



State of California – Natural Resources Agency  
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August 26, 2024

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Subject: **Highway 59 Landfill Valley Fill Project (Project)**  
**Supplemental Draft Environmental Impact Report (SDEIR)**  
**SCH: 2014061081**

Dear Patrick Womble:

The California Department of Fish and Wildlife (CDFW) received a SDEIR from Merced County for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, CDFW appreciates 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.

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<sup>1</sup> 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.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

Take is for necessary scientific research,

Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or

They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515)

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

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## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Agromin

**Objective:** The proposed Project is a modification to the approved Valley Fill Project, which involves expansion of the current 25,000 ton per year green waste windrow composting facility and development and operation of a covered aerated static pile (CASP) green waste and food waste compost facility to comply with California's Short-Lived Climate Pollutant Reduction Strategy organic waste disposal targets. The compost facility would be designed to accept up to 50,000 tons per year of green waste and food waste and capable of storing up to 100,000 cubic yards on-site of organic material. Additional site improvements would include construction of a new lined wastewater storage pond, on-site drainage improvements, and improvements to working surfaces such as paving active composting and/or processing areas or amending/compacting the soil.

The CASP and processing and composting equipment would be installed on a concrete pad draining to a new lined pond within the Project site. The organic waste would be delivered to the proposed compost facility by collection vehicles, transfer trailers, and self-haul vehicles. Once received, the organic waste would be sorted to remove non compostable wastes and contamination, then pre-processed by grinding. The active composting area would be located on a compost pad. Some organic material may be delivered pre-processed and feedstock-ready from local material recovery facilities and may be deposited directly into the CASP unit without further processing. Once active composting is complete, the materials are then moved to a curing area, then to final screening and finishing at the compost storage area until products are sold.

**Location:** The Project is located immediately east of State Route (SR) 59 in unincorporated Merced County, approximately 6 miles north of the City of Merced. The street address is 7040 North Highway 59. The Highway 59 Landfill consists of five parcels which are County Assessor's parcel numbers (APN's) 175-050-003, 175-060-001, 175-060-003, 170-070-001 and 170-070-002. The landfill is located in Sections 13, 14, 23, 24, and 25, Township 6 South, Range 13 East on the U.S. Geological Survey Winton and Yosemite Lake 7.5-minute quadrangles.

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## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Merced 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 SDEIR prepared for the Project.

Currently, the SDEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species including the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State fully protected golden eagle (*Aquila chrysaetos*), the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), the State and federally threatened California tiger salamander (*Ambystoma californiense*), the federally endangered Conservancy fairy shrimp (*Branchinecta conservatio*), the federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*), and the federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*).

### Fully Protected Raptors

The SDEIR concludes on Page 3.3-25 that no mitigation measures are required for bald eagle (BAEA) due to poor foraging habitat at the Project site and the SDEIR states that, "Ongoing rodent control activities in the Highway 59 Landfill limit the abundance of prey for these species, and therefore, the project site would provide low-quality foraging for bald eagle..." It should be noted that Section 3.3.2 documents BAEA foraging activity on the Project site and the SDEIR mentions that, "Bald eagles have been observed by staff at the Highway 59 Landfill hunting for gulls in the active landfill area (Womble, pers. comm., 2024), and they have been documented soaring over the area (eBird 2024)." CDFW does not concur that no mitigation measures are necessary to mitigate for impacts to nesting and foraging BAEA as aerial imagery shows several large trees suitable for nesting along the western boundary of the Project site with a large body of water within the vicinity at Yosemite Lake. Additionally, the SDEIR does not include an analysis on golden eagle (GOEA) and no mitigation measures are proposed for the species. CDFW would like to note the Project site is within the geographic range of GOEA and the species has the potential to forage within the Project site. Suitable nesting habitat may also be present along the western boundary of the Project site. As such, CDFW recommends the following for BAEA and GOEA:

#### **Recommended Mitigation Measure 1: Fully Protected Raptors Surveys**

CDFW recommends that focused surveys incorporating survey methods outlined in the Protocol for Evaluating Bald Eagle Habitat and Populations in California (Jackman and Jenkins 2004) and the Interim Golden Eagle Inventory and Monitoring

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Protocols; and Other Recommendations guidelines (USFWS 2010) be conducted by qualified biologists prior to Project implementation.

**Recommended Mitigation Measure 2: Fully Protected Raptors Avoidance Buffer**

If a BAEA or GOEA nest is found prior to or during construction, to avoid Project related impacts to these species, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer. CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon parental care for survival. In the event that a BAEA or GOEA are detected during surveys, and a ½-mile no disturbance buffer is not feasible, consultation with CDFW is recommended.

**Swainson's Hawk**

The SDEIR concludes on page 3.3-14 that no mitigation measures are required for Swainson's hawk (SWHA) due to the Project site having no suitable nesting habitat, "Although Swainson's hawk may occasionally hunt, forage, or soar over the area, there is no suitable nesting habitat for this species in the vicinity of the Highway 59 Landfill." CDFW does not concur with this conclusion as suitable trees for nesting are present along most of the western boundary of the Project site. As SWHA have the potential to nest and forage within the Project vicinity, CDFW recommends the following:

**Recommended Mitigation Measure 3: SWHA Surveys Prior to Construction**

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation. The survey protocol includes early season surveys to assist the Project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

**Recommended Mitigation Measure 4: SWHA Avoidance Buffer**

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

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### **Recommended Mitigation Measure 5: SWHA Take Authorization**

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **Tricolored Blackbird**

The SDEIR concludes on Page 3.3-26 that no mitigation measures are required for tricolored blackbird (TRBL) due to the Project site having no suitable nesting habitat and the SDEIR states that, “The project site contains suitable tricolored blackbird foraging habitat; however, no habitat suitable for tricolored blackbird nesting colonies is present in the project site.” CDFW does not concur that there is no potential nesting habitat within the immediate Project vicinity and would like to note that Section 3.3.2 states, “One special-status species has the potential to occur in the northern potential temporary storage area because it may nest in mallow fields growing in barren areas during its sensitive period: tricolored blackbird (*Agelaius tricolor*).” Additionally, the SDEIR notes that, “The nearest known occurrence of a nesting tricolored blackbird colony is 2 miles from the project site (CNDDDB 2024).” As TRBL have been documented foraging within the Project site and there is potential nesting habitat located within the Project vicinity, CDFW recommends the following:

### **Recommended Mitigation Measure 6: TRBL Surveys Prior to Construction**

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during the breeding season, then CDFW recommends a qualified biologist conduct focused surveys for nesting TRBL no more than 10 days prior to the start of ground-disturbing activities.

### **Recommended Mitigation Measure 7: TRBL Avoidance Buffer**

If an active TRBL nesting colony is found during the pre-construction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW’s “Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015” (CDFW 2015). CDFW recommends that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends conducting pre-construction surveys of an identified nesting colony within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony’s real extent.

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**Recommended Mitigation Measure 8: TRBL Take Authorization**

If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

**California Tiger Salamander**

Mitigation Measure 3.3-3b provides measures to mitigate for impacts to California tiger salamander (CTS) and provides details related to pre-construction CTS surveys and avoidance and minimization measures and specifically mentions the use of a borescope to detect CTS presence inside burrows. Additionally, this measure provides relocation procedures for CTS if a 50-foot buffer cannot be maintained and states that if, “California tiger salamanders are found, work activity will cease until a USFWS-approved biologist with a recovery permit for California tiger salamander relocates the organism to the nearest burrow that is outside of the construction impact area.” CDFW would like to note that it does not appear that focused CTS surveys were conducted in support of the SDEIR and there is no mention of obtaining the required State take authorization, pursuant to Fish and Game Code section 2081 subdivision (b), prior to implementation of Mitigation Measure 3.3-3b. As such, CDFW has significant concerns that implementation of the Project and Mitigation Measure 3.3-3b as currently worded would result in the unauthorized take of CTS. As such, CDFW recommends the following:

**Recommended Mitigation Measure 9: Focused CTS Protocol-level Surveys**

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

**Recommended Mitigation Measure 10: CTS Avoidance Buffer**

If CTS protocol-level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to

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the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW a State ITP in accordance with Fish and Game Code section 2081(b).

#### **Recommended Mitigation Measure 11: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

#### **Conservancy Fairy Shrimp, Vernal Pool Fairy Shrimp, Vernal Pool Tadpole Shrimp**

Section 3.3.2 discusses the potential for Conservancy fairy shrimp (CFS), vernal pool fairy shrimp (VPFS), and vernal pool tadpole shrimp (VPTS) within the Project site and states, “The project site does not provide aquatic habitat suitable for these species (vernal pools or similar seasonal wetlands)” and therefore isn’t included in an assessment for this SDEIR. CDFW would like to note that the SDEIR notes that these species have been documented within the immediate Project vicinity and there are several detention ponds, culverts, and ditches within the overall landfill site that may provide suitable habitat for these species. Additionally, there are two historical occurrences of vernal pool fairy shrimp within the Project site (CDFW 2024). As such, CDFW recommends the following mitigation measures for Conservancy fairy shrimp, vernal pool fairy shrimp, and vernal pool tadpole shrimp:

#### **Recommended Mitigation Measure 12: FESA Listed Shrimp Surveys and CDFW Consultation**

CDFW recommends that a qualified biologist conduct protocol level surveys within areas of suitable aquatic habitat suitable in accordance with the USFWS “Survey Guidelines for the Listed Large Branchiopods” (USFWS 2017) the survey season prior to construction. These surveys would need to be conducted at the appropriate time of year to determine the existence and extent of federally listed shrimp. If through surveys it is determined that these species are occupying or have the potential to occupy within Project site impacts, consultation with CDFW is recommended well in advance of any planned vegetation or ground-disturbing activities to determine appropriate avoidance and minimization measures including adequate implementation of no-disturbance buffers. Additionally, consultation with



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USFWS may be necessary to minimize the potential for federal “take” and/or mitigate for potential impacts.

### **Editorial Comments and/or Suggestions**

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to, CTS, CFS, VPFS, and VPTS. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

**Lake and Streambed Alteration:** The SDEIR notes multiple aquatic features within the Project vicinity and there appears to be a stream located within the eastern portion of the landfill. These features may be subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq. Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. “Any river, stream, or lake” includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW’s website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

**CNDDDB Positive Submission of Data:** Please note that the California Natural Diversity Database (CNDDDB) is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys

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conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project area.

## **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 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>.

## **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 SDEIR to assist Merced County in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included below to assist Merced County with incorporating the recommended mitigation measures provided above. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453, or [john.riedel@wildlife.ca.gov](mailto:john.riedel@wildlife.ca.gov).

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Sincerely,

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<b>CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE                      RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)</b>	
<b>PROJECT: Highway 59 Landfill Valley Fill Project</b>	
<b>SCH: 2014061081</b>	
<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
<b>BAEA &amp; GOEA</b>	
Recommended Mitigation Measure 1: BAEA & GOEA surveys	
<b>SWHA</b>	
Recommended Mitigation Measure 3: SWHA surveys	
Recommended Mitigation Measure 5: SWHA take authorization	
<b>TRBL</b>	
Recommended Mitigation Measure 6: TRBL surveys	
Recommended Mitigation Measure 8: TRBL take authorization	
<b>CTS</b>	
Recommended Mitigation Measure 9: CTS surveys	
Recommended Mitigation Measure 11: CTS take authorization	
<b>CFS, VPFS, VPTS</b>	
Recommended Mitigation Measure 12: CFS, VPFS, VPTS surveys and consultation	
<i>During Construction</i>	
<b>BAEA &amp; GOEA</b>	
Recommended Mitigation Measure 2: BAEA & GOEA avoidance buffer	
<b>SWHA</b>	
Recommended Mitigation Measure 4: SWHA avoidance buffer	
<b>TRBL</b>	
Recommended Mitigation Measure 7: TRBL avoidance buffer	
<b>CTS</b>	
Recommended Mitigation Measure 10: CTS avoidance buffer	