Section 3.3
Biological Resources

This section evaluates the existing biological resources setting and the potential effects caused by implementation of the proposed project, including impacts on sensitive species and habitat. The following discussion addresses the existing biological resources conditions of the affected environment, identifies and analyzes environmental impacts, and identifies measures to reduce or avoid adverse impacts anticipated from implementation of the project, as applicable.

The analysis in this section is substantially based on the *Biological Resources Assessment* prepared by ECORP Consulting, Inc. (2020a; see Appendix D-1) and the *Tree Survey* prepared by Schmidt Design group (2020; Appendix D-2). Analysis in this section also draws upon data in the *City of Encinitas General Plan* (1991) and the *City of Encinitas 2013-2021 Housing Element Update Environmental Assessment* (2018a). Third-party technical reports have been peer-reviewed by Michael Baker International and the City of Encinitas.

ENVIRONMENTAL SETTING

The project site is located at the northwest corner of the Leucadia Boulevard/Quail Gardens Drive intersection, in the Leucadia community of Encinitas. The site is located in an urbanized setting, and is highly disturbed due to current on-site commercial agricultural operations. The areas where the current greenhouses stand are largely developed with some areas of disturbed vegetation, and routine weed abatement for these areas occurs on an ongoing basis.

One existing occupied single-family residential unit is located in the southwestern portion of the site (near the intersection of Leucadia Boulevard and Sidonia Street) and is proposed to be demolished with project implementation. The remainder of the project site is occupied by private commercial greenhouse structures which are also proposed to be demolished with project implementation.

The Encinitas Ranch Golf Course is located to the east of the project site. Leucadia Boulevard forms the southern boundary of the subject property. Existing single-family residential development lies west and south of the project site. The Magdalena Ecke Open Space Preserve borders the site along the northern property boundary.

Appendix D-1 documents the biological surveys completed within and along the boundaries of the subject property. The assessment revealed that a number of special-status species have been previously recorded in the project vicinity, although none are expected to occur on or adjacent to the project site due to the absence of suitable habitat conditions and the developed/disturbed nature of such lands. More detailed discussion of the potential presence of sensitive habitat, plants, and animal species on-site is provided below.

Literature Review

Project-related documentation was reviewed to collect site-specific data regarding habitat suitability for special-status species and to identify potentially jurisdictional waters. Additional information was obtained from a variety of outside data sources. Preliminary database searches were performed on the following websites to identify special-status species with the potential to occur in the area (refer to Appendix D-1 for additional details):

- Records search of the California Natural Diversity Database (CNDDB)
- List of potentially occurring special-status plants generated by a query of the California Native Plant Society (CNPS) *Inventory of Rare, Threatened, and Endangered Plants of California*
- List of potentially occurring listed species generated from a review of the US Fish and Wildlife Service (USFWS) list of federal endangered and threatened species
- National Wetlands Inventory (USFWS)
- San Diego Geographic Information Source (SANGIS)

Field Reconnaissance

On March 19, 2020, the entire project site, as well as adjacent natural areas, were surveyed on foot by ECORP. Focused, protocol-level surveys were not conducted as part of the site visit due to the developed conditions of the site and results of the literature review. Plant and wildlife species observed during the survey were recorded, and representative photographs of the property were taken. The individuals who conducted the surveys, the date and time of the surveys, and survey conditions are available in the *Biological Resources Assessment* (see Appendix D-1).

Existing Conditions

Biological Setting

Vegetation Communities

Due to the developed condition of the subject property, intact vegetation communities are not present on-site. As such, the land use type is classified as urban/developed. Refer to Figure 2.0-2, Project Vicinity Map, which illustrates the extent of development on-site. Surrounding lands are largely classified as urban/developed uses; however, vegetation communities classified as eucalyptus woodland, Diegan coastal sage scrub, and grassland are present within proximity to the northern property boundary.

Urban/Developed

Urban/developed areas do not constitute a vegetation classification, but rather a land cover type. These areas are typically characterized as lands that have been constructed upon or otherwise physically altered to an extent that vegetation communities are no longer supported. This land cover type is not considered to be sensitive by the City, or by state or federal agencies.

Diegan Coastal Sage Scrub

Diegan coastal sage scrub was observed to the north of the project site near the Magdalena Ecke Open Space Preserve. The vegetation community is composed of low-growing, aromatic, drought-deciduous, soft-woody shrubs. Typically, this community is found on sites with steep, dry slopes or on clay-rich soils that are slow to release stored water. Dominant species include California encelia, coastal sagebrush, and jimson weed. This vegetation community has the potential to host special-status species such as the coastal California gnatcatcher (see Appendix D-1).

Eucalyptus Woodland

Eucalyptus woodland was observed to the north of the project site near the Magdalena Ecke Open Space Preserve. Eucalyptus habitats range from single-species thickets with little or no shrubby understory to scattered trees over a well-developed herbaceous and shrubby understory. They are found in coastal and foothill regions with significant access to water stores. In most cases, eucalyptus forms a dense stand with a closed canopy and produces a large amount of leaf and bark litter, which limits the ability of other species to grow in the understory.

Non-native Grassland

Non-native grassland was observed adjacent to the project site. This vegetation community is a mixture of annual grasses and broad-leaved, herbaceous species. Annual species comprise 50 percent to more than 90 percent of the vegetative cover, and most annuals are non-native species. Non-native grasses typically comprise at least 30 percent of the vegetation, although this number can be much higher in some years and lower in others, depending on land use and climatic conditions. Typically, the annual grasses form a continuous or open cover.

Sensitive Habitats

Sensitive habitats include the following:

- Areas of special concern to resource agencies
- Areas that provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act (CEQA) Guidelines

- Areas designated as sensitive natural communities by the CDFW
- Areas outlined in California Fish and Game Code (FGC) Section 1600
- Areas regulated under Clean Water Act Section 404
- Areas protected under Clean Water Act Section 401
- Areas protected under local regulations and policies

Critical habitat is a term from the federal Endangered Species Act (ESA) designed to guide actions by federal agencies (as opposed to state, local, or other agency actions) and defined as an area occupied by a species listed as threatened or endangered within which are found physical or geographical features essential to the conservation of the species, or an area not currently occupied by the species which is itself essential to the conservation of the species. Critical habitat is designated by the USFWS. There is no USFWS critical habitat for special-status plants mapped within or adjacent to the project area (see Appendix D-1).

Special-Status Species

Candidate, sensitive, or special-status species are commonly characterized as species that are at potential risk or actual risk to their persistence in a given area or across their native habitat. These species have been identified and assigned a status ranking by governmental agencies such as the CDFW or the USFWS and private organizations such as the CNPS. The degree to which a species is at risk of extinction is the determining factor in the assignment of a status ranking. Some common threats to a species' or population's persistence include habitat loss, degradation, and fragmentation, as well as human conflict and intrusion. For the purposes of the biological review, special-status species are defined by the following codes:

- Listed, proposed, or candidates for listing under the federal ESA (50 Code of Federal Regulations [CFR] 17.11 – listed; 61 Federal Register 7591, February 28, 1996, candidates)
- Listed or proposed for listing under the California ESA (FGC 1992 Section 2050 et seq.; 14 California Code of Regulations [CCR] Section 670.1 et seq.)
- Designated as Species of Special Concern by the CDFW
- Designated as Fully Protected by the CDFW (FGC Sections 3511, 4700, 5050, and 5515)
- Species that meet the definition of rare or endangered under CEQA (14 CCR Section 15380) including CNPS List Rank 1b and 2

Sensitive Plants

Due to the developed and disturbed condition of the site, sensitive plant species are unlikely to occur on-site. The special-status plant species that were determined to have some potential to occur on land adjacent to the project site include Del Mar manzanita; Encinitas baccharis; California adolphia; Shaw's agave; Orcutt's spineflower; long-spined spineflower; Del Mar Mesa sand aster; Orcutt's hazardia; Nuttall's scrub oak; decumbent goldenbush; and San Diego marsh-elder. Although these species could occur in the adjacent lands north of the project site, it is unlikely that these species occur on-site due to current land uses and the highly disturbed nature of the property. Additionally, there is no USFWS critical habitat for special-status plants mapped within or adjacent to the project area (see Appendix D-1).

Sensitive Wildlife

No special-status wildlife species were observed or detected during the reconnaissance survey. Wildlife observed included common raven, song sparrow, house finch, mourning dove, Anna's hummingbird, and western fence lizard.

Due to a lack of suitable habitat, it is presumed that no special-status wildlife species are present on-site. However, it was determined that one special-status species—coastal California gnatcatcher—has a high potential to occur on land adjacent to the project site (i.e., the area north of the project, within the Magdalena Ecke Open Space Preserve). The coastal California gnatcatcher, which is listed as threatened by the USFWS, is found in coastal sage scrub, desert scrub, and coastal dune scrub habitats. This species is known to occur within the Magdalena Ecke County Preserve. Other species identified as having some potential to occur or use habitat within the preserve area include coastal cactus wren and San Diego desert woodrat.

Migratory Birds

The project site contains ornamental vegetation, landscape trees, and shrubs that could support foraging and nesting habitat for migratory bird species and, in some locations, for raptors. While nests were not observed on-site during the reconnaissance survey, non-native palm, eucalyptus, and other observed tree species could provide suitable habitat for raptor nesting.

Jurisdictional Waters

Jurisdictional waters of the State and waters of the United States, along with isolated wetlands, serve a variety of functions for plants and wildlife. Wetlands and other water features provide habitat, foraging, cover, and migration and movement corridors for both special-status and common species. In addition to habitat functions, these features physically convey surface water flows and are capable of handling large stormwater events. Based on the field survey and literature review, no jurisdictional wetlands and/or waterways occur within the project area.

REGULATORY FRAMEWORK

Federal

Endangered Species Act

The federal Endangered Species Act provides the legal framework for the listing and protection of species (and their habitats) identified as being endangered or threatened with extinction. Actions that jeopardize endangered or threatened species and the habitats upon which they rely are considered a "take" under the ESA. Take of a federally listed threatened or endangered species is prohibited without a special permit. The ESA allows for take of a threatened or endangered species incidental to development activities once a habitat conservation plan has been prepared to the satisfaction of the USFWS and an incidental take permit has been issued. The ESA also allows for the take of threatened or endangered species after consultation has deemed that development activities will not jeopardize the continued existence of the species. The federal ESA also provides for a Section 7 consultation when a federal permit is required, such as a Clean Water Act Section 404 permit.

Clean Water Act

Section 401 of the federal Clean Water Act (CWA) requires any applicant for a federal license or permit that is conducting any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification that the discharge will comply with the applicable effluent limitations and water quality standards. The appropriate Regional Water Quality Control Board (RWQCB) regulates Section 401 requirements.

CWA Section 404 prohibits the discharge of dredged or fill material into waters of the United States without a permit from the US Army Corps of Engineers (USACE). The USACE and the US Environmental Protection Agency administer the act. In addition to streams with a defined bed and bank, the definition of waters of the United States includes wetland 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 for life in saturated soil conditions" (33 CFR 328.3 7b). The lateral extent of non-tidal waters is determined by delineating the ordinary high-water mark (33 CFR Section 328.4[c][1]).

Substantial impacts to jurisdictional wetlands may require an individual permit. Small-scale projects may require a nationwide permit, which typically has an expedited process compared to the individual permit process. Mitigation of wetland impacts is required as a condition of the 404 permit and may include on-site preservation, restoration, and/or enhancement and/or off-site

restoration or enhancement. The characteristics of restored or enhanced wetlands must be equal to or better than those of the affected wetlands to achieve no net loss of wetlands.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) implements international treaties between the United States and other nations devised to protect migratory birds, their parts, eggs, and nests from activities such as hunting, pursuing, capturing, killing, selling, and shipping, unless expressly authorized in the regulations or by permit. The State of California has incorporated the protection of birds of prey in FGC Sections 3800, 3513, and 3503.5.

All raptors and their nests are protected from take or disturbance under the MBTA (16 United States Code [USC] Section 703 et seq.) and California statute (FGC Section 3503.5).

State

California Endangered Species Act

The California ESA establishes the state's policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The California ESA mandates that state agencies not approve projects that would jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy. There are no state agency consultation procedures under the California ESA. For projects that affect both a state and federal listed species, compliance with the federal ESA will satisfy the California ESA if the CDFW determines that the federal incidental take authorization is "consistent" with the California ESA under Fish and Game Code Section 2080.1. For projects that will result in a take of a state-only listed species, the project proponent must apply for a take permit under Section 2081(b).

State Water Resources Control Board/Regional Water Quality Control Board

For Waters of the State that are federally regulated under the Clean Water Act, the State Water Resources Control Board (through its RWQCBs) must provide state water quality certification pursuant to CWA Section 401 for activities requiring a federal permit or license that may result in discharge of pollutants into Waters of the United States. Where no federal jurisdiction exists over Waters of the State, the State Water Resources Control Board (through its RWQCBs) retains regulatory authority to protect water quality through provisions of the Porter-Cologne Water Quality Control Act through application for or waiver of waste discharge requirements.

California Fish and Game Code

Native Plant Protection Act

The Native Plant Protection Act (FGC Sections 1900–1913) prohibits the take, possession, or sale within the state of any plants with a state designation of rare, threatened, or endangered (as defined by the CDFW). An exception in the act allows landowners, under specified circumstances, to take listed plant species, provided that the owners first notify the CDFW and give that State agency at least 10 days to retrieve the plants before they are plowed under or otherwise destroyed (FGC Section 1913). Impacts to these species are not considered significant unless the species are known to have a high potential to occur within the area of disturbance associated with construction of a proposed project.

Birds of Prey

Under FGC Section 3503.5, it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.

Sensitive Vegetation Communities

Sensitive vegetation communities are natural communities and habitats that are unique, of relatively limited distribution in the region, or of particularly high wildlife value. These resources have been defined by various federal, state, and local conservation plans, policies, or regulations. The CDFW ranks sensitive communities as threatened or very threatened and keeps records of their occurrences in the California Natural Diversity Database. The CDFW also identifies sensitive vegetation communities on its List of California Natural Communities Recognized by the CNDDB. Impacts to sensitive natural communities and habitats identified in local or regional plans, policies, and regulations, or by federal or state agencies, must be considered and evaluated under CEQA.

Species of Special Concern

Species of special concern are broadly defined as animals not listed under the California ESA, but which are nonetheless of concern to the CDFW because they are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. 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 California ESA and recovery efforts that might ultimately be required. This designation also is intended to stimulate collection of additional information on the biology, distribution, and status of poorly known at-risk species and to focus research and management attention on them. Although these species generally

have no special legal status, they are given special consideration under CEQA during project review. Species of special concern are included in the list of Special Animals List tracked by the CNDDB.

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act defines waters of the State as any surface water or groundwater, including saline waters, within the boundaries of the state. The RWQCBs protect all waters in their regulatory scope, but have special responsibility for isolated wetlands and headwaters. These water bodies have high resource value, are vulnerable to filling, and may not be regulated by other programs, such as CWA Section 404. The RWQCBs regulate waters of the State under the Water Quality Certification Program, which regulates discharges of dredged and fill material under CWA Section 401 and the Porter-Cologne Water Quality Control Act.

Projects that require a USACE permit, or fall under other federal jurisdiction, and have the potential to impact waters of the State are required to comply with the terms of the Water Quality Certification Program. If a proposed project does not require a federal license or permit, but involves activities that may result in a discharge of harmful substances to waters of the State, the applicable RWQCB has the option to regulate such activities under its state authority in the form of waste discharge requirements or certification of waste discharge requirements.

Lake and Streambed Alteration Program

FGC Section 1602 requires any person, state, or local governmental agency to notify the CDFW prior to initiating any activity that would: (1) divert or obstruct the natural flow of or substantially change or remove material from the bed, channel, or bank of any river, stream, or lake; or (2) result in the disposal or deposition of debris, waste, or other material into any river, stream, or lake. The state definition of “lakes, rivers, and streams” includes all rivers or streams that flow at least periodically or permanently through a well-defined bed or channel with banks that support fish or other aquatic life, and watercourses with surface or subsurface flows that support or have supported riparian vegetation.

Natural Community Conservation Planning Act

The Natural Community Conservation Planning Act (1991) is aimed at conservation of natural communities at the ecosystem scale while allowing for compatible land uses. The CDFW is primarily responsible for implementation of the act, which is intended to allow comprehensive protection and management of wildlife species and provides for regional protection of natural wildlife diversity while allowing appropriate land development.

California Native Plant Society Rare or Endangered Plant Species

Vascular plants listed as rare or endangered by the CNPS, but which have no designated status under state or federal endangered species legislation, are defined as follows:

- 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)
- List 4: Plants of limited distribution (a watch list)

Local

Multiple Habitat Conservation Program

The Multiple Habitat Conservation Program (MHCP) is a comprehensive, multiple jurisdictional planning program designed to develop an ecosystem preserve in northern San Diego County. Implementation of the regional preserve system is intended to protect viable populations of key sensitive plant and animal species and their habitats while accommodating continued economic development and quality of life for residents of the North County region. The MHCP is one of several large multiple-jurisdictional habitats planning efforts in San Diego County, each of which constitutes a subregional plan under the California Natural Community Conservation Planning Act of 1991. The MHCP includes seven incorporated cities in northwestern San Diego County: Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista. These jurisdictions will implement their respective portions of the MHCP through "subarea" plans, which describe the specific implementing mechanisms each city will institute for the MHCP. The goal of the MHCP is to conserve approximately 19,000 acres of habitat, of which roughly 8,800 acres (46 percent) are already in public ownership and contribute toward the habitat preserve system for the protection of more than 80 rare, threatened, or endangered species.

City of Encinitas Draft Subarea Plan

The City's Draft Subarea Plan addresses how the City would conserve natural biotic communities and sensitive plant and wildlife species under the MHCP framework. The Draft Subarea Plan would provide regulatory certainty to landowners in the City and aid in conserving the region's biodiversity and enhancing the quality of life. The Draft Subarea Plan addresses potential impacts to natural habitats and rare, threatened, or endangered species caused by development planned within the City. The Draft Subarea Plan also forms the basis for Implementing Agreements, which

act as legally binding agreements between the City and the wildlife agencies that ensure implementation of the Subarea Plan and provide the City with state and federal take authority.

City of Encinitas General Plan

The City of Encinitas General Plan is the primary source of long-range planning and policy direction used to guide growth and preserve the quality of life in Encinitas. The General Plan states that a goal of the City is to analyze proposed land uses to ensure that the designations would contribute to a proper balance of land uses within the community. Relevant goals and policies pertaining to biological resources include the following:

Resource Management Element

GOAL 3: **The City will make every effort possible to preserve significant mature trees, vegetation and wildlife habitat within the Planning Area.**

Policy 3.1 Mature Trees of community significance cannot be removed without City authorization.

Policy 3.2 Mature trees shall not be removed or disturbed to provide public right-of-way improvements if such improvements can be deferred, redesigned, or eliminated. This policy is not meant to conflict with establishment of riding/hiking trails and other natural resource oaths for the public good, or with the preservation of views.

Policy 3.6 Future development shall maintain significant mature trees to the extent possible and incorporate them into the design of development projects.

GOAL 10: **The City will preserve the integrity, function, productivity, and long-term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.**

Policy 10.1: The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). This policy shall not apply to construction of

roads of the City's circulation element, except to the extent that adverse impacts on habitat should be minimized to the degree feasible.

Policy 10.5: The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentrations of these habitats within the Special Sturdy Overlay designation. The following guidelines will be used to evaluate projects for approval.

- Conservation of as much existing contiguous area of Coastal Mixed Chaparral or Coastal Sage Scrub as feasible while protecting the remaining areas from highly impacting uses;
- Minimize fragmentation or separation of existing contiguous natural areas;
- Connection of existing natural areas with each other or other open space areas adjacent to maintain local wildlife movement corridors;
- Maintenance of the broadest possible configuration of natural habitat area to aid dispersal of organisms within the habitat;
- Where appropriate, based on community character and design, clustering of residential or other uses near edges of the natural areas rather than dispersing such uses within the natural areas;
- Where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them;
- Conservation of the widest variety of physical and vegetational conditions on site to maintain the highest habitat diversity;
- Design of development, with adjacent uses given consideration, to maximize conformance to these guidelines; and
- Preservation of rare and endangered species on site rather than by transplantation off-site.

Policy 10.6: The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of

Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a neat gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmental damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

- Incidental public service projects.
- Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- Restoration purposes.
- Nature study, aquaculture, or other similar resource dependent activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal EPA 404(b) (1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined

by regulatory agencies with authority over wetland resources, but in any case, at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of saltwater wetlands, and a 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive creational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

City of Encinitas General Plan Housing Element 2019

In March 2019, the City Council adopted the General Plan Housing Element Update (HEU), which provides the City with a coordinated and comprehensive strategy for promoting the production of safe, decent, and affordable housing for all within the City. The purpose of the HEU is to ensure that the City establishes policies, procedures, and incentives to increase the quality and quantity of the housing supply in the City. The Housing Element Update 2019 includes the 2013–2021 HEU and a series of discretionary actions to update and implement the City's Housing Element. The City received Local Coastal Program Amendment approval for the HEU from the California Coastal Commission in September 2019, and certification from the California Department of Housing and Community Development in October 2019. Relevant policies and goals related to biological resources are provided below:

GOAL 2: **Sound housing will be provided in the City of Encinitas for all persons.**

Policy 2.4: Coordinate the provision of open areas in adjoining residential developments to maximize the benefit of the open space.

Policy 2.5: Encourage street planting, landscaping, and undergrounding of utilities.

Policy 2.7: Discourage residential development of steep slopes, canyons, and floodplains.

IMPACT ANALYSIS AND MITIGATION MEASURES

An evaluation of the significance of potential impacts on biological resources must consider both direct effects to the resource and indirect effects in a local or regional context. Potentially significant impacts would generally result in the loss of a biological resource or obviously conflict with local, state, or federal agency conservation plans, goals, policies, or regulations. Actions that would potentially result in a significant impact locally may not be considered significant under CEQA if the action would not substantially affect the resource on a population-wide or region-wide basis.

Thresholds of Significance

The following thresholds of significance are based on CEQA Guidelines Appendix G. For purposes of this EIR, the proposed project may have a significant adverse impact on biological resources if it would do any of the following:

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 Wildlife or US Fish and Wildlife Service.

2. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or US Fish and Wildlife Service.

3. 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.

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.

5. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

6. Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

PROJECT IMPACTS AND MITIGATION

HAVE A SUBSTANTIAL ADVERSE EFFECT ON CANDIDATE, SENSITIVE, OR SPECIAL-STATUS SPECIES

Impact 3.3-1 **The project would have a potentially 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 US Fish and Wildlife Service. Impacts would be less than significant with mitigation incorporated.**

As discussed in the Existing Conditions subsection above, and shown in Figure 2.0-2, Project Vicinity Map, no candidate, sensitive, or special-status species were observed or recorded on the project site. As such, it is not reasonably foreseeable that the proposed project would result in any direct effects to special-status species. Additionally, due to the lack of sensitive habitat on-site, the proposed project would not result in any direct impacts on sensitive habitat from clearing or grading activities. It should be noted that, once grading of the site is completed, vertical construction (i.e., residential units, restaurant, etc.) would occur a minimum of 350 feet from the edge of the Magdalena Ecke Open Space Preserve, and would be buffered by the proposed on-site organic farm, water quality basins, and a community trail and fence (refer to Figure 2.0-5, Conceptual Site Plan).

However, migratory bird and raptors have the potential to nest and forage on and around the subject property due to the presence of on-site trees and natural open space that abuts the northern property boundary. As such, the potential for project construction activities to indirectly affect migratory bird or raptor nesting cycles within and adjacent to the project site does exist. Such impacts would be considered potentially significant.

Mitigation measure **BIO-1** would require the project applicant to conduct a preconstruction survey for migratory birds and raptors prior to the initiation of grading activities if they are to occur during the breeding season (January 15th to August 31st). If active nests are identified in the construction area plus a 300-foot buffer, buffers would be established limiting construction activities within those areas. Impacts to migratory birds and raptors would be less than significant with implementation of mitigation measure **BIO-1**.

Additionally, there is a high potential for the coastal California gnatcatcher to occur on land north of the project site in the natural open space area. The coastal California gnatcatcher is listed as threatened by the USFWS and has been recorded in the Magdalena Ecke Open Space Preserve. Due to the close proximity of suitable habitat, it is possible that project construction activities could indirectly affect the species (Appendix D-1). Such impacts would be considered potentially

significant. Therefore, mitigation measure **BIO-2** shall be implemented that requires a biologist knowledgeable of gnatcatcher biology and ecology to perform a minimum of three focused surveys to determine the presence of gnatcatchers, nest building activities, egg incubation activities, or brood-rearing activities within a minimum of 300 feet of the project impact limits during the gnatcatcher breeding season. With implementation of mitigation measure **BIO-2**, impacts to California gnatcatcher would be reduced to a less than significant level.

Implementation of mitigation measures **BIO-1** and **BIO-2** would reduce the potential for the project to 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 CDFW or USFWS. Impacts would be **less than significant with mitigation incorporated**.

Mitigation Measures:

BIO-1 **Pre-Construction General Nesting Bird Surveys and Protocols.** If clearing, grubbing, or other construction activities (for example, but not limited to, staging, site preparation, grading) occurs within the nesting season (January 15 to August 31), the following measures shall be implemented to address potential construction-period impacts to migratory birds and raptors:

- Prior to the start of vegetation removal and/or construction activities within 300 feet of the Magdalena Ecke Open Space Preserve, a qualified biologist shall perform focused surveys within 72 hours prior to the commencement of construction activities. The survey areas shall include the construction area plus a 300-foot buffer. Survey findings shall be submitted to the City for review and approval prior to the initiation of any construction activities.

- If active nests are found during the nesting bird survey, appropriately sized no-work buffers (generally 50 to 300 feet depending on species sensitivity) shall be established around the active nests identified within and adjacent to the project site. The qualified biologist, in consultation with the City, shall determine the appropriate buffer size and level of nest monitoring necessary for species not listed under the federal or state Endangered Species Act based on the species' life history, the species' sensitivity to disturbances (e.g., noise, vibration, human activity), individual behavior, status of nest, location of nest and site conditions, presence of screening vegetation, anticipated project activities, ambient noise levels compared to project-related noise levels, existing non-project-related disturbances in

vicinity, and ambient levels of human activity. Buffers shall be marked (flagged or fenced with Environmentally Sensitive Area fencing) around any active nests and periodic monitoring by the qualified biologist shall occur to ensure the project does not result in the failure of the nest. The buffer(s) shall be maintained around each nest until the nest becomes inactive as determined by the qualified biologist. At the discretion of the qualified biologist, if a nesting bird appears to be stressed as a result of project activities and the buffer does not appear to provide adequate protection, additional minimization measures shall be implemented. Buffer sizes may be adjusted (either increased or reduced), or the extent of nest monitoring may be adjusted, at the discretion of the qualified biologist based on the conditions of the surrounding area and/or the behavior of the nesting bird. Any changes to buffer sizes and/or nest monitoring frequency shall be documented.

- If active nests are found and delineated by the buffers, construction activities may continue outside of the biological buffers.
- The qualified biologist shall have the following responsibilities: ensure that restricted activities occur outside of the delineated buffers, check nesting birds for any potential indications of stress, and ensure that installed fencing or flagging is properly maintained during nest monitoring and any additional site visits.

BIO-2 **Pre-Construction Coastal California Gnatcatcher Surveys and Protocols.** If clearing, grubbing, or other construction activities occur within the California gnatcatcher nesting season (February 15 to August 31), the following measures shall be implemented to address potential construction-period impacts to the coastal California gnatcatcher that may occupy native habitats adjacent to the construction area in the Magdalena Ecke Open Space Preserve:

- Prior to the initiation of construction activities within 300 feet of habitat that could support gnatcatchers, a biologist with necessary permits to conduct California gnatcatcher surveys shall perform a minimum of three focused surveys, on separate days, to determine the presence of active gnatcatcher nests within a minimum of 300 feet of project construction activity proposed during the gnatcatcher breeding season. The biologist shall conduct two surveys a maximum of seven days prior to vegetation disturbance or project construction and one survey the day immediately prior to the initiation of work. Survey findings shall be submitted to the

City for review and approval prior to the initiation of any construction activities.

- If a gnatcatcher nest is found in or within 300 feet of initial vegetation disturbance or project construction, additional coordination with the United States Fish and Wildlife Services shall occur prior to construction and within 48 hours of the discovery to determine what additional measures would need to be implemented, if any, to avoid "take" of the species. Similar protocols for other federal or state listed bird species may need to be implemented, based on finding of the biological surveys.

Level of Significance: Less than significant with mitigation incorporated.

HAVE A SUBSTANTIAL ADVERSE EFFECT ON RIPARIAN HABITAT

Impact 3.3-2	**The project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or US Fish and Wildlife Service. Impacts would be less than significant.**

The project site is heavily disturbed and located in an urbanized area. No riparian habitat exists on-site and, due to the existing development on the project site, intact vegetation communities are not present. As such, the land use type of the project site is classified as urban/developed, which is not considered to be a sensitive natural community (refer to Figure 2.0-2, Project Vicinity Map).

Additionally, surrounding lands consist of urban/developed lands to the west, south, and east, with some areas of eucalyptus woodland, Diegan coastal sage scrub, and grassland vegetation communities (i.e., to the north). Although surrounding areas may contain limited sensitive natural communities, it is unlikely that these species would occur on-site or move to the site, due to the current and proposed land uses. Furthermore, CDFW or USFWS critical habitats for special-status plants are not mapped within or adjacent to the project area (Appendix D-1).

Therefore, the proposed project would not have a substantial adverse effect on riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS. Impacts would be **less than significant**.

Mitigation Measures: None required.

Level of Significance: Less than significant.

HAVE A SUBSTANTIAL ADVERSE EFFECT ON WETLANDS

Impact 3.3-3	**The project would not have a potentially 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. Impacts would be less than significant.**

The project site does not support any state or federally protected wetlands (i.e., marsh, vernal pool, or coastal). There are no jurisdictional wetlands and/or waterways in the project area that would be affected by direct removal, filling, or hydrological interruption during the project construction phase.

As indicated in Section 3.8, Hydrology and Water Quality, of this EIR, stormwater runoff would be treated and stored on-site via several biofiltration basins, prior to being conveyed to storm drain systems within Sidonia Street or Quail Gardens Drive (refer to Figure 3.8-2, Post-Development Hydrology Node Map). Runoff from the site would therefore not adversely affect any off-site wetlands or waterbodies located on adjacent lands.

Therefore, the proposed project would not have a potentially substantial adverse effect on state or federally protected wetlands through direct removal, filling, hydrological interruption, or other means. Impacts would be **less than significant**.

Mitigation Measures: None required.

Level of Significance: Less than significant.

INTERFERE SUBSTANTIALLY WITH THE MOVEMENT OF ANY NATIVE RESIDENT OR MIGRATORY FISH OR WILDLIFE SPECIES OR WITH ESTABLISHED NATIVE RESIDENT OR MIGRATORY WILDLIFE CORRIDORS

Impact 3.3-4	**The project would have the potential to interfere with the movement of 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. Impacts would be less than significant with mitigation incorporated.**

The project site is disturbed and does not support suitable habitat or water bodies for migratory species. The City's Draft MHCP Subarea Plan identifies Wildlife Corridor Planning Zones in the Encinitas subarea. However, the project site is not located within any identified corridors. In addition, the proposed project would not impede the use of any native wildlife nursery sites, as none exist in the surrounding area.

However, migratory bird and raptors have the potential to nest and forage on-site due to the presence of on-site trees and Magdalena Ecke Open Space Preserve located to the north of the project site. Therefore, mitigation measures are proposed to remove the potential for the project to adversely affect migratory bird and raptor nesting cycles within or adjacent to the property. Mitigation measure **BIO-1** would require the project applicant to conduct a preconstruction survey for migratory birds and raptors prior to the initiation of grading activities if they are to occur during the breeding season (January 15th to August 31st). If active nests are identified on-site or in the immediate vicinity, buffers would be established limiting construction activities within those areas. Impacts to migratory birds and raptors would be less than significant with implementation of mitigation measure **BIO-1**.

Mitigation measure **BIO-2** requires a biologist knowledgeable of gnatcatcher biology and ecology to perform a minimum of three focused surveys to determine the presence of gnatcatchers, nest building activities, egg incubation activities, or brood-rearing activities if construction occurs within gnatcatcher breeding season (February 15 to August 31). Impacts to California gnatcatcher would be less than significant with implementation of mitigation measure **BIO-2**.

Therefore, the project would have limited potential to indirectly interfere with the movement of native resident or migratory fish or wildlife species, or with any established native resident or migratory wildlife corridors. With implementation of mitigation measure **BIO-1** and **BIO-2**, impacts would be **less than significant**.

Mitigation Measures: Implement mitigation measures **BIO-1** and **BIO-2.**

Level of Significance: Less than significant with mitigation incorporated.

CONFLICT WITH ANY LOCAL POLICIES OR ORDINANCES PROTECTING BIOLOGICAL RESOURCES

Impact 3.3-5	**The project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. Impacts would be less than significant.**

The planting, maintenance, and removal of public and mature trees within the public right-of-way or on public property are regulated by the City's General Plan Resource Management Element (Policies 3.1, 3.2, and 3.6) and Chapter 15.02 of the City's Municipal Code. As stated under Policy 3.1, mature trees of community significance cannot be removed without City authorization.

Due to the disturbed nature of the site, the proposed project would not involve the removal of mature trees or other sensitive vegetation types. The project site contains ornamental landscape trees and shrubs that are not protected under local policies or ordinances (Appendix D-1).

However, the proposed project has the potential to impact trees within the City right of way along Leucadia Boulevard within an existing landscape maintenance zone, as well as trees along Quail Gardens Drive. A Tree Survey (Appendix D-2) has been prepared for the proposed project documenting these trees, and the proposed project would be required to comply with the City's Tree Preservation Ordinance.

On January 23, 2020, a tree inspection was conducted to determine the conditions of the trees on the project site and right-of-way. Data collected during the inspection include tree identification number, botanical name, common name, height in feet, canopy spread in feet, the diameter of tree trunk at breast height (DBH) in inches, tree condition and any relevant additional findings. Based on the overall health, structure, and form of the tree, the condition of each tree was rated between 0-5, where 0 is the poorest condition and 5 is the best condition rating.

Approximately 32 street trees along Leucadia Boulevard and Quail Gardens Drive would be removed as part of the project. However, the proposed project would replant approximately 30 trees along Leucadia Boulevard and 5 trees along Quail Gardens Drive which would fully mitigate the loss of trees in the right-of-way (refer to Figure 2.0-12a, Conceptual Landscape Plan). The replanting and maintenance of the trees in the right-of-way would comply with the regulations and policies established in the City's General Plan Resource Management Element and Municipal Code.

With regulatory compliance, the proposed project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. Impacts would be considered **less than significant**.

Mitigation Measures: None required.

Level of Significance: Less than significant.

CONFLICT WITH THE PROVISIONS OF AN ADOPTED HABITAT CONSERVATION PLAN, NATURAL COMMUNITY CONSERVATION PLAN, OR OTHER APPROVED LOCAL, REGIONAL, OR STATE HABITAT CONSERVATION PLAN

Impact 3.3-6	**The project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. Impacts would be less than significant.**

The project site is located in an urbanized area where surrounding lands are largely built out, with exception of the Magdalena Ecke Open Space Preserve which borders the site along the entire northern property boundary. The project site is not located within the boundaries of the City of Encinitas Draft MHCP Subarea Plan. No sensitive species have been documented on the

project site due to the lack of suitable habitat and current level of disturbance, and no wetlands or riparian habitat are present on-site. Therefore, development of the site as proposed would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. Impacts would be **less than significant**.

Mitigation Measures: None required.

Level of Significance: Less than significant.

CUMULATIVE IMPACTS

Impact 3.3-7	**The project would not have the potential to result in a significant cumulative impact related to biological resources. Impacts would be less than cumulatively considerable.**

Geographic Scope

Cumulative projects that would have the potential to be considered in a cumulative context with the proposed project, and that are included in the analysis of cumulative impacts relative to biological resources, are identified in Table 3.0-1 in Section 3.0, Environmental Analysis, of this EIR. Generally, in instances where a potential impact could occur, the CDFW and the USFWS have promulgated regulatory procedures that limit impacts to sensitive habitat and wildlife species. It is anticipated that potential effects of cumulative projects considered would be rendered less than significant through mitigation requiring compliance with applicable regulations that protect plant, fish, and animal species, as well as waters of the United States and waters of the State. Other cumulative projects in the study area would also be required to avoid impacts to special-status species and/or mitigate to the satisfaction of the CDFW and USFWS, as applicable, for any potential loss of habitat.

Additionally, to be conservative, the cumulative analysis is based on the "worst-case" assumption that all 2019 HEU sites develop under maximum density bonus unit allowances. The cumulative impact analysis includes all 2019 HEU sites to the extent they may contribute to certain issue-specific cumulative effects and conservatively assumes the remaining 12 HEU sites (those sites other than the proposed project and the two HEU sites currently being processed) would apply the density bonus allowance to achieve a maximum density of residential units (see Table 3.0-2).

Potential Cumulative Impact

Encinitas is an urbanized city surrounded by other urbanized cities. The protection of biological resources in the City is generally enforced through the City of Encinitas Draft MHCP Subarea Plan. The Draft Subarea Plan addresses how the City would conserve natural biotic communities and

sensitive plant and wildlife species under the larger MHCP framework. As stated under Impact 3.3-6, the project site is not located within the boundaries of the Draft Subarea Plan or an area identified as a migratory wildlife corridor. Furthermore, no other sensitive species have been documented on the project site due to the lack of suitable habitat and level of disturbance, and no wetlands or riparian habitat are present.

Cumulative projects located within the City's Draft Subarea Plan area would be subject to the goals and policies outlined in the plan, and would be required to implement mitigation measures if a significant impact would occur as a result of project implementation. As such, direct and indirect effects to special-status species would be evaluated on a case-by-case basis. Furthermore, none of the cumulative projects identified in Table 3.0-1 or Table 3.0-2 are located within the boundaries of City Draft Subarea Plan Preserve.

Project impacts would be limited to indirect construction impacts on migratory avian species and potentially California gnatcatcher (if determined to be present in the adjacent Magdalena Ecke Open Space Preserve to the north of the site). Impacts would be reduced to less significant with implementation of mitigation measures **BIO-1** and **BIO-2**. Therefore, with implementation of the mitigation measures proposed, the proposed project's contribution to a cumulative impact on biological resources would be **less than cumulatively considerable**.

Mitigation Measures: Implement mitigation measures **BIO-1** and **BIO-2**.

Level of Significance: Less than cumulatively considerable.