

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY

LEGAL OPINION

To: Wildfire Prevention Assessment District Advisory Committee
(“WPAD Committee”)

CC: Kristine Shaff, Fire Prevention Bureau of the Oakland Fire Dept.

From: Mark T. Morodomi, Supervising Deputy City Attorney

Date: January 12, 2007

RE: Use of Wildfire Prevention Assessment District Money

I. ISSUES

A. May the City of Oakland, through the WPAD Committee, enter into partnerships with citizens to facilitate fire prevention projects?

B. May WPAD funds be used for fire prevention projects on private lands within the WPAD, including but not limited to disbursement of funds and/or payment for City of Oakland staff time?

II. SUMMARY CONCLUSION

A. No, the committee only has advisory powers, and does not have the power to enter into agreements.

B. Yes, so long as:

1. The activity on private property benefits the properties subject to the assessment. This element is satisfied if the fire hazard on the property reasonably endangers other assessed properties in the district.

2. The use meets the list of services set forth in the Procedural Ordinance.

3. The use is described in the Engineer’s Report.

III. ANALYSIS

A. May the City of Oakland, through the WPAD Committee, enter into partnerships with citizens to facilitate fire prevention projects?

The City Council created the Wildfire Prevention Assessment District advisory committee with Resolution No. 78305 C.M.S. The resolution does not give the WPAD Committee the power to award grants or contracts. (Resolution, Section 15.) The committee can “recommend program priorities” or “policies.” (Id.) Accordingly, the committee only has advisory powers, and does not have the power to enter into partnerships.

B. May WPAD funds be used for fire prevention projects on private lands within the WPAD, including but not limited to disbursement of funds and/or payment for City of Oakland staff time?

Any use of WPAD money must be in compliance with Proposition 218, as well as any ordinances and resolutions of the City Council, the enacting body. Our analysis examines each of these authorities.

The Requirements of Proposition 218

Government agencies levy benefit assessments (also called "special assessments") to pay for specifically identified services that specially benefit the properties subject to the assessment. (Proposition 218, now Cal. Constitution, Article XIID(b). Or stated another way, the money raised from the assessments may only be used on services that benefit specifically the properties that are subject to the assessment.

Subject to Proposition 218, local governments may create their own procedures and purposes of assessment districts so long as they follow the dictates of Article XIID.

The Requirements of Ordinance No. 12556 C.M.S.

Here, the City Council enacted a procedural ordinance No 12556 C.M.S. “An Ordinance Establishing Procedures For The Creation Of Special Assessment Districts To Fund Services And Programs For Fire Suppression, Prevention And Preparedness Within Designated Areas Of The City Of Oakland” (the “Procedural Ordinance”). The Procedural Ordinance sets forth the outside parameters for use of fire suppression assessment district monies. The Procedural Ordinance gives a laundry list of purposes, which basically call for use of the monies for fire suppression, prevention, and preparedness services.

The assessment may be made for the purpose of providing fire suppression, prevention and preparedness services and programs including, but not limited to: inspection services to monitor and identify

hazardous conditions; inspection services to identify Fire Code violations in order to provide notice of violations, abatement proceedings, imposition of fines and institution of formal legal enforcement measures; mitigation services to reduce and eliminate fire hazardous condition's; fire suppression and prevention education services and programs for area schools, churches and neighborhood homeowner associations; planning, personnel and material assistance to the Citizens of Oakland Respond to Emergencies (CORE) Program; neighborhood access and evacuation training programs; signage, tow— away zones, and other services and facilities to reduce evacuation “bottlenecks”; parking programs to improve access for emergency vehicles; services and equipment for mechanical chipping of landscaping debris; debris removal or recycling; reduction of heavy fuel loads on open spaces; clearing of the rights— of-way of public paths (including stairs) and trails, improving and extending such paths in critical fire areas, and providing adequate signage; building and maintaining fire breaks; obtaining, furnishing, operating and maintaining fire suppression equipment or apparatus that is devoted to district operations; deployment of additional firefighting personnel in periods of increased fire—hazard weather conditions; paying the salaries and benefits of firefighting or civilian personnel, or both, involved in providing these services, whether or not fire suppression or inspection services are actually used by or upon a parcel, improvement, or property. Funds from any district revenues shall be used solely for the purpose of enhancing fire suppression, prevention and preparedness services within the district. (Procedural Ordinance, Section 3.)

The Requirements of Resolution No. 78305

The City Council followed the Procedural Ordinance and created the Wildfire Prevention Assessment District with Resolution No. 78305 C.M.S. The Resolution narrows the use of the WPAD money to “all activities and services described in the Engineer’s Report.”

9. An assessment will be levied annually to pay for all activities and services described in the Engineer’s Report for the District. Non-program administrative expenses shall be limited to 5% of the District’s annual budget.

The Final Engineer’s Report, City of Oakland, Oakland Wildfire Prevention Assessment District, Fiscal Year 2004-05 Levy (January 6, 2004) provides a “Description of Services” that the district will provide with the funding. Each of the services listed in the Engineer’s Report is consistent with the purposes stated in the Procedural Ordinance.

The category in the Final Engineer’s Report closest to the proposed fire prevention on private lands is the category of “Vegetation Management”:

Vegetation Management – Private contractors and city crews would provide the district’s vegetation reduction and management programs where the goats are not able to graze. This includes open space and canyon hill parcels, firebreaks and roadside clearance along public streets and evacuation routes within the district. Additionally, fire companies and vegetation management inspectors annually inspect district properties to identify those that are in violation of the Oakland Fire Code. The inspectors will notify non-compliant property owners and after conducting re-inspections, non-compliant property owners will be charged the cost of having contractors bring the private property back into compliance. (Emphasis added.)

Summarizing the three authorities, WPAD funds may be for services on private properties if:

1. The activity on private property benefits the properties subject to the assessment. (This element may be met if the fire hazard on the property reasonably endangers other properties in the district. A shaded fuel break on private property is a good example.)
2. The use meets the list of services set forth in the Procedural Ordinance.
3. The use is described in the Engineer’s Report.

IV. CONCLUSION

Presuming that the fire hazard on the private property is a possible threat to properties in the District, a fire prevention project on private land that involves “vegetation reduction and management programs where the goats are not able to graze,” is a permitted use of WPAD funds. (Resolution No. 78305.)

Respectfully submitted,

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