallid bat (*Antrozous pallidus*), and Yuma myotis (*Myotis yumanensis*). Although bat roosts in structures can be relatively easy to identify, tree roosts are more obscure and require close examination. Some species of bats day roost in the foliage of trees while other bat species day roost in crevices or cavities found in mature trees Some types of day roosts where bats are particularly vulnerable to disturbance include maternity colonies in which female bats congregate to give birth and raise young, and hibernacula, where bats congregate to enter a period of hibernation during the winter months. A night roost, on the other hand, refers to a structure or structural feature, whether natural or human-made, in which bats roost during the evening between foraging bouts (e.g., crevices, cavities, corners, and recessed open spaces that are sheltered from the wind). Night roosts are typically situated in or near a foraging area and play an important role in the energetics and social interaction of bats. Because bats have separate roosting and foraging habitat requirements, it is expected that some bats may use one area for foraging and another for roosting. While more extensive and direct impacts to bats occur through roost removal, destruction, or disturbance, indirect impacts such as decline of prey base due to loss or modification of foraging habitat can also be substantial. Therefore, when assessing an area with regard to proposed alterations to habitat, a landscape-level approach is required to adequately determine potential impacts to bats.

Although the Initial Study determined that bats were unlikely to inhabit the palm trees surrounding the Project Site, based on the letter received from CDFW and the bat habitat assessment that followed, it has been determined that the palm trees on the street appear to provide marginal bat roosting habitat. In particular, the palm trees are periodically maintained and are well trimmed and bats prefer trees that are overgrown and provide better shelter and cover from predators; therefore, habitat in the street trees lining the sidewalks is considered marginal. **Because the palm trees on the street appear to provide marginal bat roosting habitat, impacts to bats and roosts due to removal of the 15 street trees during construction could be potentially significant.** Mitigation

measures are proposed below to reduce potential construction-related impacts to bats and roosts to a less than significant level.

With regard to operational impacts, the Project would not result in a loss of foraging habitat as none currently exists on-site, and all street trees to be removed would be replaced at a 1:1 ratio, thereby replacing any loss of roosting habitat. Specifically, the Project would increase the number of trees on-site from zero to 7 trees, and the 15 existing street trees would be replaced at a 1:1 ratio for a combined total of 22 trees. Furthermore, bats utilize undeveloped open spaces for foraging and no such habitat exists on-site, as the Project Site is entirely developed at present. Specifically, the existing landscaping within the Project Site is sparse and consists of ornamental shrubs in planters and 15 street trees lining the sidewalks. **Because the Project would not result in a loss of foraging or roosting habitat, impacts to bats and roosts during operation would be less than significant.**

4.2.3.4.2 Mitigation Measures

As discussed above, the palm trees lining the sidewalks appear to provide marginal bat roosting habitat. Therefore, Mitigation Measures BIO-MM-1 and BIO-MM-2 are provided below to reduce construction-related potentially significant impacts to bats and roosts to a less than significant level. In addition, as previously noted, the conditions of approval set forth in the Initial Study regarding compliance with the MBTA are included herein as Mitigation Measure BIO-MM-3:

Mitigation Measure BIO-MM-1: At least 30 days prior to construction, surveys shall be conducted by a qualified biologist, on all roosting habitat adjacent to the construction area, to identify the presence of bats and any active or potential bat-roosting cavities. During the non-breeding and active season (typically October), bats shall be safely evicted from these areas, if feasible, under the direction of a qualified biologist. Pre-construction bat surveys of the palm tree crowns from a man-lift shall be conducted by a qualified bat specialist immediately prior to tree removal within the Biological Study Area, to determine whether or not there are bats within the construction area. If the presence or absence of bats cannot be confirmed in potential roosting habitat, a biological monitor shall be on-site during tree and building removal. If bats are disturbed during tree or building removal, work shall be safely suspended until all bats leave the vicinity on their own. Work shall resume only once it has been determined that all bats have left the site, as determined by the qualified biologist. In the event a maternal colony of bats is found, no work shall be conducted within 100 feet of the maternal roosting site until the maternal season (April 1–September 15) is over or the bats have left the site, or as otherwise

determined by a qualified biologist. The site shall be designated as a sensitive area and protected as such until the bats have left the site. No clearing and grubbing shall be authorized adjacent to the roosting site. Combustion equipment, such as generators, pumps, and vehicles, shall not be parked nor operated within 100 feet of the roosting site. Fencing or other barriers shall be installed around the buffer area, and construction personnel shall not be authorized to enter areas beneath the colony, especially during the evening exodus. All qualified biologists shall be retained by the Applicant and proof of such retention shall be submitted to the City prior to the commencement of construction and prior to conducting any of the above described activities.

Mitigation Measure BIO-MM-2: If bats or any active bat-roosting cavities are found to be present on-site or in the adjacent street trees, construction activities shall be conducted during daylight hours, and no construction work shall be conducted at night until all bats leave the vicinity on their own. Once all bats have left the vicinity on their own, as determined by a qualified biologist, construction activities during nighttime hours may resume, consistent with all other applicable requirements.

Mitigation Measure BIO-MM-3: Tree removal activities associated with the Project are required to be conducted outside of the nesting season (February 1–August 31), to the extent feasible. Should vegetation removal activities occur during the nesting season, a biological monitor would be present during the removal activities to ensure that no active nests would be impacted. If active nests are found, a buffer would be established until the fledglings have left the nest.

4.2.3.4.3 Level of Significance After Mitigation

With implementation of Mitigation Measures BIO-MM-1 and BIO-MM-2, potential impacts to bats and roosts, with regard to Threshold (a) would be reduced to less than significant levels.

Threshold (d): 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?

4.2.3.4.4 Impact Analysis

As previously discussed in detail above under Threshold (a), based on the results of the daytime bat habitat assessment and survey, there is marginal roosting habitat for bats in the 15 street trees lining the sidewalks and no suitable habitat in the buildings within the Project Site or within the 60-foot buffer. Because the palm trees lining the sidewalks

appear to provide marginal bat roosting habitat, removal of the 15 street trees identified lining the sidewalks could potentially interfere with the movement of bat species. **As such, impacts to bat movement could be potentially significant.**

Furthermore, as discussed under Threshold (a) with regard to operational impacts, the Project would not result in a loss of foraging habitat as none currently exists on-site, and all street trees removed would be replaced at a 1:1 ratio, thereby replacing any loss of roosting habitat. **Because the Project would not result in a loss of foraging or roosting habitat, impacts to bat movement during operation would be less than significant.**

4.2.3.4.5 Mitigation Measures

As discussed above, the palm trees lining the sidewalks, which are proposed for removal as part of the Project, could provide marginal bat roosting habitat. Therefore, Mitigation Measures BIO-MM-1 and BIO-MM-2, provided above, would be implemented.

4.2.3.4.6 Level of Significance After Mitigation

With implementation of Mitigation Measures BIO-MM-1 and BIO-MM-2, potential impacts to bats and roosts, with regard to Threshold (d) would be reduced to less than significant levels.

4.2.3.5 Cumulative Impacts

4.2.3.5.1 Impact Analysis

As indicated in Section 3.0, Environmental Setting, of this Draft EIR, there are a total of 24 related projects identified within the City of Beverly Hills, 6 related projects identified within the City of Los Angeles, and 17 related projects identified within the City of West Hollywood. As discussed above, the City of Beverly Hills is fully developed with urban uses and has little undisturbed native vegetation. Similarly, the City of Los Angeles and the City of West Hollywood are also highly urbanized cities. As such, like the Project, the related projects generally involve infill development/redevelopment within highly urbanized areas that would also have little to no habitat for bats. Therefore, similar to the Project, bat species are unlikely to be found within the related project sites, which are infill development sites, as the habitat which may be found in the adjacent street trees would also be anticipated to be of marginal quality since regular street tree trimming is routinely implemented by all of the Cities within which the related projects are located. Further, due to their site-specific nature, impacts to biological resources, including bats, would be specifically assessed on a project-by-project basis or for a particular localized area. Therefore, as with the Project, related projects would address potential site-specific impacts

to bats through the implementation of site-specific recommendations and/or mitigation measures. For example, similar to the Project, where the removal of onsite trees and street trees is proposed, such developments would be required to comply with the applicable city's regulations regarding tree replacement, and as such, there would not be a cumulative loss of habitat for bats. Additionally, in the event bats or roosts are present in any of the related project sites, each related project would be required to comply with the applicable regulatory requirements and any site specific mitigation that would be identified for that related project. Therefore, the Project and related projects would not result in significant cumulative impacts to bats. The Project's contribution would not be cumulatively considerable, and cumulative impacts would be less than significant.

4.2.3.5.2 Mitigation Measures

Cumulative impacts related to bats would be less than significant. Therefore, no mitigation measures are required.

4.2.3.5.3 Level of Significance After Mitigation

Cumulative impacts related to bats were determined to be less than significant without mitigation. Therefore, no mitigation measures were required or included, and the impact level remains less than significant.