



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



December 14, 2023

**Governor's Office of Planning & Research**

**December 15 2023**

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## **STATE CLEARINGHOUSE**

Subject: **Pape Materials Handling Project (Project)  
Notice of Preparation (NOP)  
State Clearinghouse No. 2023110477**

Dear Thomas Veatch:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) for an Environmental Impact Report (EIR) from the City of Fresno for the Pape Materials Handling Project (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

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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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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.), related authorization as provided by the Fish and Game Code will be required.

**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 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).

**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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of Fresno

**Objective:** The proposed Project includes the construction of a two-story, 52,600 square-foot commercial building for rental, sale, repair, and maintenance of construction and warehouse equipment. The proposed Project would also include the construction of a separate 6,000 square-foot vehicle wash and storage building along the site's northern boundary, employee and customer parking, landscaped areas, two equipment storage racks, and a stormwater retention basin along the eastern portion of the site.

To facilitate the future development of the subject property, the proposed Project would provide, as required, dedications for public street rights-of-way, as well as the construction of public facilities and infrastructure in accordance with the standards, specifications, and policies of the City of Fresno.

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**Location:** The proposed Project is located at 4254 South Cedar Avenue, on approximately 11.75 acres. The Project site is approximately 0.83-mile west of State Route (SR) 99 in Fresno, California. Latitude: 36.673219°, Longitude: -119.752433°, Mount Diablo Base & Meridian, NW quarter of Section 36, Township 14 South, Range 20 East (Assessor's Parcel Number [APN]: 330-03-184).

Per Google historical aerial imagery, the proposed site has mainly contained disturbed grassland since approximately 2009. Vineyards are present to the west/northwest of the Project site across South Cedar Avenue, and the dirt-lined American Colony Canal is located approximately 0.16-mile to the west. There is a large orchard that is adjacent to SR-99 to the east of the Project site per aerial imagery. The Project area also contains rural residential housing, a truck stop, petroleum yards, truck rentals, and other industrial businesses along with disturbed grassland to the east. These grassland areas are within and/or directly adjacent to petroleum yards. There are no trees within Project limits, however; large trees are present in the general area (CDFW 2023).

**Timeframe:** Undetermined.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist the City of Fresno 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 have also been included to improve the Draft EIR.

Current aerial imagery of the Project site shows that it contains disturbed annual grassland. Based on a review of California Natural Diversity Database (CNDDDB) records (CDFW 2023), the Project site is within the geographic range of several special status animal species including but not limited to the State Threatened (ST) Swainson's hawk (*Buteo swainsoni*); the State Candidate for listing as Endangered (SCE) Crotch's bumble bee (*Bombus crotchii*); and the State Species of Special Concern (SSC) burrowing owl (*Athene cunicularia*).

To evaluate Project-related impacts to listed species, SSC species, and unlisted biological species, CDFW recommends that a general habitat assessment be conducted as part of the biological technical studies conducted in support of the Draft EIR. CDFW recommends that this general habitat assessment be followed with specific protocol surveys for the following listed species.

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## **Swainson's Hawk**

Swainson's hawks (SWHA) have been observed approximately 0.75-mile southwest of the proposed Project site in 2023. SWHA have also been observed approximately 0.09-mile southeast of the proposed Project site in 2016 (CDFW 2023). SWHA are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Additionally, SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). Based on aerial imagery, the Project location and adjacent areas contain suitable habitat for SWHA foraging, and there are trees located within the vicinity of the Project site that may provide suitable nesting habitat.

The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat. CDFW recommends the CEQA document prepared for this Project address potential impacts to SWHA by including both mitigation for loss of foraging habitat and appropriate avoidance and minimization measures resulting from an analysis of potential impacts to nesting habitat beginning with protocol surveys as described below.

CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) as part of the biological technical studies conducted in support of the Draft EIR.

In addition to conducting SWHA surveys, CDFW recommends the Project mitigate for loss of SWHA foraging habitat as described in Recommended Mitigation Measure 4 below. CDFW also recommends the Draft EIR include the following information and measures:

### **Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction**

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and project construction, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC, 2000), be repeated the survey season immediately prior to construction. 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.

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### **Recommended Mitigation Measure 2: 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.

### **Recommended Mitigation Measure 3: 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.

### **Recommended Mitigation Measure 4: SWHA Foraging Habitat Mitigation**

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

### **Crotch's Bumble Bee**

Crotch's bumble bee (CBB) is known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. CBB was once common throughout most of central and

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southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years. The Project site appears to contain a mix of native and non-native grasses. As such, CBB could potentially use the habitats within the Project site for foraging or nesting.

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the Draft EIR to determine if the Project site or its immediate vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023a), as part of the biological technical studies conducted in support of the Draft EIR.

In addition to conducting protocol surveys for CBB, CDFW recommends the Draft EIR include the following measures:

**Recommended Mitigation Measure 5: CBB Surveys Prior to Construction**

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and project construction, CDFW recommends that additional surveys, following the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023a), be repeated the blooming period immediately prior to construction.

**Recommended Mitigation Measure 6: CBB Avoidance Buffer**

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

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### **Recommended Mitigation Measure 7: CBB Take Authorization**

If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

### **Burrowing Owl**

The Project site is within the known geographic range of the burrowing owl (BUOW). The dirt lined American Colony Canal (approximately 0.16-mile west of the Project site) may provide potential habitat for this species along with grassland areas in the vicinity. BUOW inhabit open grasslands containing small mammal burrows, a requisite habitat feature used by this species for nesting and cover. Based on aerial imagery, the Project site and areas nearby appear to contain suitable habitat for BUOW nesting and foraging.

As BUOW have the potential to nest and/or forage within the Project site, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) as part of the biological studies conducted in support of the Draft EIR.

In addition to conducting BUOW surveys, CDFW recommends the Draft EIR include the following measures:

### **Recommended Mitigation Measure 8: BUOW Surveys Prior to Construction**

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and project construction, CDFW recommends that additional surveys, following the "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) be repeated the survey season immediately prior to construction.

### **Recommended Mitigation Measure 9: BUOW Avoidance Buffer**

Should a BUOW be detected, CDFW recommends that no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW

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verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

### **Recommended Mitigation Measure 10: BUOW Passive Relocation and Mitigation**

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), excluding birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. Avoidance of direct impacts to BUOW and BUOW eggs and chicks is necessary to avoid violations of Fish and Game Code Sections 3503 (taking or destroying nests or eggs, 3503.5 (take of birds of prey or their eggs), and/or 3513 (take of migratory non game birds). However, if it is necessary for Project implementation, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of one (1) burrow collapsed to one (1) artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance at a rate that is sufficient to detect BUOW if they return.

### **Nesting Birds**

CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological



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technical studies conducted in support of the CEQA document. Depending on the results of that assessment, CDFW further recommends that the CEQA document for this Project include that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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

**Artificial Lighting:** Installation of outdoor artificial night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). Project activities could result in disruption of wildlife behavior, inadvertent injury, or mortality.

CDFW recommends that the Draft EIR for the Project include an analysis of the impacts of artificial lighting on biological resources and incorporate enforceable mitigation measures to decrease the impacts of artificial outdoor lighting on wildlife species. Potentially feasible mitigation measures include motion sensitive lighting; mounting light fixtures as low as possible to minimize light trespass; use of light fittings that direct and

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confine the spread of light downward; and use of long-wavelength light sources. In addition, CDFW recommends that lighting not be installed in ecologically sensitive areas (e.g., streams, wetlands, and habitat used by special status species, such as nesting/roosting sites and riparian corridors) and the use of the white/blue wavelengths of the light spectrum be avoided.

**Project Alternatives Analysis:** CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the Project's Draft EIR be used to develop and modify the Project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, CDFW advises that remaining impacts to sensitive biological resources be mitigated to reduce impacts to a less than significant level, if feasible.

**Cumulative Impacts:** CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). Cumulative impacts are recommended to be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should also be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends closely evaluating the need for a cumulative impacts analysis for the following species, at a minimum, as part of the Draft EIR: SWHA, CBB, and BUOW.

CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

## 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 found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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## FILING FEES

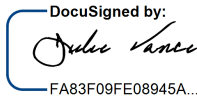
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 NOP to assist the City of Fresno in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194 or by electronic mail at [Kelley.Nelson@wildlife.ca.gov](mailto:Kelley.Nelson@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

ec: State Clearinghouse  
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**Attachment 1**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)**

**PROJECT: Pape Materials Handling Project**

**SCH No.: 2023110477**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA surveys prior to construction	
Recommended Mitigation Measure 3: SWHA take authorization	
Recommended Mitigation Measure 4: SWHA foraging habitat mitigation	
CBB	
Recommended Mitigation Measure 5: CBB surveys prior to construction	
Recommended Mitigation Measure 7: CBB take authorization	
BUOW	
Recommended Mitigation Measure 8: BUOW surveys prior to construction	
Recommended Mitigation Measure 10: BUOW passive relocation and mitigation	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
BUOW	
Recommended Mitigation Measure 9: BUOW avoidance buffer	
Recommended Mitigation Measure 6: CBB avoidance buffer	