



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 28, 2024

Alyssa Kroeger, Housing Program Manager
City of Pacific Grove
Community Development Department
300 Forest Avenue, 2nd Floor
Pacific Grove, California 93950
(831) 648-3127
akroeger@cityofpacificgrove.org

Governor's Office of Planning & Research

Feb 28 2024

STATE CLEARINGHOUSE

**Subject: Pacific Grove Housing Element Update, Zoning Amendments, and
General Plan Amendments Project (Plan)
Notice of Preparation (NOP)
SCH No.: 2024010897**

Dear Alyssa Kroeger:

The California Department of Fish and Wildlife (CDFW) received a Notice of preparation (NOP) to prepare a Draft Environmental Impact Report (DEIR) from the City of Pacific Grove Development Department (City of Pacific Grove) for the Pacific Grove Housing Element Update, Zoning Amendments, and General Plan Amendments Project (Plan) pursuant to 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 Plan that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Plan that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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 & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines

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.

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Section 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., Section 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, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, reasonably foreseeable future project's tiered from this Plan may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, Section 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future project's tiered from this Plan may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code may 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, 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).

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. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

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PROJECT DESCRIPTION SUMMARY

Proponent: City of Pacific Grove

Objective: The proposed Plan consists of the following components: 1) Housing Element update, which includes a program to rezone sites in the Commercial-Forest Hill, Commercial-Downtown, and some Unclassified districts; 2) Zoning Amendments to implement Housing Element Programs, including updates to the zoning map; and 3) associated General Plan Amendments. The draft Housing Element was submitted to the California Housing and Community Development Department (HCD) for the first round of HCD review on November 2, 2023, and is undergoing revisions to address HCD comments. The zoning amendments would include modifications to the Zoning Code to meet target densities as well as compliance with State housing laws as identified in the Housing Element. The Land Use Element would be updated for consistency with the Housing Element update and Zoning Amendments. The Health & Safety Element update would involve updated information, policies, and implementation measures consistent with the current requirements of State law. This includes additional details related to evacuation routes and emergency access.

Location: The City of Pacific Grove

Comments and recommendations

CDFW is unable to provide substantive comments due to the limited General Plan information provided. Many special-status plant and animal species in the proposed Plan area have been reported to the California Natural Diversity Database (CNDDDB) (CDFW 2024). The following species should be considered as part of the DEIR that will be drafted for this Plan:

The federally endangered steelhead - south-central California coast DPS (*Oncorhynchus mykiss irideus*); State and federally endangered California jewelflower (*Caulanthus californicus*), least bell's vireo (*Vireo bellii pusillus*), Menzies' wallflower (*Erysimum menziesii*), Tidestrom's lupine (*Lupinus tidestromii*), and foothill yellow-legged frog - south coast DPS (*Rana boylei*); State endangered and federally threatened beach layia (*Layia carnosa*); State and federally threatened California tiger salamander - central California DPS (*Ambystoma californiense*); State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*); State endangered Santa Lucia mint (*Pogogyne clareana*); State rare adobe sanicle (*Sanicula maritima*) and Pismo clarkia (*Clarkia speciosa ssp. immaculata*); Candidate endangered Crotch's bumble bee (*Bombus crotchii*) and Western bumble bee (*Bombus occidentalis*); State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and Monterey gilia (*Gilia tenuiflora*); State threatened bank swallow (*Riparia riparia*), California black rail (*Laterallus jamaicensis coturniculus*), and tricolored blackbird (*Agelaius tricolor*);

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State fully protected American peregrine falcon (*Falco peregrinus anatum*), golden eagle (*Aquila chrysaetos*), and white-tailed kite (*Elanus leucurus*); and State species of special concern American badger (*Taxidea taxus*), black swift (*Cypseloides niger*), coast horned lizard (*Phrynosoma blainvillii*), coast range newt (*Taricha torosa*), Monterey dusky-footed woodrat (*Neotoma macrotis luciana*), Monterey hitch (*Lavinia exilicauda harengus*), Northern California legless lizard (*Anniella pulchra*), Northern harrier (*Circus hudsonius*), Pacific lamprey (*Entosphenus tridentatus*), pallid bat (*Antrozous pallidus*), purple martin (*Progne subis*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), Salinas pocket mouse (*Perognathus inornatus psammophilus*), Southern coastal roach (*Hesperoleucus venustus subditus*), Townsend's big-eared bat (*Corynorhinus townsendii*), western pond turtle (*Emys marmorata*), western mastiff bat (*Eumops perotis californicus*), western spadefoot (*Spea hammondi*), and yellow warbler (*Setophaga petechia*).

California Endangered Species Act

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to CESA. In the event that species listed under CESA are 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 a State Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. In addition, CDFW advises that mitigation measures for the CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from this Plan.

CDFW therefore recommends that the DEIR for this Plan include information related to these requirements and advises that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to CESA listed species may require the need to obtain a 2081 ITP.

Botanical Surveys

CDFW recommends that the DEIR for this Plan include a measure requiring that each project implemented within the Plan area be surveyed by a qualified botanist for any possible special-status plants following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) as part of the biological technical studies completed in support of the CEQA documents tiered from this Plan. CDFW recommends that the plant surveys be floristic and utilize a known reference site for any special status plants in order to provide a high level of confidence in the effort and results.

If a special status plant is found, CDFW recommends that the special status plant species be avoided whenever possible by delineating and observing a no disturbance

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buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species. If a State or federally listed plant species is identified during botanical surveys, consultation with CDFW and/or the USFWS is warranted to determine permitting needs.

Nesting birds

CDFW recommends that all projects tiered from this Plan occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), each future project applicant is responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate future project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of each project's CEQA document, and then conduct pre-activity surveys 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 each future project site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from each future 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 that 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 compelling biological or ecological reason to do so, such as when the construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise on any variance from these buffers and notify CDFW in advance of implementing a variance.

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Cumulative Impacts

Given that a general plan serves primarily as a planning tool and that future project-level CEQA documents are expected to be tiered from it, CDFW recommends that a cumulative impact analysis be conducted for all potential biological resources that will either be significantly or potentially significantly impacted by implementation of the Plan, 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 any future project, even if those impacts are expected to be relatively small (i.e. less than significant). CDFW recommends cumulative impacts 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 identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

Lake and Stream Alteration

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires project proponents 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; or (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 in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

CDFW therefore recommends that the DEIR for this Plan include information related to these requirements of Fish and Game code and advise that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to streams may require the need to obtain a 1600 LSAA.

CEQA Alternatives Analysis

CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Plan's DEIR be used to develop and modify the Plan's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. Please note that for all future projects tiered from this Plan, that when efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

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CNDDDB

Please note that the 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. All projects tiered from this Plan should adequately assess any potential project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology as warranted in order to determine whether or not any special status species are present at or near the project area.

Federally Listed Species

CDFW recommends consulting with the USFWS on potential impacts to federally listed species. 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 to comply with FESA is advised well in advance of any ground disturbing activities.

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, Section 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to 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. 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 Plan, 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, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

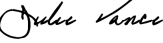
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Conclusion

CDFW appreciates the opportunity to comment on the NOP to assist the City of Pacific Grove in identifying and mitigating this Plan's impacts on biological resources.

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 Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

CESA R4CESA@wildlife.ca.gov
LSA R4LSA@wildlife.ca.gov
FWS steve_henry@fws.gov

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LITERATURE CITED

California Department of Fish and Wildlife. 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed February 2024.