



Office of The Mayor

REVISED AGENDA MATERIAL

Meeting Date: March 19, 2024

Item Number: #8

Item Description: East Bay Hills Wildfire Prevention Coordinating Group
Representative Selection

Submitted by: Mayor Jesse Arreguín

Added Resolution to the item.



Office of the Mayor

CONSENT CALENDAR
March 19, 2024

To: Honorable Members of the Berkeley City Council

From: Mayor Jesse Arreguín

Subject: East Bay Hills Wildfire Prevention Coordinating Group Representative Selection

RECOMMENDATION

Adopt a Resolution to appoint Vice Mayor Susan Wengraf as the City of Berkeley's Representative Member to the East Bay Hills Wildfire Prevention Coordinating Group, and Councilmember Mark Humbert as the Alternate.

FINANCIAL IMPLICATIONS

None

CURRENT SITUATION AND ITS EFFECTS

On November 21st 2023 Council adopted Resolution No. 71, 104-N.S. approving the Memorandum of Understanding for Coordination of Wildfire Prevention Activities to Protect the East Bay Hills in Alameda and Contra Costa Counties.

The Memorandum of Understanding calls for the formation of a Wildfire Prevention Coordinating Group (WPCG). This requires each Participating Agency to appoint one member and one alternate from its governing body to serve on the WPCG.

Vice Mayor Susan Wengraf has championed wildfire prevention and safety planning since her days as Chief of Staff to former Councilmember Betty Olds in the early 1990's. Vice Mayor Wengraf has unofficially represented Berkeley as one of the original people involved in the formation of this group and attended every meeting since its inception.

Councilmember Mark Humbert represents the district devastated by the 1991 Tunnel fire. The U.S. Forest Service called the Tunnel fire "one of the worst fires involving loss of life and property since the Great San Francisco Earthquake and Fire of 1906", noting at the time, "Only those who fought the Chicago Fire last century and those who battled the Great Fire in San Francisco would be able to identify with this conflagration and firestorm." Additionally, Councilmember Humbert represents the City's only Environmental Safety-Residential (ES-R) district, the Panoramic Hill area, which is exceptionally vulnerable to severe damage or destruction from fire and earthquake hazards.

BACKGROUND

On September 14, 2021, City Council unanimously approved Resolution No. 70,029-N.S. Expressing Conceptual Support for the Formation of An East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency (JPA). Ultimately the municipalities, counties and fire districts decided to establish a coordinating group via a Memorandum of Understanding as an alternate structure to a JPA.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Wildfire prevention aligns with the City's strategic goal of addressing climate change.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7160

Attachments:

- 1: Resolution
- 2: Memorandum of Understanding (MOU)

RESOLUTION NO. ##,###-N.S.

WILDFIRE PREVENTION COORDINATING GROUP REPRESENTATIVE SELECTION

WHEREAS, on November 21st 2023 Council adopted Resolution No. 71, 104-N.S. approving the Memorandum of Understanding for Coordination of Wildfire Prevention Activities to Protect the East Bay Hills in Alameda and Contra Costa Counties; and

WHEREAS, The Memorandum of Understanding calls for the formation of a Wildfire Prevention Coordinating Group (WPCG). This requires each Participating Agency to appoint one member and one alternate from its governing body to serve on the WPCG; and

WHEREAS, Vice Mayor Susan Wengraf has championed wildfire prevention and safety planning since her days as Chief of Staff to former Councilmember Betty Olds in the early 1990's. Vice Mayor Wengraf has unofficially represented Berkeley as one of the original people involved in the formation of this group and attended every meeting since its inception; and

WHEREAS, Councilmember Mark Humbert represents the district devastated by the 1991 Tunnel fire, and the City's only Environmental Safety-Residential (ES-R) district, the Panoramic Hill area, which is exceptionally vulnerable to severe damage or destruction from fire and earthquake hazards.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it appoints Vice Mayor Susan Wengraf as Berkeley's Representative Member to the Wildfire Prevention Coordinating Group (WPCG) and Councilmember Mark Humbert as the Alternate.

**MEMORANDUM OF UNDERSTANDING FOR COORDINATION OF WILDFIRE
PREVENTION ACTIVITIES TO PROTECT THE EAST BAY HILLS IN ALAMEDA AND
CONTRA COSTA COUNTIES**

This Memorandum of Understanding ("MOU") is entered into as of _____, 2023, (the "Effective Date") by and between the following agencies (referred to herein individually as a "Participating Agency" and collectively as the "Participating Agencies"):

[[List of agencies]]; and any other New Participating Agency in accordance with Section 4 of this MOU.

Recitals

A. The East Bay Hills along the border of Alameda and Contra Costa Counties, and extending north to Hercules and south to Fremont, is a high wildfire risk zone. As wildfires do not respect political boundaries, fire prevention and vegetation management are regional efforts that require coordination among the many jurisdictions, fire districts, and other regional agencies in the East Bay wildfire zone.

B. While there are strong regional coordinating efforts that have been long established, the pace of climate change and its impacts to wildfire in the region call for more coordination at the governing body level. With support from community organizations concerned with wildfire prevention, a group of public officials representing the counties, municipalities and fire districts in the East Bay Hills has come together to form a structure for elected officials to meet their common goals regarding regional wildfire prevention, including providing governance and policy support towards regional efforts to lobby for legislation and funding, improve grant funding and wildfire hazard reduction, resulting in the development, execution and implementation of this MOU. This group desires for the Counties of Alameda and Contra Costa, together with all municipalities and fire districts in the East Bay Hills that include areas in high wildfire risk zones, as determined by the California Department of Forestry and Fire Protection (CAL FIRE), to sign this MOU.

C. Each of the Participating Agencies performs wildfire prevention activities, including but not limited to adopting and implementing fire codes; enforcing weed/overgrown vegetation hazard abatement standards; planning, coordinating and applying for local and regional grants, implementing wildfire hazard identification and mitigation programs; and engaging in separate and joint wildfire emergency response planning.

D. Staff members of certain Participating Agencies currently work together on common endeavors, particularly within Contra Costa County and within Alameda County. These efforts are expected to continue. The Participating Agencies desire to better coordinate these activities at both the governing body and staff levels to improve their efficacy and efficiency, with the shared goal of increasing each Participating Agency's respective level of service to the residents and property owners in the region.

E. In furtherance of this goal, the Participating Agencies desire to create and benefit from opportunities for cross-agency governing body communication and cooperation related to wildfire prevention in the East Bay Hills, without altering any of the Participating Agencies' jurisdictional boundaries, existing cooperative efforts at the staff or Board/Council levels, or create new legal authorities.

F. The Counties of Alameda and Contra Costa are subdivisions of the State of California with responsibility for adopting and enforcing Fire Codes within all unincorporated

areas of the County, though separate fire protection districts and municipalities provide fire prevention and suppression services throughout the entire County.

G. The municipalities of [list of municipalities] are municipal corporations located in Alameda and Contra Costa Counties with responsibility for providing fire prevention and fire and emergency response services within their respective jurisdictions, whether directly or by contract with a local fire protection district.

H. The municipalities of [list of municipalities] are municipal corporations located in Alameda and Contra Costa Counties in which fire prevention and fire and emergency response services are provided by local fire protection districts.

I. Each of the counties listed in Recital F, above, is responsible for ratifying a Fire Code, and enforcing portions thereof, within the unincorporated portions of its respective jurisdiction.

J. Each of the municipalities listed in Recitals G and H, above, is responsible for ratifying a Fire Code, and enforcing portions thereof, within its respective jurisdiction.

K. The [list of fire protection districts] Districts are organized under the Fire Protection District Law of 1987 (Health & Safety Code § 13800 et seq.) to provide fire prevention and suppression services within their jurisdictions within portions of Alameda and Contra Costa Counties.

NOW THEREFORE, the Participating Agencies agree as follows:

1. **Shared Intent.** The Participating Agencies desire to collaborate on strategies and activities to minimize wildfire hazards in the East Bay Hills by:

A. Providing regional coordination among elected officials and policy support to fire chiefs and their staff in developing model fire codes.

B. Providing regional coordination among elected officials and policy support to fire chiefs and their staff in developing and implementing joint plans to reduce flammable wildland vegetation and replace it with wildfire resistant vegetation where appropriate.

C. Working with regional partners including the Hills Emergency Forum and local fire chiefs to identify and apply for state, federal or other funds to assist with wildfire risk mitigation activities including (but not limited to) risk identification, planning, and vegetation removal from public and private lands, protecting sensitive wildlife habitats and native plant landscapes, and supporting private property owners to implement home hardening activities.

D. Supporting the planning and coordination efforts of fire chiefs and their staff to plan wildfire evacuations and response, especially where these efforts cross jurisdictional boundaries between one or more of the Participating Agencies.

E. Working cooperatively to influence legislation at the State level to support resources and policies to mitigate wildfire risk and to make wildfire safety a priority.

2. **Term of Agreement.** The term of this MOU will commence on _____, 20__ and continue unless terminated pursuant to Section 7, below.

3. **Co-operative Structure: East Bay Hills Regional Wildfire Prevention Coordinating Group.** The Participating Agencies agree to form an East Bay Hills Regional Wildfire Prevention Coordinating Group (WPCG) as described below. The WPCG's responsibilities will be executed in a manner consistent with the Participating Agencies' individual fire prevention responsibilities.

A. **WPCG Members.**

Each Participating Agency will appoint one member and one alternate from its governing body to serve on the WPCG. More specifically, all WPCG members and alternates shall be elected or appointed members of Boards of Supervisors, City or Town Councils, Boards of Directors, or a functional equivalent. Upon authorizing execution of this MOU, each Participating Agency will endeavor to identify its member and alternate within two months. A quorum of the WPCG will consist of representatives of 50% plus one of the Participating Agencies

B. **Principles.** The WPCG will adhere to the following principles:

- i. Each member of the WPCG commits to actively advance the Shared Intent described in Section 1 of this MOU.
- ii. The WPCG will provide a means of coordination, information sharing and peer review concerning means of accomplishing the Shared Intent described in Section 1 of this MOU.
- iii. Signing this MOU and appointing a member to the WPCG does not obligate any Participating Agency to include other Participating Agencies in their individual wildfire prevention and risk mitigation activities.

C. **Duties.** The WPCG will undertake the following duties:

- i. Hold open and public meetings in accordance with a regular meeting schedule established by the WPCG, not less than quarterly.
- ii. Establish goals, procedures and programs, as necessary, for accomplishing the Shared Intent outlined in Section 1 of this MOU.
- iii. Designate a Fiscal Agent, as further described in Section 3.F, and provide policy oversight, advice and direction to the Fiscal Agent.
- iv. Develop and implement a plan for staff support of WPCG activities and objectives, whether provided by members from one or more Participating Agency, or one or more other consulting entities hired the WPCG (such as private companies, other public entities, community-based organizations, or other non-profit organizations).
- v. Propose a dues structure to fund WPCG activities, and implement if so agreed by 100% of WPCG members.
- vi. Apply for grants or other funds that may become available for joint use by the Participating Agencies, if so agreed by the WPCG members.
- vii. In the event that either (i) a dues structure is instituted, or (ii) grants or other funds are received: Adopt, monitor and revise a budget for expenditure or distribution of such funds on an annual basis (or other timeframe established by the WPCG,

taking into account the life cycle of various grants and Participating Agency contributions). The budget will generally outline the staffing assignments and resources needed to accomplish the funded projects.

D. **Chair.** At the first meeting of each calendar year, the WPCG will elect a Chair for purposes of facilitating meetings of the WPCG and overseeing development of the agenda, with whatever assistance the Chair requires.

The Chair also may create a stakeholder advisory group consisting of individuals such as representatives of other public agencies, Firesafe Councils, neighborhood or other community-based organizations, and other organizations owning land and/or serving communities of residences and businesses in the East Bay Hills wildfire zone.

E. **Decision Making.** Except where otherwise noted in this MOU, the WPCG shall make decisions only with an affirmative vote of a majority of the WPCG members (or their alternates, in the members' absence). Additional decision-making procedures may be established by the WPCG as needed.

F. **Designation of a Fiscal Agent.** The WPCG will designate one of the Participating Agencies to serve as the WPCG's "Fiscal Agent," in which role that entity will (i) serve as the WPCG treasurer and (ii) enter into contracts on behalf of the WPCG. The WPCG will review the designation of the Fiscal Agent not more often than once every three years and with at least six months of time for the then-current and newly-selected agencies to prepare for the transition. The selection is subject to approval by the governing body of the newly-selected entity. In the event of a new designation and approval of the governing body of the newly-selected Fiscal Agent, the then-current and newly-selected Fiscal Agents will seek approval from their governing bodies to (i) transfer funds or access to WPCG accounts to the new Fiscal Agent, (ii) assign all outstanding WPCG-required contracts to the new Fiscal Agent, and (iii) take such other actions as may be necessary or convenient to effect the transition of the Fiscal Agent role. The WPCG will establish a process for reimbursing the Fiscal Agent for its actual costs and expenses accrued in performing its duties under this MOU, including for staff time based on then-current hourly rates of compensation.

4. **Addition of Participating Agencies.** Additional municipalities, special districts, and other public agencies may become Participating Agencies after obtaining approval of (a) their governing bodies, and (b) the WPCG. Any additional Participating Agency must evidence its agreement to the terms of this MOU, or a subsequent restatement of this MOU, by executing a signature page in the same form used by the original Participating Agencies and accepting the then-current terms of this MOU. Counter-signature by only the Fiscal Agent is required for the additional Participating Agency to be bound by the terms of this MOU with all other signatories to this MOU.

5. **Employment of Personnel.** The employees of each Participating Agency coordinating services pursuant to this MOU are not, and shall not be deemed, employees of any of the other Participating Agencies for any purpose. Each Participating Agency shall be solely responsible for all salary, benefits, workers' compensation, and insurance for its personnel providing services pursuant to this MOU, and said personnel shall be considered solely employees of the Participating Agencies for all supervisory, disciplinary and other employment related purposes.

6. **Litigation Support.** The Participating Agencies will make their employees available to testify in any litigation brought regarding work performed under this MOU. Should a Participating Agency request that another Participating Agency's employees testify in litigation

following the termination of this MOU, the requesting Participating Agency shall compensate the Participating Agency that is fulfilling the request for employees' costs and expenses in preparing for, traveling to, and testifying in such matters at the employee's then current hourly rate of compensation, unless such litigation is brought by the requesting Participating Agency or is based solely on allegations of the Participating Agency's negligent performance or wrongdoing.

7. **Termination or Withdrawal.** At any time and without cause, a Participating Agency may terminate its participation in this MOU by giving sixty (60) days' prior written notice to the other Participating Agencies.

8. **Indemnification.** Each of the other Participating Agencies will jointly indemnify, and hold harmless the Fiscal Agent and its directors/councilmembers/supervisors, officers, employees and agents (collectively, "Indemnitees") against all liability, claims, suits, actions, costs or expenses arising from loss of or damage to property, and injuries to or death of any person (including but not limited to the property or employees of each Participating Agency) when arising out of performance of this MOU.

The indemnifying Participating Agencies' obligation to defend includes the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered, or settlement entered, against any Indemnitee, the indemnifying Participating Agencies must, at their expense, satisfy and discharge the same.

This Section 8, Indemnification, will survive termination or expiration of this MOU.

9. **General Provisions.**

A. **Not a Joint Venture or Joint Powers Authority.** The Participating Agencies intend by this MOU to establish only a coordinating arrangement with regard to their respective individual and joint fire prevention activities, and do not intend to create a joint powers agency, partnership, joint venture, or joint enterprise at this time.

B. **No Third-Party Beneficiary.** This MOU is only for the benefit of the Participating Agencies as corporate entities and shall not be construed as or deemed to operate as an agreement for the benefit of any third party or parties. This MOU does not entitle any third party or parties to any right, benefit, position, or right of action of any kind for any reason whatsoever.

C. **Notices.** All written notices required or permitted to be given under this MOU will be deemed made when received by the other party or parties at its/their respective address(es) as indicated on its/their Signature Page(s), attached at the end of this MOU.

D. **Waiver.** No failure on the part of any Participating Agency party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that any Participating Agency may have hereunder, nor does waiver of a breach or default under this MOU constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

E. **Counterparts.** This MOU may be executed in one or more counterparts, each of which shall be considered an original and all of which constitute a single instrument.

F. **Severability.** If any provision of this MOU or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such provision to persons, entities or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected

thereby, and each other provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

G. **Amendment.** No modification, waiver, mutual termination, or amendment of this MOU is effective unless made in writing and signed by all of the Participating Agencies.

H. **Disputes.** In any dispute over any aspect of this MOU, the prevailing party shall be entitled to reasonable attorney's fees and costs.

I. **Governing Law.** This MOU, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of Alameda or Contra Costa County.

J. **Existing Agreements.** This MOU supplements, and does not replace, any prior or future agreements between any two or more Participating Agencies, including for contracted, shared or cooperative fire prevention and/or emergency medical services .

IN WITNESS WHEREOF, the parties have caused this MOU to be executed effective as of the day and year first above written.

[[SIGNATURE PAGES FOR EACH SIGNATORY AGENCY]]

