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From: Donaldson, Hailey@Wildlife
Sent: Wednesday, September 10, 2025 3:24 PM
To: planning@ci.jackson.ca.us
Cc: Wildlife R2 CEQA; Wood, Dylan@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: CDFW Comments on the Oro De Amador Remedial Action Plan - Mitigated Negative Declaration; SCH No. 2025080224

Dear Susan Peters:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from the City of Jackson for the Oro De Amador Remedial Action Plan (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.^[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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. (Fish & G. Code, § 1802). Similarly for purposes of CEQA, CDFW provides, 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 may also act 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

The Project site is located in the center between Jackson Gate Road and New York Ranch Road, in the City of Jackson, Amador County; Assessor's Parcel Numbers: 020-070-031, 020-070-037, and 020-070-040.

The Project consists of remediation of soils contaminated with arsenic on an approximately 160 acre site that was historically used for mine tailings from the former Kennedy Mine and preparation for public recreational use. The plan involves on-site consolidation of contaminated materials and capping with clean soil. The recreational improvements include sports fields, trails, and solar arrays.

The Project description should include the whole action as defined in the CEQA Guidelines section 15070 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment staging areas, spoils areas, adjacent infrastructure development, and access and haul roads if applicable.

COMMENTS AND RECOMMENDATIONS

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

CDFW is primarily concerned with the project impacts to rare plants, mature trees, bats, western pond turtles, and nesting birds and raptors.

COMMENT 1: Rare Plants, MND Background Page 16.

Issue: The MND identified five special-status plants with the potential to be present within the project area, and the MND considers the project to not have any impacts to special-status plants because project plans are not located 200 feet of the lakebed. However, the species listed also have a likelihood of being present in upland areas where excavation to remove contaminated soils as well as project development are planned, yet no measures were proposed to avoid or minimize impacts to the rare, native plant species listed. The species listed inhabit the Sierra Nevada foothills, including habitats such as dry sandy slopes, and acidic soil in chaparral, woodland, and forests all of which are habitat types present within the Project Area. Because measures are not proposed, impacts to special-status plants could be considered significant.

Recommendation or Recommended Mitigation Measure: CDFW recommends the following measure to avoid impacting the rare plants identified in the MND that are within 10-miles of the Project Site including:

- Bisbee Peak rush-rose (*Helianthemum suffrutescens*)
- lone manzanita (*Arctostaphylos myrtifolia*)
- lone buckwheat (*Eriogonum apricum var. apricum*)
- Parry's horkelia (*Horkelia parryi*)
- Red Hills soaproot (*Chlorogalum grandiflorum*)

Rare Plant Surveys. In accordance with the recommendations of the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and natural Communities, a minimum of two focused rare plant surveys shall be conducted prior to construction during the blooming season for the species listed above (May-July). Surveys shall be spaced a minimum of three weeks apart during the blooming period. Exact survey timing shall be determined by the qualified biologist. Survey results shall be summarized in a Botanical Survey Report consistent with the Protocols for Surveying and Evaluating Impacts to special-status Native Plant Populations and Natural Communities. If rare plants are discovered during these surveys, the Project Proponent shall coordinate with City of Jackson to develop

a plan for avoiding project impacts to rare plants. The project may not commence until an avoidance and minimization plan is approved by the City of Jackson.

COMMENT 2: Mature Tree Removal Mitigation, MND Background, Page 16 and 17.

Issue: While the MND includes 3:1 mitigation for tree removal of trees with a Diameter at Breast Height (DBH) of greater than or equal to 16 inches, and Planning Commission approval under the City of Jackson Development Code, Article III, Chapter 17.40 for trees with a DBH of 8 inches or greater, trees with a DBH of 4 inches or greater can be considered mature vegetation, and thus, important contributors to the ecological value of the habitat and canopy cover in the environment. Studies suggest that bats select roost sites in trees with DBHs as low as 6.6 inches (Brigham et al. 1997) therefore, removal of trees within the Project Area as planned by the Project Proponent will reduce the availability of roosting habitat for bats, which may be considered a significant impact to biological resources if not mitigated for.

Recommendation or Recommended Mitigation Measure: CDFW recommends the following measures to ensure that removal of mature trees providing potential nesting bird and bat roosting habitat within the Project Area is properly mitigated for.

Mature Tree Mitigation. CDFW recommends replanting all native trees removed with a DBH greater than 4 inches at a of 5:1 ratio. Replacement trees should be of native origin and to the extent feasible, trees should be planted on-site. If on site mitigation is not feasible, in-kind mitigation can be considered for an alternate location, or a donation to a local tree mitigation program or conservation fund could be considered. CDFW also recommends that a qualified biologist supervise vegetation removal to ensure compliance with mitigation requirements and avoid impacting wildlife during the removal.

COMMENT 3: Draft Final RAP: Pre-Construction Bat Surveys and Suitable Roost Tree Removal, Section 9.3.2, Pre-Construction Biological Surveys and Delineation, Page: 193.

Issue: It is not stated in the MND that the project will or will not impact roosting bats in the Project Area. The MND should address, avoid, and minimize impacting tree roosting bat species potentially roosting in mature trees within the Project area. The removal of suitable tree roosting habitat is not adequately analyzed or minimized through the proposed avoidance and minimization measures. Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). Several bat species are also considered Species of Special Concern (SSC), which meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines §15065); therefore, impacts may be considered potentially significant unless adequate mitigation is incorporated.

CDFW recommends that the Project Proponent include surveys prior to tree removal for bats that are likely to roost in trees in Amador County including: the big brown bat (*Eptesicus fuscus*), California myotis (*Myotis californicus*), western red bat (*Lasiurus blossevii*), western pipistrelle (*Pipistrellus hesperus*), silver-haired bat (*Lasionycteris noctivagans*), and Hoary bat (*Lasiurus cinereus*), and Townsend's big-eared bat (*Corynorhinus townsendii*).

Recommended Mitigation Measure: CDFW recommends that the number, species, and size of the trees to be removed are included in the Removal of Vegetation section 9.4.1/9.5.1 of the RAP as well as a discussion on how this will or will not be a significant impact to tree roosting bat species. It is also

recommended that the following bat survey measure be included in the RAP under section 9.3.2, Pre-Construction Biological Surveys and Delineation, Page: 193.

Bat Pre-Construction Surveys and Suitable Roost Tree Removal. A CDFW-approved qualified biologist shall conduct a habitat assessment for potentially suitable bat tree roosting habitat, March 1 to April 15 or August 31 to October 15 prior to Project activities. If the habitat assessment reveals suitable bat habitat within trees, and tree removal is scheduled from April 16 through August 30 and/or October 16 through February 28, then presence/absence surveys shall be conducted two to three days prior to any tree removal or trimming. If presence/absence surveys are negative, then tree removal may be conducted by following a two-phased tree removal system. If presence/absence surveys indicate bat occupancy, then the occupied trees shall only be removed from March 1 through April 15 and/or August 31 through October 15 by following the two-phased tree removal system. The two-phased removal system shall be conducted over 2 consecutive days and under supervision of a qualified biologist. On the first day (in the afternoon), limbs and branches are removed by a tree cutter using chainsaws or other hand tools only. Limbs with cavities, crevices, or deep bark fissures are avoided, and only branches or limbs without those features are removed. On the second day, the entire tree shall be removed. Project proponents should consult with a qualified bat biologist to determine suitable buffers around roost and/or hibernaculum sites. Buffers may vary depending on species and Project activity being performed.

COMMENT 4: Western Pond Turtle, MND Background, Page 16.

Issue: The MND highlights the potential for western pond turtle (*Actinemys marmorata*) within the Project Site, and while the project activities are not planned to be within the waterbody on the Project Site, there is still a likelihood of impacting this species in surrounding upland areas if pre-construction surveys are not implemented and avoidance and minimization measures are not adopted.

Western pond turtles require terrestrial habitat for nesting, basking, migration or dispersal, overwintering and aestivation. Oviposition typically occurs from May through July. Females travel an average of 51 meters from water to excavate nests in upland areas with sparse vegetation and direct sunlight exposure. The nests depth generally occur between 9 to 12 centimeters below the surface. The incubation period for eggs typically ranges from 80 to 126 days. (USFWS 2023). Between September and December, western pond turtles have been found to migrate an average distance of 203 meters (666 feet) from water bodies to overwintering habitats (Reese & Welsh, 1997). The MND does not address the potential for nesting/overwintering habitat in the uplands within the Project Area making it difficult to assess the potential for impacts that the project may have on this species. From a desktop review, the upland habitat surrounding the Lake within the Project Area appears to be suitable for western pond turtle nesting which if not addressed through pre-construction surveys, could result in the potential for direct harm to female turtles during Project Activities (i.e. crashed or impinged) while traveling from the water to a potential nest site. If buffers are not established around active nests during construction, there is also potential for noise and visual disturbances to cause females to abandon nesting activities. If there is an active nest in the Project site, there is potential for the nest to be directly harmed (i.e. crashed) during ground disturbing activities. Western pond turtles are a threatened species under the Federal Endangered Species Act (ESA). Therefore, impacts to western pond turtles may be considered potentially significant unless adequate mitigation is incorporated. Western pond turtle populations have declined in the past due to habitat fragmentation resulting from increased urban development and leading to loss of genetic diversity over time (USFWS, 2023).

Recommendation or Recommended Mitigation Measure: CDFW recommends that the following Mitigation Measure be included in the RAP: Section 9.3.2, Pre-Construction Biological Surveys and Delineation Page: 193 to avoid impacting western pond turtles which may be utilizing upland habitat within the Project Area.

Western Pond Turtle. Within 24 hours prior to initiation of construction or ground-disturbing activities, a qualified biologist shall survey the site for western pond turtles and/or their nests. If western pond turtle is encountered during surveys, a site specific avoidance, minimization, and/or relocation plan shall be prepared for review and approval by the City of Jackson. This plan shall be submitted prior to starting construction activities within the areas where pond turtles were discovered. All the measures included in the approved plan shall be implemented during project activities.

COMMENT 5: Nesting Birds and Raptors, Draft Final RAP: Section 9.3.2, Pre-Construction Biological Surveys and Delineation – Nesting Raptors, Page: 193 & MND: background, Page 16.

Issue: Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implemented the MBTA by adopting the Fish & G. Code section 3513. Fish & G. Code sections 3503, 3503.5 and 3800, which provide additional protection to nongame birds, birds of prey, their nests and eggs. Suitable foraging and nesting habitat for birds and birds of prey is present on and adjacent to the Project area. Ground disturbance and other construction activities could result in the take of migratory native bird species, including ground nesting species such as Killdeer (*Charadrius vociferus*) and California Quail (*Callipepla californica*). Currently the MND does not mention any potential impacts that the Project Activities may have on nesting birds and the RAP does not include pre-construction surveys for nesting birds and only includes a pre-construction survey for nesting raptors which will not effectively reduce or avoid impacts on other birds and their nests if work takes place between February 1 and August 31, and it also does not include avoidance procedures if active nests are found in the Project Area both of which are considered significant impacts unless mitigation measures are incorporated.

Recommendation or Recommended Mitigation Measure: CDFW recommends that the following Mitigation Measure be included in the RAP: Section 9.3.2, Pre-Construction Biological Surveys and Delineation Page: 193.

Nesting Bird Survey. If project-related activities are scheduled between February 1 to August 31 (the typical nesting season), a focused survey for nests shall be conducted by a qualified biologist within no greater than fifteen (15) calendar days prior to the beginning of Project-related activities. A qualified biologist shall survey a minimum radius of 500-feet for migratory birds and 1/2-mile for raptors around the Project area that can be accessed by the project proponent. The results of the survey shall be provided to the City of Jackson upon completion. If no active nests are found, project activities may proceed as scheduled.

Active Nests. If an active nest is found, active nests should be avoided, and a no disturbance or destruction buffer shall be determined and established by a qualified biologist. The buffer shall be kept in place until after the breeding nesting season or the qualified biologist confirms the young have fledged, are foraging independently, and the nest is no longer active for the season. The extent of these buffers shall be determined by the qualified biologist and will depend on the species present, the level of noise or construction disturbance, line of sight between the nest and

the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.

Project Delay. If a lapse in project-related work of fourteen (14) calendar days or longer occurs, the qualified biologist shall complete another focused survey before Project work can be reinitiated.

Project Proponent Responsibility. It is the project proponent responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.

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 found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the for the Oro De Amador Remedial Action Plan to assist City of Jackson in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Hailey Donaldson, Environmental Scientist at (916) 216-6253 or hailey.donaldson@wildlife.ca.gov.

Sincerely,

Morgan Kilgour
Regional Manager

cc: Dylan Wood, Senior Environmental Scientist (Supervisory)
Hailey Donaldson, Environmental Scientist
Department of Fish and Wildlife

Office of Land Use and Climate Innovation, State Clearinghouse, Sacramento

REFERENCES

- Bringham M.R., M.J. Vonhof, R.M. Barclay, and J.C. Gwilliam. (1997) Roosting Behavior and Roost-site Preference of Forest-Dwelling California Bats (*Myotis californicus*). *Journal of Mammalogy*. 78(4): 1231-1239.
- Reese D.A. & H.H. Welsh. (1997) Use of Terrestrial Habitat by Western Pond Turtles, (*Clemmys marmorata*): Implications for Management. *Conservation, Restoration, and Management of Tortoises and Turtles*. 352-357
- U.S. Fish and Wildlife Service. (2023) U.S. Fish and Wildlife Service proposes federal protections for both species of western pond turtle. [U.S. Fish and Wildlife Service proposes federal protections for both species of western pond turtle under the Endangered Species Act | U.S. Fish & Wildlife Service](#)

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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.