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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

October 17, 2025
Sent via email.

Benjamin Matlock
Deputy Director of Community Development
City of Yucaipa
34272 Yucaipa Boulevard
Yucaipa, CA 92399
Bmatlock@yucaipa.gov

Dear Benjamin Matlock:

RESIDENCES AT OAK GLEN CREEK SPECIFIC PLAN DEVELOPMENT
(CASE NO. 23-105 GPA/SP/TTM) (PROJECT)
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND)
SCH# 2025091290

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an IS/MND from City of Yucaipa for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Blue Engineering and Consulting Inc.

Objective: The proposed Project includes a General Plan Amendment (GPA), Specific Plan (SP), and a Tentative Tract Map (TTM 20649), for the development of 17.46 acres of undeveloped land for the construction of single-family town home residential units consisting of 145 two-story dwelling units and associated retail development. The proposed GPA will facilitate the Residences of Oak Glen Creek Specific Plan in amending the current land designation from Neighborhood Commercial to Specific Plan.

Location: The proposed Project is located northwest of the intersection of Bryant Street and Oak Glen Road at Assessor's Parcel Numbers 0303-051-44, 0303-051-45, and 0303-051-64 within the City of Yucaipa, County of San Bernardino, State of California.

Timeframe: The Project is proposed to commence in 2026.

COMMENTS AND RECOMMENDATIONS

CDFW appreciates that the MND conducted the appropriate protocol level surveys to determine absence of burrowing owl (*Athene cunicularia*) (CESA Candidate), California gnatcatcher (*Polioptila californica californica*) (Species of Special Concern), San Bernardino kangaroo rat (*Dipodomys merriami parvus*) (CESA Endangered), and sensitive plants. CDFW only offers minor comments and recommendations below to assist City of Yucaipa in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on nesting birds and burrowing owl. Editorial comments or other suggestions may also be included to improve the document.

COMMENT #1: Nesting Birds

CDFW appreciates that the MND included a mitigation measure for a pre-construction survey for nesting birds (i.e., BIO-3). However, BIO-3 limits pre-construction surveys for nesting birds to the typical bird nesting season (i.e. January 15 through September 15). CDFW recommends that disturbance to occupied nests of non-migratory birds,

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migratory birds, and raptors within the Project site and surrounding area be avoided *any time* birds are nesting onsite. This is in consideration that studies have shown that migratory bird species arrive earlier in the season partially in response to higher temperatures influenced by climate change (Usui et. al. 2016)[2]. In addition, in response to warming, birds have been reported to breed earlier and CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates.

Further, Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. As such, CDFW recommends the following revisions (additions are in **bold** and deletions are in ~~strikethrough~~) to BIO-3 for incorporation in the final MND to avoid and minimize impacts to nesting birds:

Mitigation Measure BIO-3: Nesting Bird Pre-Construction Surveys (Revised)

The clearance of vegetation construction shall occur outside of the nesting bird season (nesting bird season defined herein as January 15 through September 15), if feasible. ~~If vegetation removal and/or demolition outside this time period is not feasible, the following additional measures shall be employed to~~ **To** avoid impacts to nesting birds protected under the MBTA and California Fish and Game Code (CFGC)**,**~~. A~~ **a** pre-construction nesting bird survey shall be conducted by a qualified biologist (i.e., a biologist familiar and experienced with the identification and life histories of wildlife and plant species in southern California) within three days (72 hours) prior to the start of **any ground disturbing** construction activities to determine whether active nests are present within or directly adjacent to the construction zone. Nests found shall be recorded and an appropriate buffer shall be established **by the qualified biologist** based on field conditions, the nature of work, and the bird species (typically 300 feet of an active nest of any passerine bird or within 500 feet of an active nest of any raptor or sensitive species). A qualified biologist shall monitor the nest on a bi-weekly (twice a week) basis, or at a frequency necessary to adequately monitor potential impacts to the active nest and to postpone construction activity, as needed, until the biologist determines that the

[2] Usui, T., Butchart, S.H.M., and Philmore A.B., (2016). Temporal Shifts and Temperature Sensitivity of Avian Spring Migratory Phenology: A Phylogenetic Meta-analysis. *Journal of Animal Ecology* 86(2): 250-261.

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nest is no longer active. If the recommended nest avoidance buffer zone is not feasible, the qualified biologist shall provide justification on a case-by-case basis if a buffer reduction is possible, taking into consideration the location of work and type of activity, distance of nest from work area, surrounding vegetation, and line-of-sight between the nest and work areas, tolerance of species to disturbance, and observations of the nesting bird's reaction to construction activities (including light, noise, dust, and human presence). If the biologist determines nesting activities may fail as a result of work activities, work activities shall be modified or shall temporarily cease within the recommended no disturbance buffer until the biologist determines the adults and young are no longer reliant on the nest site.

Buffers shall be delineated (by or under the supervision of a qualified biologist) onsite with bright flagging, for easy identification by staff and the construction team. The perimeter of the buffer shall be flagged so as not to draw predator attention to the direct location of the nest itself and flagging will be minimized where feasible. The onsite construction supervisor and operator staff shall be notified of the nest and the buffer limits to ensure it is maintained.

The indirect impacts of night-time construction lighting on nesting birds outside the construction limits shall be reduced by shielding or directing construction lighting to avoid light encroachment into adjacent habitats.

All wildlife will be allowed to safely leave the site and/or **any non-CESA listed species or non-fully protected species shall** be relocated by the qualified biologist in the event they are observed during the pre-construction survey and/or grading.

COMMENT #2: Burrowing Owl (*Athene cunicularia*)

CDFW appreciates that the MND included a measure for a pre-construction survey for burrowing owl (i.e., BIO-5). However, BIO-5 considers relocation of burrowing owl, which should only occur through a CESA incidental take permit (ITP). Further, BIO-5 states that pre-construction surveys for burrowing owl will be conducted within 30 days prior to the commencement of ground disturbing activities. The *2012 Staff Report on Burrowing Owl Mitigation*[3] states that burrowing owls may re-colonize a site within a few days during any time lapses between project activities. Therefore, performing a pre-construction survey 30 days prior to construction may be too early to determine if burrowing owl is present and whether avoidance of the species is needed. Impacts to burrowing owl may be significant if burrowing owl and their sign are not properly identified through protocol level surveys prior to construction. Thus, CDFW recommends that take avoidance surveys occur 14 days and 24 hours prior to any ground disturbing activities commencing, consistent with the *2012 Staff Report on*

[3] California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

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Burrowing Owl Mitigation, to determine whether any burrowing owl has recently colonized the Project site.

Burrowing owl is a protected species under CESA. The Project may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species if burrowing owl establishes onsite. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.,* Fish and Game Code sections 3503.5, *etc*.) and Federal laws (*i.e.,* Migratory Bird Treaty Act). If Project activities could result in take (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".), appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities. As such, CDFW recommends the following revisions (additions are in **bold** and deletions are in ~~strikethrough~~) to BIO-5 for incorporation in the final MND to avoid and minimize impacts to burrowing owl:

Mitigation Measure BIO-5: Burrowing Owl Pre-Construction Surveys (Revised)

~~A p~~**Pre**-construction **take avoidance** ~~presence/absence~~ survey**s** for burrowing owl within the Project **Site** ~~Footprint where suitable habitat is present~~ shall be conducted **consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation** by a qualified biologist within **14** ~~30~~ days prior to the commencement of ground disturbing activities**, and again within 24 hours prior to ground disturbing activities**. The survey shall include the Project **Site** ~~Footprint~~ and all suitable burrowing owl habitat within a 500-foot buffer. If ground disturbing activities **on the Project Site** ~~in these areas~~ are delayed or suspended ~~for more than 30 days~~ after the pre-construction survey, the **Project Site** ~~area~~ shall be resurveyed for owls **through take avoidance surveys consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation**. If burrowing owl are identified during the pre-construction survey**s**, the owl shall be **fully** avoided and the qualified biologist shall coordinate with the City of Yucaipa Planning Department **and CDFW**, to develop a Burrowing Owl Plan to be approved by **CDFW and** the City prior to commencing Project activities. The Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) (CDFW 2012). The Burrowing Owl Plan shall describe proposed avoidance, minimization, ~~relocation~~, and monitoring as applicable. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers ~~if~~ **to fully** avoid~~ing~~ the burrowing owls ~~and/or information on the adjacent or nearby suitable habitat available to owls for relocation~~. ~~If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls may also be required in the Burrowing Owl Plan.~~ A final letter report shall be prepared by the qualified biologist documenting the results of the Burrowing Owl Plan. The letter shall be submitted to the City **and CDFW** prior to the start of Project activities. Additionally, the Project proponent may be required to obtain a

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Section 2081 Incidental Take Permit, if burrowing owl **cannot be fully avoided** ~~are still protected under CESA~~. The Permittee shall implement the 2081 Incidental Take Permit if required.

If burrowing owls are identified after Project activities have started, then construction activities shall be halted immediately. The Project proponent shall **immediately** notify the City **and CDFW**. As noted above, if a 2081 Incidental Take Permit is required, it shall be obtained and implemented.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the draft IS/MND to assist City of Yucaipa in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed Emily Leon, Environmental Scientist, at Emily.Leon@wildlife.ca.gov or at (760) 644-5976.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@lci.ca.gov

ATTACHMENT

A. Mitigation and Monitoring Reporting Plan

REFERENCES

California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

Usui, T., Butchart, S.H.M., and Philmore A.B., (2016). Temporal Shifts and Temperature Sensitivity of Avian Spring Migratory Phenology: A Phylogenetic Meta-analysis. *Journal of Animal Ecology* 86(2): 250-261.

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Attachment A
Mitigation Monitoring and Reporting Plan

Measure Number	Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
BIO-3	**Mitigation Measure BIO-3: Nesting Bird Pre-Construction Surveys** The clearance of vegetation construction shall occur outside of the nesting bird season (nesting bird season defined herein as January 15 through September 15), if feasible. To avoid impacts to nesting birds protected under the MBTA and California Fish and Game Code (CFGC), a pre-construction nesting bird survey shall be conducted by a qualified biologist (i.e., a biologist familiar and experienced with the identification and life histories of wildlife and plant species in southern California) within three days (72 hours) prior to the start of any ground disturbing construction activities to determine whether active nests are present within or directly adjacent to the construction zone. Nests found shall be recorded and an appropriate buffer shall be established by the qualified biologist based on field conditions, the nature of work, and the bird species (typically 300 feet of an active nest of any passerine bird or within 500 feet of an active nest of any raptor or sensitive species). A qualified biologist shall monitor the nest on a bi-weekly (twice a week) basis, or at a frequency necessary to adequately monitor potential impacts to the active nest and to postpone construction activity, as needed, until the biologist determines that the nest is no longer active. If the recommended nest	Within 3 days prior to the start of any ground disturbing Project activities	Qualified Avian Biologist

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	avoidance buffer zone is not feasible, the qualified biologist shall provide justification on a case-by-case basis if a buffer reduction is possible, taking into consideration the location of work and type of activity, distance of nest from work area, surrounding vegetation, and line-of-sight between the nest and work areas, tolerance of species to disturbance, and observations of the nesting bird's reaction to construction activities (including light, noise, dust, and human presence). If the biologist determines nesting activities may fail as a result of work activities, work activities shall be modified or shall temporarily cease within the recommended no disturbance buffer until the biologist determines the adults and young are no longer reliant on the nest site. Buffers shall be delineated (by or under the supervision of a qualified biologist) onsite with bright flagging, for easy identification by staff and the construction team. The perimeter of the buffer shall be flagged so as not to draw predator attention to the direct location of the nest itself and flagging will be minimized where feasible. The onsite construction supervisor and operator staff shall be notified of the nest and the buffer limits to ensure it is maintained. The indirect impacts of night-time construction lighting on nesting birds outside the construction limits shall be reduced by shielding or directing construction lighting to avoid light encroachment into adjacent habitats. All wildlife will be allowed to safely leave the site and/or any non-CESA listed species or non-fully protected species shall be relocated by the qualified		

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	biologist in the event they are observed during the pre-construction survey and/or grading.		
BIO-5	**Mitigation Measure BIO-5: Burrowing Owl Pre-Construction Surveys** Pre-construction take avoidance surveys for burrowing owl within the Project Site shall be conducted consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation by a qualified biologist within 14 days prior to the commencement of ground disturbing activities, and again within 24 hours prior to ground disturbing activities. The survey shall include the Project Site and all suitable burrowing owl habitat within a 500-foot buffer. If ground disturbing activities on the Project Site are delayed or suspended after the pre-construction survey, the Project Site shall be resurveyed for owls through take avoidance surveys consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation. If burrowing owl are identified during the pre-construction surveys, the owl shall be fully avoided and the qualified biologist shall coordinate with the City of Yucaipa Planning Department and CDFW, to develop a Burrowing Owl Plan to be approved by CDFW and the City prior to commencing Project activities. The Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) (CDFW 2012). The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring as applicable. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers to fully avoid	Within 14 days & 24 hours prior to the commencement of ground disturbing Project activities	Project Proponent and Qualified Biologist

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	the burrowing owls. A final letter report shall be prepared by the qualified biologist documenting the results of the Burrowing Owl Plan. The letter shall be submitted to the City and CDFW prior to the start of Project activities. Additionally, the Project proponent may be required to obtain a Section 2081 Incidental Take Permit, if burrowing owl cannot be fully avoided. The Permittee shall implement the 2081 Incidental Take Permit if required. If burrowing owls are identified after Project activities have started, then construction activities shall be halted immediately. The Project proponent shall immediately notify the City and CDFW. As noted above, if a 2081 Incidental Take Permit is required, it shall be obtained and implemented.		