

8-4.11 BIOLOGICAL RESOURCES

8-4.11.1 Regulatory Framework

In addition to CEQA, other laws that apply to biological resources are addressed below.

8-4.11.1.1 Federal Endangered Species Act

Species listed as endangered or threatened by the U.S. Fish & Wildlife Service (USFWS) under the federal Endangered Species Act (ESA) are protected under Section 9 of the ESA, which forbids any person to “take” an endangered or threatened species. “Take” is defined in Section 3 of the Act as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The U.S. Supreme Court ruled in 1995 that the term “harm” includes destruction or modification of habitat. Sections 7 and 10 of the ESA may authorize an “incidental take” for otherwise lawful activity (e.g. development project) if it is determined that the activity would not jeopardize the species’ survival or recovery.

8-4.11.1.2 California Endangered Species Act

The California Endangered Species Act (Cal-ESA), enacted in 1970, is intended to provide protection to endangered and threatened species in California. The definition of “take” under Cal-ESA does not include “harm” or “harass” as does the federal ESA; thus, no provisions to protect habitat are included. Sections 2081 and 2090 provide for consultation by project proponents with the California Department of Fish and Game (CDFG) regarding measures to minimize impacts on species listed by Cal-ESA.

8-4.11.1.3 Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA), first enacted in 1916, prohibits any person to “pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase...” any migratory bird.

The MBTA statute was extended in 1974 to include parts of birds, such as eggs and nests. Thus, it is illegal under MBTA to directly kill, or destroy a nest of, nearly any bird species, and not just endangered species. The list of migratory birds includes nearly all bird species native to the United States; non-native species such as European starlings are not included. Activities that result in the removal or destruction of an active nest (a nest with eggs or young being attended by one or more adults) would violate the MBTA. Removal of unoccupied nests however, or bird mortality resulting indirectly from implementation of a project, would generally not violate the MBTA. For example, removal of abandoned nests would not violate the MBTA.



8-4.11.1.4 Section 404 of the U.S. Clean Water Act

The objective of the Clean Water Act of 1977 is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 404 of the Act regulates activities that result in discharge of dredged, fill or excavated material into "waters of the United States;" this generally includes any waterway, intermittent stream, man-made wetland or reservoir. Projects that include any such physical modification of a "water of the United States" must generally comply with Section 404 under the jurisdiction of the U.S. Army Corps of Engineers (ACOE).

8-4.11.1.5 Sections 401 and 402 of the U.S. Clean Water Act

These sections of the Clean Water Act address problems of water pollution through the National Pollution Discharge Elimination System (NPDES). Section 401 prohibits the discharge of any pollutant without a permit, and Section 402 establishes the permit program administered by the Environmental Protection Agency (EPA).

8-4.11.1.6 California, Department of Fish and Game Code Sections 1600 to 1607

The CDFG oversees streambeds and their associated habitats pursuant to Sections 1600 to 1607 of the California Fish and Game Code, which manages activities that would "substantially change" the "bed, channel, or bank of any river, stream or lake designated by the department in which there is at any time an existing fish or wildlife resource, or from which these resources derive benefit." In addition to complying with Section 404 of the Clean Water Act, any modification of streambed habitat may require a Streambed Alteration Agreement from CDFG.

8-4.11.2 Existing Conditions

8-4.11.2.1 Methods for Inventory of Biological Resources

Prior to conducting surveys of the study area and the alternatives considered, each route of the three Rapid Bus alternatives was reviewed to ascertain potential habitats for native plant and wildlife species, including sensitive species. The study area is depicted in **Figures 8-2.1, 8-2.2, and 8-2.3.**

Keene Biological Service conducted a survey of the BRT project area on September 10, 2000 from the North Hollywood Metro Red Line Station to the Warner Center Transit Hub. The survey focused on assessing the existing biological resources of the BRT project area and its surroundings, and on identifying the presence and locations of plant communities, wildlife habitat and potential habitat for sensitive species. It also determined whether the BRT project area supported riparian (streambed) habitats that may be subject to potential jurisdiction under Section 404 of the U.S. Clean Water Act and/or Section 1600 of the California Fish and Game Code. In addition, the survey focused on habitats in areas surrounding the BRT project area that



may incur indirect project impacts. Plant and wildlife species observed during the survey were recorded.

UltraSystems Environmental on August 26 and 31, 2004 resurveyed the study area. The entire length of each route was surveyed by vehicle; videotaped and selected areas were surveyed on foot. During the resurvey particular focus was placed on native vegetation including oaks, nesting sites for birds, and roosting areas for bats.

Gruen Associates during August 2004 identified the species of street trees that are within the areas that would be used for RB stops along the Rapid Bus routes. The species of street trees identified include:

- Crepe Myrtle (*Lagerstroemia*)
- Jacaranda (*Jacaranda mimosifolia*)
- Magnolia (*M. grandiflora*)
- Evergreen Pear (*Pyrus kawakamii*)
- Bottlebrush (*Callistemon*)
- Chinese Flame (*Koeloreuteria bipinnata*)

Documents were also reviewed pertaining to sensitive species that may be present in the study area vicinity. A plant or wildlife species is defined as sensitive when it has been afforded special recognition by federal, state or local resources conservation agencies (e.g., USFWS, CDFG) and/or resource conservation organizations (e.g., California Native Plant Society or National Audubon Society). Sources used to identify sensitive species potentially occurring in the project vicinity include the following:

- *California Natural Diversity Data Base*, CDFG, Natural Heritage Division.
- *Inventory of Rare and Endangered Vascular Plants of California* (Skinner and Pavlik 1994), California Native Plant Society Special Publication No. 1 (Fifth Edition), Sacramento, CA.
- *State and Federally Listed Endangered and Threatened Animals of California*, CDFG, Natural Heritage Division, January 2000.
- *State and Federally Listed Endangered, Threatened and Rare Plants of California*, CDFG, Natural Heritage Division, January 2000.
- *Special Animals* (including California Species of Special Concern), CDFG, Natural Heritage Division, June 1999.

The California Natural Diversity Data Base was queried in 2004 to determine whether new observations had been entered into the database since 2000.

The following summarizes the findings of the literature review and field observations.



8-4.11.2.2 Vegetation

The study area for the three Rapid Bus Route alternatives is within an urban environment comprised of residential, commercial, institutional, open space/park, public infrastructure, and industrial land uses. Open space areas in the study area include parts of Pierce College, the Sepulveda Dam Recreation Area and Lake Balboa Park, all park areas. Native plant communities that formerly occupied the study area are no longer present. Some native, as well as non-native, vegetation is present within the Los Angeles River; otherwise, the study area is composed of unvegetated areas, areas supporting ruderal (weedy) vegetation, and areas supporting exotic (landscaped) species. No native plant communities¹ were detected in the study area; thus, no vegetation map depicting plant communities is provided in this document. Weedy species within the study area include tree tobacco (*Nicotiana glauca*²), common horseweed (*Conyza canadensis*), western sunflower (*Helianthus annuus*), tocalote (*Centaurea mellitensis*), and non-native grasses (*Bromus* and *Avena* sp.). Evidence of weed control is apparent throughout the entire study area. Landscaping in the study area consists of date palm (*Phoenix canariensis*), Mexican fan palm (*Washingtonia robusta*), oleander (*Nerium oldeander*), eucalyptus of various species (*Eucalyptus* sp.), London plane tree (*Platanus x hispanica*), Peruvian pepper tree (*Schinus molle*), pine of various species (*Pinus* sp.) and acacia (*Acacia* sp.), among several others. A detailed inventory of trees existing within the Metro ROW is provided in Section 4-6 of the Final EIS/EIR.

The study area includes the Los Angeles River, which is channelized and barren at some locations, but heavily vegetated with riparian habitat at other locations with native species including California fan palm (*Washingtonia filifera*), mulefat (*Baccharis salicifolia*), willow (*Salix* sp.) and western sunflower, as well as non-native species including castor bean (*Ricinus communis*). During the 2004 resurvey of the biological resources within the project area no wetland areas were observed within the Los Angeles River near the crossings that would be used for the three Rapid Bus alternatives.

8-4.11.2.3 Wildlife

The disturbed condition of the study area and the predominance of non-native vegetation limits' its potential to support native wildlife species other than birds and other species well adapted to human-disturbed habitats. Amphibians that may occur in the Los Angeles River and other channelized drainages traversed by the Rapid Bus alternative routes include Pacific treefrog (*Pseudacris regilla*) and non-native bullfrog (*Rana catesbeiana*). Some native reptiles may occur rarely in the study area, including side-blotched lizard (*Uta stansburiana*) and western fence lizard (*Sceloporus occidentalis*), but the lack of natural plant communities and open space limits the ability of the study area to support reptile species that are typical in open space areas elsewhere in Los Angeles County.

^{1/} A plant community is defined as "an assemblage of interacting plant species characterized by the presence of one or more dominant species" (Holland 1986).

^{2/} Scientific names are provided only after the first mention of the common name in this document.

Birds observed during the field survey were limited to species common in residential habitats of Southern California and included American kestrel (*Falco sparverius*), rock dove (*Columba livia*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), European starling (*Sturnus vulgaris*), house finch (*Carpodacus mexicanus*), and house sparrow (*Passer domesticus*). A variety of other species may occur in the project vicinity during migration.

Because of the lack of native vegetation and prey species associated with such vegetation, foraging in the study area by raptors (birds of prey) other than the American kestrel is expected to be rare. Mammal species that may be found in the study area include primarily non-native species: domestic dogs (*Canis familiaris*) and cats (*Felis domesticus*), Virginia opossum (*Didelphis virginiana*), Norway rat (*Rattus norvegicus*), house mouse (*Mus musculus*), and Eastern fox squirrel (*Sciurus niger*).

8-4.11.2.4 Wildlife Corridors

A wildlife corridor is an area of habitat(s) connecting two or more larger areas of habitat. It is generally free of physical barriers such as fences and developed areas. A functioning wildlife corridor allows for ease of movement between habitat areas. Canyon bottoms with a well-developed tree canopy often serve as wildlife corridors and offer food, shelter, and water, as well as ease of movement, depending upon the density of the under-story.

Corridors function to prevent habitat fragmentation, which can result in the loss of species that require large contiguous expanses of unbroken habitat and/or that occur in low densities. Habitat fragmentation can result in increases of non-native species and may allow inbreeding in species whose populations are small because they have become confined to smaller areas. This in turn reduces the rate of reproductive success. Fragmentation also reduces functioning ecosystems to small pockets, decreasing biodiversity and the interactive processes required for healthy ecosystem functioning. Corridors promote gene flow within species, allow recolonization of areas following catastrophic events such as fire, prevent the loss of large animals by linking suitable habitat areas, and help to ensure the survival of native species that cannot compete with more aggressive non-native species in fragmented habitats.

The study area is surrounded by development, aside from some riparian habitat in the Los Angeles River. However, because the river is barren and channelized in some areas, it provides little cover for wildlife movement other than that by locally common species. Based upon field observations, wildlife corridors are not present in the vicinity of the alternative Rapid Bus Routes.

8-4.11.2.5 Sensitive Species

Species are typically considered sensitive because of declining or limited population sizes resulting, in most cases, from loss of habitat. Those listed as threatened or endangered by the federal or California ESAs are protected by those acts. Other categories for sensitive species that do not afford legal protection are USFWS Category 1 candidates or CDFG Species of Special



Concern; still other species are included on lists maintained by resource conservation organizations (California Native Plant Society [CNPS] or National Audubon Society [NAS]). Although the laws do not protect these species, as are those listed by ESAs, measures to avoid or minimize impacts on these species are often considered during environmental review. Because the study area supports no native plant communities, and because of the high level of human disturbance throughout the study area, no sensitive plant or wildlife species were observed in the field. In addition, no potential habitat is present for sensitive species that occur elsewhere in the study area or region.

8-4.11.3 Impact Analysis Methodology and Impact Evaluation

The three alternatives would have a significant effect under CEQA on biological resources if it would satisfy any of the following conditions:

- Substantially disturb habitat or take 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 or U.S. Fish and Wildlife Service.
- Substantially disturb any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.
- Substantially disturb any federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrologic interruption, or other means.
- 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.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan.

8-4.11.4 Impacts to Biological Resources

8-4.11.4.1 Effects on Protected Species

The three Rapid Bus alternatives would not cause a significant impact under CEQA on protected species, because, as described above, the study area does not contain or support habitat for 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 or U.S. Fish and Wildlife Service.

8-4.11.4.2 Effects on Wetlands Riparian Habitat, or Sensitive Natural Communities

The three Rapid Bus alternatives would cross the Los Angeles River and other drainages within the study area, which supports some riparian habitat. The three Rapid Bus alternatives would not contribute to runoff since they run within existing streets. Therefore, no significant impact under CEQA would occur.

8-4.11.4.3 Effects on Migratory Fish or Wildlife

No impact would occur because, as described above in Setting, surrounding development limits the ability of the three alternatives study area to support the movement of native resident or migratory wildlife species. No established native resident or migratory wildlife corridors or native wildlife nursery sites are present in the study area or in its vicinity. No migratory fish or wildlife were observed during the resurvey.

8-4.11.4.4 Conflicts with Established Policies

No operational impacts would occur because no sensitive resources protected by local ordinances occur within the study area of the three alternatives. However, the Migratory Bird Treaty Act, a national ordinance, protects nests of nearly all-native birds, and removal of one or more active nests of birds protected by the MBTA would be a violation of the MBTA and thus an adverse impact. The three Rapid Bus alternatives would construct RB stops on the far side of intersections, which would require some minor street tree removal or relocation. It is highly unlikely that migratory birds would nest in ornamental street trees due to the high volume of activity around the trees and the trimming that keeps their foliage less full. If construction of RB stops were to occur during the nesting season (generally March to September) and street trees were scheduled to be removed, MTA would conduct a pre-construction survey to identify if there are migratory bird nests present in the trees to be removed. If migratory bird nests are present, they would not be disturbed, and construction work would be managed in the RB stop construction area to avoid disturbing the nesting migratory birds. Therefore, no impact would occur.

8-4.11.4.5 Conflicts with Conservation Plans

No impact would occur, because the study area and its vicinity are not part of an adopted Habitat Conservation Plan, Natural Community Conservation Plan (NCCP), or other approved or pending local, regional or state habitat conservation plan.



8-4.11.4.6 Direct and Indirect Impacts

The following is an overview of potential direct/indirect effects associated with operation of the proposed project.

a. Vegetation

Implementing any of the three alternatives would result in direct impacts on vegetation because they would require the removal of ornamental street trees to provide for potential new RB stops. MTA and team members conducted a windshield survey of the east-west Rapid Bus routes on August 12, 2004 to locate potential RB stops at intersections. It was determined during this survey that the RB-3 Alternative would require the removal of approximately 11 ornamental street trees; the RB-5 Alternative would require the removal of approximately 5 ornamental street trees; and the RB-Network Alternative would require the removal of approximately 26 ornamental street trees. Any removal or displacement of street trees or landscaping during construction of RB stops would be coordinated with the City of Los Angeles's Public Work's Department and permitted per the Street Tree Division policy. Removed trees would be replaced, as necessary, and would not be a significant impact under CEQA.

b. Wildlife

Implementing any of the three alternatives would not result in direct impacts on wildlife because they would only require the addition of Rapid Buses to existing urban streets in the Valley.

The three alternatives would generate higher levels of noise in the study area that may affect wildlife; however, the study area is completely surrounded by existing development; thus, indirect significant impacts under CEQA of alternatives operation on wildlife on and adjacent to the study area would not occur.

c. Wildlife Dispersion Corridors

The study area is not part of a major or minor wildlife corridor as it is surrounded by development; thus, no indirect significant impacts of the three Rapid Bus alternatives on wildlife movement would occur.

d. Sensitive Species

No species listed under the ESA were observed, or are expected to occur in the study area; thus, the three Rapid Bus alternatives would not implicate the ESA. No other species currently listed by the ESA would be affected directly or indirectly by the three Rapid Bus alternatives (see "Sensitive Species" above).

No species currently listed by Cal-ESA would incur "take" by the three Rapid Bus alternatives. Thus, the Rapid Bus alternatives would not cause a significant impact to sensitive species.



8-4.11.5 Mitigation Measures

Before any street trees are removed to construct a RB stop for one of the three Rapid Bus alternatives, the MTA will have the trees surveyed by a biologist for active nests. Active nests will be allowed to become inactive before removal.

