



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
**FROM:** Council Member Daniel Davis  
**MEETING DATE:** September 20, 2006  
**SUBJECT:** CITY JURISDICTION OVER THE SUB-TIDAL LANDS OF PACIFIC GROVE

**RECOMMENDATION:**

**Request City Attorney to determine legal right of Pacific Grove to regulate the Pacific Grove Marine Gardens Refuge**

**DISCUSSION:**

The City Council has taken a firm stand encouraging the Department of Fish and Game to establish the Pacific Grove Marine Gardens Fish Refuge as a State Marine Reserve through the Marine Life Protection Act implementation process. So far the response of the state has been to propose the establishment of two marine reserves, one along the west side of the City from Point Pinos to Point Joe, and the other, extending the Hopkins Marine Reserve to Lover's Point. The DFG is also proposing to create a state marine conservation area between these two reserves and extending somewhat north.

These marine protected areas will completely enclose the sub-tidal lands deeded to the City. Chapter 14.04 of the Municipal Code establishes the City's sub-tidal lands as a City Marine Refuge.

**14.04.020 Unlawful acts.**

Anyone taking specimens of marine plant life, or who willfully disturbs, injures or destroys marine animal habitats or who removes sand, gravel, or rocks therefrom shall be guilty of a misdemeanor.

In 2005, the state designated the sub-tidal land of Pacific Grove as the Pacific Grove Marine Gardens State Marine Conservation Area. I received the enclosed letter from Frances Williams requesting the City to determine if it is legal for the State Department of Fish and Game to rename our refuge and divide it into three different sections with different regulations and different boundaries. Personally I believe the state has the legal right to rename the state designated marine conservation area, and establish different marine protected areas under the Marine Life Protection Act of 1999. However it seems to me that the City may retain the right to continue to regulate its sub-tidal lands as a Marine Refuge as designated in Chapter 14.04 of the Municipal Code. Note that the existing ordinance only regulates the taking of plant life, or

material forming the habitats of animals. It does not currently regulate fishing in the City's sub-tidal lands, or the taking of marine life other than plants.

The question I would like to raise is whether the City will continue to have the legal authority it has asserted in Chapter 14.04 independent of the MLPA process. Further does the City have the legal authority to regulate the taking of marine animals that inhabit its sub-tidal lands. Resolution of this issue will clarify for our citizens their municipal right to protect our sub-tidal lands independent of the state. Finally what is the current legal status of the City Marine Refuge given its long state legislative history (see attached letter).

**FISCAL IMPACT:**

Undetermined

**ATTACHMENTS:**

- Letter from Save Our Refuge Founder, Frances A. Williams
- Letter from Former Mayor Costello to the State Fish and Game Commission
- Save Our Refuge Petition

RESPECTFULLY SUBMITTED:

*Daniel Davis*

I have authored this document

Daniel Davis  
COUNCIL MEMBER

**“Save Our Refuge”**  
As the  
**Pacific Grove State Marine Reserve**

September 8, 2006

**To: Councilman Dan Davis  
Pacific Grove City Council**

**From: Frances A. Williams, Founder  
Save Our Refuge**

**As one of your constituents, and because of the overwhelming support we have had from residents and visitors on our “Save Our Refuge” petitions, (sample enclosed), I am respectfully requesting that you agendaize for the next City Council meeting on September 20, the issue of the Pacific Grove Marine Gardens Fish Refuge being designated into perpetuity as the Pacific Grove Marine Gardens State Marine Reserve in its entirety.**

**If it takes a Council letter to Governor Schwarzenegger or a Resolution reaffirming Council support for a State Marine Reserve designation (letter of April 19, 2006) to the Fish and Game Commission, I urge this to be done as soon as possible.**

**I understand you served on the third MLPA stakeholders group as an alternate, and have a much better understanding of the process than most citizens. Many of us believe it was an outrageous affront that the City of Pacific Grove was not included in the process when it was our refuge that was being fragmented. I cannot see how this serves the best interests of our city or its citizens, and must be protested.**

**As you are aware, my husband Florus Williams served as Mayor of Pacific Grove from 1976 to 1986. He was involved in city government during the period when Senator Fred Farr carried the state legislation to establish the Marine Gardens Refuge in 1963 at the request of his Pacific Grove constituents. We cherish our marine resources as evidenced by past and current marine preservation citizen activism.**

**Based upon the following documents which I can easily furnish to you upon request, I do not believe what the Fish and Game Commission and Department are proposing is legal in terms of renaming our refuge into three different sections with different regulations and different boundaries. Although I believe all of the documents are available to the city attorney, I can provide whatever is necessary to substantiate this request.**

- 1. The deed of 1931 from the State of California to the City of Pacific Grove of its waterfront out to a depth of 60 feet.**
- 2. S.B. 1006 establishing the Pacific Grove Marine Gardens Fish Refuge in 1963. ((Senator Farr)**
- 3. S.B. 1812 expanding the boundaries of the Pacific Grove Marine Gardens Fish Refuge to match the city boundaries in 1984. (Senator Mello)**

4. **City Charter, Article 3. Inalienable Rights of City to its waterfront.**
5. **Local Coastal Parks Plan, Chapter 6, Marine Resources .**
6. **Citywide ballot initiative "Pacific Grove Marine Gardens Fish Refuge Marine Conservation and Protection initiative adopted as local law June, 2000 based on Department of Fish and Game Code 1002(h). Pacific Grove Municipal Code 00-12.**

**Succinctly, I am requesting the City Council reinforce to Governor Schwarzenegger, who jumpstarted this third MLPA process, the Fish and Game Commission and Fish and Game Department that it is the will of the people of Pacific Grove that our refuge be kept intact as the Pacific Grove Marine Gardens State Marine Reserve.**

**It is clear our oceans are in crisis (Pew Foundation Report), that 87% percent of Californians favor greater coastal protection, and that the people of Pacific Grove will not support any proposals that deprive the city of its marine heritage and legacy.**

**Please call me if you would like to meet regarding this matter, but I strongly urge you to place this matter on the agenda as there is a 45 day period for recommended changes following the August 15, 2006 Fish and Game decision on the central coast proposal P.**

**I believe this matter is of an urgent nature, not only for residents living here now, but for future generations. We cannot allow the State to usurp our rights of ownership without legal challenge.**

**Perhaps most egregious about Proposal P is that the City of Pacific Grove was left out of the decision making process during the MLPA stakeholders meetings, the Blue Ribbon Task Force deliberations and the Fish and Game Commission's decision. It is not in the best interests of Pacific Grove for the City Council to sit idly by while the destiny of our refuge is at risk.**

**Thank you.**

**Frances Williams  
65 Companion Way  
Pacific Grove, Ca. 93950  
375-6047**

*Frances Williams*



## CITY OF PACIFIC GROVE

300 FOREST AVENUE  
PACIFIC GROVE, CALIFORNIA 93950  
TELEPHONE (831) 648-3100  
FAX (831) 657-9361

April 19, 2006

California State Fish and Game Commission  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

*Re: MLPA: establishment of marine protected areas in the Central Coast region*

Dear Commissioners:

This is to advise you that pursuant to its recent vote on the issue, the City Council of the City of Pacific Grove urges you to support total State Marine Reserve status for the entire Pacific Grove coastline out to a depth of 60 feet.

The current stakeholder proposals now before you, while some are better than others in terms of the ocean conservation goals the MLPA seeks to achieve, still fall short of the full protection that this precious and overstressed area needs.

The people of Pacific Grove have long worked for protection of their ocean resources and this is simply a reflection of this long time concern. Thank you for your consideration in this matter.

Sincerely,

James W. Costello, Mayor  
City of Pacific Grove

cc: Ryan Brodderick, Department of Fish and Game  
John Ugoretz, Department of Fish and Game  
James Colangelo, City Manager, City of Pacific Grove  
Jim and Lee Willoughby, Tidepool Coalition

**SAVE OUR REFUGE**  
**AS THE**  
**Pacific Grove State Marine Reserve**

**We, the undersigned voters of Pacific Grove, residents and visitors wish to speak out against the Fish and Game Commission selecting any proposal that would designate or fragment the Pacific Grove Marine Garden Fish Refuge as anything less than a State marine Reserve. This refuge must be left intact and undisturbed for the enjoyment of the public now and in the future. This is what the people of Pacific Grove intended in their initiative of 2000, and it is a fact the City owns its refuge.**

**NAME**

**ADDRESS**

**TELEPHONE/E-MAIL (OPTIONAL)**

*over 1200  
signatures*