State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

November 17, 2025
Sent via email

Alexia Barberena
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City of Fontana
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Fontana Walnut Residential Project (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2025100627

Dear Alexia Barberena:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Fontana (Lead Agency) 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 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: Diversified Pacific

Objective: The proposed Project includes development of a 393-unit residential project and associated landscaping, utilities, and site amenities on approximately 30.99 gross acres (30.53 net acres), known as the Residential Development Site. The proposed residential units would consist of two-story cluster homes, motor court homes, and townhomes. The Project also includes the upzone of two parcels (Upzone Properties),

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[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.

totaling 56.1 acres, from Residential Planned Community (R-PC) to Multi-Family Medium/High Density Residential (R-4) and a corresponding General Plan land use amendment from R-PC to R-MFMH. No development action is proposed on the Upzone Properties at this time.

The Residential Development Site is proposed to be a gated community with ingress and egress off Knox Avenue and Walnut Street. The entries would lead to the recreational and common areas located throughout the Project. The proposed amenities would include a recreational center with a pool, spa, barbeque and lounging areas. The Project proposes a park on the northeastern edge of the Residential Project Site, large open grass areas, including one such area adjacent to the northern boundary of the site, shaded sitting areas, play areas, and a paseo with playground equipment

Location: The Residential Development Site is located between South Highland Avenue and Walnut Street, approximately 700 feet south of Interstate 210 in the City of Fontana, San Bernardino County, California. The Residential Development Site (34.131003, -117.461867) is comprised of 35 parcels of land including Assessor's Parcel Numbers (APNs) 0228-051-01, 0228-051-14 through -17, 0228-051-19 through -21, 0228-052-01, 0228-052-25 through -27, 0228-061-02 through -14, 0228-061-16 through -18, 0228-061-20 through -25, and 0228-331-05.

The Upzone Properties (APNs 0194-391-20 and 0256-131-16) are located in the southeastern corner of the City of Fontana. These properties are bounded by Jurupa Avenue to the north, Locust Avenue to the east, existing unimproved roads and the Jurupa Hills to the south, and single-family residential uses to the west. The Upzone Properties are bisected by an unpaved segment of Alder Avenue.

Timeframe: Anticipated 26-month period.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Fontana in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENT 1: Burrowing Owl (*Athene cunicularia*)

IS/MND Section 5.4.1, Page 5-33

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to burrowing owl (BUOW), a candidate species under the California Endangered Species Act (CESA), nor does it ensure that impacts are mitigated to a level less than significant. The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl and thus, project activities may result in the take of the species as defined in Fish and Game Code section 86.

Specific impact: CDFW agrees with the MND analysis that burrowing owl has a high potential for occurring on the Project site. However, CDFW is concerned that the single reconnaissance survey on October 5, 2023, between 7:35 – 9:45 am, did not adequately account for potential burrowing owl on site and that the survey is outdated to reflect current potential occupancy. A focused survey for the species following a CDFW approved guideline, or similar approach, was not conducted.

Additionally, as noted in the MND and Biological Technical Report, because of burrowing owls' high mobility, their occupancy at a site can vary annually. Burrowing owls have a high potential to move into disturbed areas prior to and during construction activities. Burrowing owls frequently move into disturbed areas since they are adaptive to highly modified habitats.[2,3] Project activities could result in the take of burrowing owls, their nests or eggs or could destroy their nesting, foraging, or over-wintering habitat thereby impacting burrowing owl populations. These specific project activities include vegetation removal, existing structure removal, grading, soil compaction, heavy equipment use, and trenching. As noted in the MND, Indirect impacts to BUOW may also occur due to increased human activity, noise, dust, nighttime lighting, and ground vibrations.

Lastly, CDFW is concerned that the current Mitigation Measure BIO-1 (MM Bio-1) would not adequately reduce impacts to BUOW to less than significant, given their new status as candidate species under CESA. Because of the lack of surrounding burrowing owl habitat immediately adjacent to the Residential Development Site, and the high-density project activities that are anticipated to occur on site, BUOW features may not be avoidable enough fully avoid take.

Why impact would occur: According to the Project's Biological Technical Report, focused burrowing owl surveys were not conducted on the Project site. Burrowing owls have been known to use highly degraded and marginal habitat where existing burrows are available. As noted in the Biological Technical Report, burrowing owls are well-adapted to open, relatively flat expanses and vacant lots and prefer habitats with generally short sparse vegetation with few shrubs such as those occurring on the Project site. If BUOW burrows are not properly detected (during both the breeding and non-breeding season), prior to ground disturbance, site preparation, grading, and other Project Activities could destroy habitat and result in the take of burrowing owl. Occupied site or occupancy means a site that is assumed occupied if at least one burrowing owl has been observed occupying a burrow within the last three years. Occupancy of suitable burrowing owl habitat may also be indicated by owl sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site.

Evidence impact would be significant: On October 10, 2024, the California Fish and Game Commission accepted a petition to list Western Burrowing Owl as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. 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. Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species could result in the Project having a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that prior to commencing Project, focused and preconstruction surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation.*[4] If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the 2012 Staff Report, passive relocation (also known as exclusion) is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. Because appropriate focused surveys were not conducted prior to circulation of the MND, the MND may not adequately identify potentially significant

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[2] Chipman, E. D., N. E. McIntyre, R. E. Strauss, M. C. Wallace, J. D. Ray, and C. W. Boal. 2008. Effects of human land use on western burrowing owl foraging and activity budgets. Journal of Raptor Research 42(2): 87-98.

[3] Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. Condor 73:162–176

[4] California Department of Fish and Game (2012). Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at:https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true

impacts. CDFW recommends the IS/MND be revised and recirculated following completion of surveys so that results and appropriate specific avoidance and minimization measures can be included, to ensure that impacts to burrowing owls are reduced to less than significant. However, if the City chooses not to follow this path, CDFW recommends the following revisions to MM-BIO-1 (edits are in strikethrough and bold) to ensure an adequate assessment is completed and CESA authorization is obtained, if needed.

Mitigation Measure BIO-1/Both sites:

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction. The Designated Biologist shall provide CDFW a GIS or KMZ map of BUOW burrow complex(es) and atypical burrows (e.g. culverts, buckled concrete, etc.) The map shall be at a scale of 1:24,000 or finer to show details and shall show locations of all BUOW sightings and labeled if sightings were potential burrows, occupied burrows, satellite burrows, areas of concentrated burrows, and BUOW sign. Locations documented by use of GPS coordinates must be collected in NAD83 datum. The map shall include an outline of the Project Area. The map shall include a title, north arrow, scale bar, and legend.

Preconstruction surveys for burrowing owl shall be conducted prior to vegetation clearing or grading of the Residential Development Site and Upzone Properties. Two surveys are required and shall follow the methods described in the California Department of Fish and Wildlife (CDFW's) Staff Report on Burrowing Owl Mitigation. The first survey shall be conducted between 30 and 14 days before initial ground disturbance (grading, grubbing, and construction), and the second survey shall be conducted no more than 24 hours prior to initial ground disturbance. ~~If burrowing owls and/or suitable burrowing owl burrows are identified on the Residential Development Site or Upzone Properties during the survey, the project Applicant(s) shall consult with CDFW and follow the methods listed in the CDFW's Staff Report on Burrowing Owl Mitigation for avoidance and/or passive relocation.~~

If burrowing owl occupancy is confirmed, and if Project activities may impact burrowing owl, including burrow exclusion and closure, the Project Proponent shall begin early coordination with CDFW for appropriate CESA authorization (i.e., Incidental Take Permit (ITP) under Fish and Game Code section 2081) prior to commencement of Project activities. The ITP application shall describe, at a minimum, project activities and equipment, proposed avoidance/buffers, temporary and permanent impacts, monitoring, relocation and/or translocation, and minimization and compensatory mitigation actions. ITP compensatory mitigation will be fulfilled by one or more of following options: 1) Permittee-responsible mitigation land acquisition or 2) Conservation or Mitigation Bank credits (if available).

~~If burrowing owls or suitable burrowing owl burrows with sign (e.g., whitewash, pellets, feathers, prey remains) are identified on the Residential Development Site or Upzone Properties during the survey(s), these features must be completely avoided. If impacts to those features are unavoidable, then the project Applicant(s) must develop a burrowing owl mitigation plan in consultation with CDFW. Mitigation methods may include passive relocation conducted outside of the owl breeding season (between September 1 and February 28). If an active owl burrow is identified, and construction is to proceed, then a qualified biologist (with two or more years of burrowing owl experience) must establish an initial disturbance-limit buffer of 500 feet around the burrow using flagging or staking. The buffer distance may be reduced in coordination with CDFW depending on time of year (i.e., in or out of breeding season), level of construction activity, and observed behavior of the burrowing owls. Construction activities shall not occur within any buffer zones until the burrow is deemed inactive by~~

~~the qualified biologist. This measure shall be implemented to the satisfaction of the City of Fontana Community Development Director or designee.~~

COMMENT 2: Crotch's Bumble Bee (*Bombus crotchii*)

IS/MND Section 5.4.1, Page 5-33

Issue: CDFW is concerned that the MND did not sufficiently identify potential Project impacts to Crotch's bumble bee and did not provide appropriate measures to fully mitigate impacts to less than significant. The Project has the potential to result in take of Crotch's bumble bee and has the potential to cause permanent or temporary loss of Crotch's bumble bee habitat.

Specific impact: The MND and Biological Technical Report note that the species has a low potential to occur on the Residential Development Site but does state that the site contains suitable friable soils, suitable burrow habitat, suitable burrows, and nectar sources found within and adjacent to the Project Area. CDFW is concerned that the Biological Technical Report's assumptions for low occurrence without a proper timing Reconnaissance survey (Oct 5, 2023) and overall lack of focused surveys for the species, has improperly identified the site as having low potential for occurrence.

Why impact would occur: Crotch's bumble bee occurs primarily in California, including the Mediterranean region, Pacific Coast, Western Desert, Great Valley and adjacent to foothills through most of southwestern California.[5] Crotch's bumble bee are generalist foragers and have been reported visiting a wide variety of flower plants. The plant families most commonly associated with Crotch's bumble bee observations or collections from California include Fabaceae, Apocynaceae, Asteraceae, Lamiaceae, Boraginaceae and Asclepiadaceae. This is not a comprehensive list, and the species has been observed foraging and utilizing areas with high levels of disturbance and non-native plant species. Ground disturbance (e.g., trenching, grading, soil compaction, and earth-moving activities) and vegetation removal have the potential to destroy Crotch's bumble bee burrows. Additionally, these activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance

Evidence impact would be significant: Crotch's bumble bee is a candidate species for listing under CESA; therefore, it receives the same legal protection afforded to endangered or threatened species under CESA pursuant to Fish & G. Code §§ 2074.2 & 2085. If found on-site, the Project could result in crushing or killing Crotch's bumble bees, reduction in sufficient food resources such as nectar and pollen, and/or removal of nesting and overwintering sites. Many bumble bee species, once common in the western United States, have undergone a dramatic decline in both distribution and abundance and are now extirpated from much of their historic ranges.[6] Many bumble bees are threatened with extinction due primarily to reductions in habitat from urbanization, intensive agriculture, and invasive species introductions[7]. If Crotch's bumble bee occurs at the Project site and Project impacts to Crotch's bumble bee occur, this could result in a substantial reduction in the species' population, which could be a significant impact.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends the following revisions to MM-BIO-2 (edits are in strikethrough and bold) to ensure an adequate assessment is completed and CESA authorization is obtained, if needed.

Mitigation Measure BIO-2/~~Residential Development Site only~~**Both Sites:**

[5] Williams, P. H., et al. 2014. The Bumble Bees of North America: An Identification Guide. Princeton University Press, Princeton
[6] Hatfield, R., Jepsen, S., Foltz Jordan, S., Blackburn, M., Code, Aimee. 2018. A Petition to the State of California Fish and Game Commission to List Four Species of Bumblebees as Endangered Species.
[7] ibid

If the Crotch bumble bee is no longer a Candidate or formally Listed species under the California Endangered Species Act (ESA) at the time ground-disturbing activities occur, then no additional protection measures are proposed for the species. Furthermore, if grading and all other initial ground disturbance are restricted to the period of September-January, no survey or other measure for this species is required.

If the Crotch bumble bee is legally protected under the California ESA as a Candidate or Listed species at the time clearing of vegetation or grading are scheduled to begin, and if vegetation clearing or initial grading is to occur during the period of February-March (the queen flight season) or April-August (the colony active period), a preconstruction survey for Crotch bumble bee **at both sites** shall be conducted in accordance with California Department of Fish and Wildlife (CDFW's) Survey Considerations for California ESA Candidate Bumble Bee Species. The survey shall be conducted prior to ground disturbance and within the same queen flight season or colony active period in which the ground disturbance is to occur. The survey shall consist of a minimum of three survey visits, each at least two weeks apart. The survey shall be completed by a biologist who holds a Memorandum of Understanding to capture and handle Crotch bumble bee (if a netting and chilling protocol is to be utilized) or by a CDFW-approved biologist experienced in identifying native bumble bee species (if surveys are restricted to visual surveys with photo documentation for species verification).

If Crotch bumble bee is detected, the biologist shall conduct a bumble bee nesting survey in accordance with CDFW's Survey Considerations for California ESA Candidate Bumble Bee Species. If an active Crotch bumble bee nest is detected, the biologist shall establish a 50-foot no-disturbance buffer (including foraging resources and flight corridors essential for supporting the colony) around the nest, which may be adjusted at the direction of the approved biologist in coordination with CDFW based on behavior of the bees and their ability to continue foraging, to reduce the risk of disturbance or accidental take. If an active Crotch bumble bee nest is detected, the biologist shall also coordinate with CDFW to determine if an Incidental Take Permit under Section 2081 of the California ESA would be required. The nest avoidance buffer may be removed at the completion of the colony active period or once the biologist deems the nesting colony is no longer active and CDFW has provided concurrence of that determination.

If no nest is found but the species is present, a full-time biological monitor with the qualifications described above or otherwise approved by CDFW shall be present during ground disturbing activities that occur during the queen flight period or colony active period. Because bumble bees move nest sites each year, this measure shall be implemented during each subsequent year of construction, regardless of the previous year's findings, whenever ground disturbing activities are to occur and nesting and foraging habitat are still present. This measure shall be implemented to the satisfaction of the City of Fontana Community Development Director or designee.

COMMENT 3: Artificial Nighttime Light

Section 2.3, Page 2-7 – 2-10

Issue: The MND's Project Description, Section 2, describes that lighting installation will be included in Project Activities. However, CDFW is concerned that the MND and Biological Technical Report do not analyze the impacts of artificial light on biological resources and includes no mitigation measures to reduce potential impacts to less than significant.

Specific impact: The proposed Project will result in new sources of artificial nighttime lighting. Impacts to biological resources resulting from the use of temporary artificial nighttime lighting during construction and permanent installation of artificial lighting are not analyzed, and no mitigation measures are proposed. Designs for temporary lighting to be used during Project Activities should be included in a revised MND, along with details of the permanent artificial nighttime lighting to be used post-construction. The direct and indirect impacts of temporary and permanent artificial nighttime lighting on biological resources, including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife, should be analyzed, and appropriate avoidance and minimization measures to reduce impacts to less than significant should be included in a revised MND.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation.[8] Many species use photoperiod cues for communication (e.g., bird song[9]), determining when to begin foraging,[10] behavior thermoregulation,[11] and migration.[12] Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.[13] Conversely, other species may have reduced foraging success or reduced nighttime activity in artificially illuminated environments.[14]

Recommended Potentially Feasible Mitigation Measure: Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends the MND be revised to include direct and indirect impacts of temporary artificial nighttime lighting proposed for construction and direct, indirect, and cumulative impacts of permanent installation of artificial nighttime lighting. The MND should also include specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant. Absent an analysis, CDFW recommends the City include the following mitigation measure in a revised MND:

MM BIO-[3]: Artificial Nighttime Light

During Project construction and the lifetime operations of the Project, the City and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City and Project proponent shall ensure that temporary lighting for Project activities is shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

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

[8] Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. Biological Reviews
[9] Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139
[10] Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. Current Biology 19:1123–1127. Elsevier Ltd.
[11] Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of Bufo americanus, in relation to light and temperature. Ecology 58:98–108.
[12] Longcore, T., and C. Rich. 2004. Ecological light pollution – Review. Frontiers in Ecology and the Environment 2:191–198.
[13] Longcore, T., and C. Rich. 2004. Ecological light pollution
[14] Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution

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 MND to assist the City of Fontana in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Amelia Viera, Environmental Scientist at (909) 544-2528 or Amelia.Viera@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
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Attachments

Attachment A: MMRP for CDFW – Proposed Mitigation Measures