



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 27, 2025

Sent via email

Elena Barragan
Planner
385 North Arrowhead Avenue, 1st Floor
San Bernardino, California 92415
Elena.Barragan@lus.sbcounty.gov

Yermo Freepoint Ecosystems (Project)
Mitigated Negative Declaration (MND)
SCH# 2025100156

Dear Elena Barragan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Bernardino County (County) 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. CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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.

Elena Barragan, Planner
San Bernardino County
October 27, 2025
Page 2

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: Freepoint Eco-systems Yermo Supply LLC

Objective: The Project proposes to construct a 543,900 square foot Plastics Sorting and Processing Facility on a 77.57-acre parcel. The warehouse would contain a staging area for inbound refuse, sorting and processing equipment, and storage areas for inbound material awaiting processing and outbound material awaiting pickup. A rail spur to the adjacent Union Pacific switching yard will be constructed. A parking lot with 82 spaces for employees would be constructed on the west side of the warehouse. Other project elements include above ground propane, diesel, and firefighting water storage tanks, a septic tank and leach field and a stormwater treatment facility. The Project will also include the relocation and paving of a dirt road that crosses the site. A total of 41.6 acres of the parcel will be graded to construct the Project.

Location: The Project is located in the unincorporated community of Yermo in the Mojave Desert of San Bernardino County, south of Yermo Road, east of Dusty Trail, and north of the Union Pacific Railroad tracks, on Accessor's Parcel Numbers 0537-071-15, 16, 17 and 19. The Project site's latitude and longitude are 34.897539°N, -116.847445°W.

Timeframe: Construction is expected to take approximately 18 months, and the beginning of construction is anticipated in April 2026 with operations to begin around October 2027.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Please note that no biological studies have been conducted for the Project prior to the circulation of the Initial Study and draft MND.

Elena Barragan, Planner
 San Bernardino County
 October 27, 2025
 Page 3

COMMENT #1: Nesting Birds

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, Species of Special Concern (SSC), and birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project could result in direct take associated with grading, vegetation removal, and vehicle and equipment strike and indirect take associated with Project operations such as attracting predators and displacement. Further, the Project may lead to the reduction of habitat and habitat quality. For example, the Project is likely to permanently remove foraging and nesting habitat for avian species, such as but not limited to golden eagle (*Aquila chrysaetos*) (Fully Protected), prairie falcon (*Falco mexicanus*) (watch list), yellow-breasted chat (*Icteria virens*) (SSC), loggerhead shrike (*Lanius ludovicianus*) (SSC) and LeConte's thrasher (*Toxostoma lecontei*) (SSC).

Why impact would occur: BIO-1 of the MND proposes to conduct pre-construction surveys for nesting birds; however, BIO-1 limits pre-construction surveys for nesting birds to the typical bird nesting season (i.e., February to August). CDFW recommends that disturbance to occupied nests of non-migratory passerine birds, 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). 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.

Evidence impact would be significant: It is the Project Proponent's responsibility to avoid take of all nesting birds. Fish & G. Code § 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 & G. Code § 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 & G. Code § 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.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the draft MND provided a mitigation measure, BIO-1, to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to BIO-1 (edits are in strikethrough and bold) for inclusions in the final MND to avoid and minimize impacts to nesting birds.

Elena Barragan, Planner
San Bernardino County
October 27, 2025
Page 4

Mitigation Measure: BIO-1

Vegetation removal activities are to be conducted outside of the **historic** nesting bird season (typically February 15th to August 31st). ~~If grading and clearing activities must occur during the nesting season, a~~ **Preconstruction** nesting bird ~~survey surveys~~ shall be conducted by a qualified biologist at two intervals, one within 30 days and one within three days of initial ground disturbance for the Project. If nesting birds are not found within the Project property, no further action will be required. If nesting birds are observed, a buffer zone between construction activities and the nesting bird shall be established by a qualified biologist. The buffer zone shall be determined by the type of nesting bird. A typical buffer zone would be 250 feet for nesting passerine birds (songbirds) and 500 feet for nesting raptors.

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

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to burrowing owl habitat. The Project may result in the take of burrowing owl, a candidate species under the CESA, during construction of the Project and the life of the Project. 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".

Specific impact: Project related activities may result in direct or indirect take of burrowing owl by reducing/eliminating suitable habitat for the species, restricting species movement, or causing injury or mortality.

Why impact would occur: BIO-3 proposes to conduct a pre-construction survey for burrowing owl concurrently with the nesting bird surveys in BIO-1 and desert tortoise surveys in BIO-2. However, as addressed in Comment #1, BIO-1 states that surveys for nesting birds will only occur if Project activities commence between February 1st and August 31st. This is concerning to CDFW, as surveys for burrowing owl may not occur or surveys may not follow proper protocol if combined with nesting bird surveys. Additionally, no surveys for burrowing owl have been conducted consistent with Appendix D of the CDFW 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to properly assess whether burrowing owl may be present within the Project site or surrounding areas. Impacts to burrowing owl may be significant if burrowing owl is not properly identified on-site. If surveys detect burrowing owl, CDFW recommends that the project proponent obtain a CESA ITP.

Elena Barragan, Planner
 San Bernardino County
 October 27, 2025
 Page 5

Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission determined that burrowing owl warrants protection as a candidate species under CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, burrowing owl is afforded the same protection as a threatened and endangered species under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. 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, appropriate CESA authorization (*i.e.*, Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure, BIO-3, to avoid and minimize the Project's impacts to burrowing owl. In consideration of the above-mentioned, CDFW offers the following revisions to BIO-3 (edits are in strikethrough and **bold**) for inclusions in the final MND.

Mitigation Measure BIO-3 (Revised)

~~A preconstruction~~ **Preconstruction take-avoidance survey surveys** of the study area for burrowing owls will be completed **by a qualified biologist consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012)** ~~within 30 days before ground-disturbing activities to prevent direct harm to the owls. This survey will coincide with the Mitigation Measure BIO-1 for nesting bird survey. If burrowing owls are observed within the study area, no work can occur within buffer areas detailed in the 2012 guidelines (California Department of Fish Game 2012) and CDFW must be contacted to develop a mitigation plan.~~ **Depending on the results from the pre-construction Burrowing Owl Survey, the Project Proponent shall perform the following:**

- **Not Detected:** If burrowing owl are not detected during the pre-construction survey, no further mitigation is required. If burrowing owl are detected, CDFW shall be sent written notification within 3 days of detection of burrowing owls and impacts to burrowing owl shall be fully avoided or if impacts are unavoidable, the Project Proponent shall obtain an ITP.

Elena Barragan, Planner
San Bernardino County
October 27, 2025
Page 6

- **Discovery of Burrowing Owl:** If active burrowing owl burrows or sign are detected at anytime during pre-construction surveys or during Project activities, the Project Proponent shall not commence activities and fully avoid impacts to burrowing owl until no sign is present that the burrows are being used by adult or juvenile owls. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. If impacts to burrowing owl are unavoidable, the Project Proponent shall obtain an incidental take permit for burrowing owl from CDFW.

COMMENT #3: Rare Plants

Issue: CDFW is concerned that the MND did not evaluate the Project's potential impacts to rare plants. The Project has the potential to result in permanent and temporary loss, degradation, and impacts to rare plants and their habitat.

Specific impact: The MND did not include a site-specific survey to identify the potential for special status plants to occur on site. Without protocol surveys (as per *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018)) potential Project impacts to candidate, sensitive, or special status species may be mischaracterized, resulting in avoidable, unminimized, or unmitigated impacts not analyzed by the MND.

Why impact would occur: The MND for the Project does not have sufficient information as to whether there's suitable habitat and potential impacts to rare plants including Mojave monkeyflower (*Diplacus mohavensis*), Barstow woolly sunflower (*Eriophyllum mohavense*), Mojave menodora (*Menodora spinescens* var. *mohavensis*), spiny-hair blazing star (*Mentzelia tricuspidis*), creamy blazing star (*M. tridentata*), Beaver Dam breadroot (*Pediomelum castoreum*), Parish's phacelia (*Phacelia parishii*) and jackass-clover (*Wislizenia refracta* ssp. *refracta*). The Protocols in CDFW (2018) state botanical field surveys need to be conducted when plants will be both evident and identifiable, with the timing and number of visits considered to determine presence of special status species and floristic diversity. Multiple surveys during the season may be warranted to capture floristic diversity. Desert plant communities that have annual and short-lived perennial plants as major floristic components, may require yearly surveys to accurately document baseline conditions for purposes of impact assessment.

Elena Barragan, Planner
San Bernardino County
October 27, 2025
Page 7

Evidence impact would be significant: Sensitive plant species listed under the CESA as threatened, or endangered, or proposed candidates for listing; designated as rare under the Native Plant Protection Act; meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as a endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Fish and Game Code Sections 1900–1913 includes provisions that prohibit the take of endangered and rare plants from the wild and a salvage requirement for landowners.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW offers the following Mitigation Measure (BIO-4) for inclusions in the final MND.

Mitigation Measure BIO-4 (New)

Prior to Project construction activities, a thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (see <https://wildlife.ca.gov/Conservation/Plants>) shall be performed by a qualified botanist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain appropriate California Endangered Species Act (CESA) authorization for those species prior to the start of Project activities. Should any species of native plants designated as rare, threatened, or endangered by state law be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.

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 (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Elena Barragan, Planner
San Bernardino County
October 27, 2025
Page 8

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 MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jason Bill, Senior Environmental Scientist (Specialist) at Christopher.Bill@wildlife.ca.gov

Sincerely,

DocuSigned by:

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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

Freepoint Eco-systems Yermo Supply LLC
hmesser@freepoint.com

ATTACHMENTS

Attachment A: Mitigation Monitoring and Reporting Plan

REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: [Microsoft Word - BUOW Staff Report final 030712 REV 1.doc \(ca.gov\)](#)

CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, State of California,

Elena Barragan, Planner
San Bernardino County
October 27, 2025
Page 9

California Natural Resources Agency, Department of Fish and Wildlife: March 20, 2018 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>)

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.

Elena Barragan, Planner
San Bernardino County
October 27, 2025
Page 10

Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
BIO-1: Incidental Take Permit for Western Joshua tree (CDFW): The Applicant shall obtain from the California Department of Fish and Wildlife (CDFW) an Incidental Take Permit (ITP) for the take of Western Joshua trees on the Project site, pursuant to the Western Joshua Tree Conservation Act (WJTCA) (Fish & G. Code, §§ 1927-1927.1 or pursuant to CESA (Fish & G. Code § 2081) prior to the relocation, encroachment, removal, or 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") of WJT. If a CESA ITP is obtained, the Applicant will be required to offset take of WJT such as through the purchase of credits from CDFW-approved conservation or mitigation bank or land acquisition, including entry into a conservation easement and management in perpetuity. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a WJT if all of the following conditions are met: (1) The Project Proponent submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height, b. One meter or greater but less than five meters in height, and c. Five meters or greater in height. (2) The Applicant will be required to consult with CDFW to determine	Prior to initiation of all ground disturbing activities	Project proponent

Elena Barragan, Planner
 San Bernardino County
 October 27, 2025
 Page 11

the measures required to minimize impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The Project Proponent mitigates all impacts and taking of, the western Joshua tree through the payment of in lieu mitigation fees. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem or trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the Project Proponent to relocate one or more of the western Joshua trees.		
BIO-4: Burrowing Owl (CDFW) Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), focused burrowing owl surveys shall be conducted by a qualified biologist according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version) on the Project site and within a 500 ft radius from the Project site. In addition, to confirm findings from previous surveys, take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. Burrowing owls may re-colonize a site after only a few days, thus time lapses between Project activities shall require subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If any of the surveys confirm the presence of burrowing owls, impacts to burrowing owl shall be fully avoided. If impacts to burrowing owl are unavoidable, the Project Proponent should apply for a CESA ITP.	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist