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AGENDA REPORT

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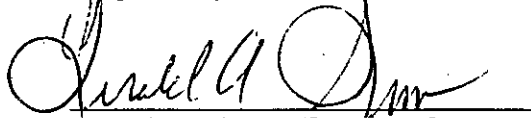
TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Oakland Fire Department
DATE: January 11, 2011

RE: Supplemental Report Regarding the Resolution Authorizing the City Administrator to Enter Into An Intergovernmental Memorandum of Understanding for Environmental Coordination and Review With The Department of Homeland Security Federal Emergency Management Agency, California Emergency Management Agency, U.S Fish and Wildlife Service, National Park Service, U.S Forest Service, University of California – Berkeley, East Bay Regional Park District regarding review of an Environmental Impact Statement For Hazardous Fuels Risk Reduction in the East Bay Hills

SUMMARY

This supplemental report provides the attached Memorandum of Understanding (MOU) and project area maps defined in the MOU as informational items.

Respectfully submitted,



Gerald A. Simon, Fire Chief
Oakland Fire Department

Prepared by:
Anne Campbell Washington, Chief of Staff
Oakland Fire Department

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

Item: _____
Public Safety Committee
January 11, 2011

Attachment A

**MEMORANDUM OF UNDERSTANDING
FOR
ENVIRONMENTAL COORDINATION AND REVIEW
AMONG
THE DEPARTMENT OF HOMELAND SECURITY'S FEDERAL EMERGENCY
MANAGEMENT AGENCY, CALIFORNIA EMERGENCY MANAGEMENT AGENCY,
U.S. FISH AND WILDLIFE SERVICE, NATIONAL PARK SERVICE, U.S. FOREST
SERVICE, UNIVERSITY OF CALIFORNIA - BERKELEY, EAST BAY REGIONAL
PARK DISTRICT, AND CITY OF OAKLAND
ALL PARTNERS INVOLVED IN
THE ENVIRONMENTAL IMPACT STATEMENT FOR HAZARDOUS FIRE RISK
REDUCTION, EAST BAY HILLS, CALIFORNIA**

This Memorandum of Understanding (MOU) governs the projects developed and/or proposed for Federal financial assistance through the Pre-Disaster Mitigation (PDM) program and the Hazard Mitigation Grant Program (HMGP) to reduce or eliminate damage, through fuel reduction, to vulnerable structures and associated loss of life from future wildfires in the East Bay Hills area, Alameda and Contra Costa counties, California, and is entered into jointly by the following parties: the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA), as Lead Agency; and the California Emergency Management Agency (Cai EMA), the U.S. Fish and Wildlife Service (USFWS), the National Park Service (NPS), and the U.S. Forest Service (USES), the University of California - Berkeley (UCB), the East Bay Regional Park District (EBRPD), and the City Of Oakland as Cooperating Agencies.

For purposes of this MOU, the term hazardous fire risk reduction is based on FEMA Mitigation Policy MRR-2-08-1, *Wildfire Mitigation Policy for the Hazard Mitigation Grant Program (HMGP) and Pre-Disaster Mitigation (PDM) Program* (September 8, 2008)(Appendix A). However, the specific requirements and eligibility criteria of the mitigation policy only apply to projects for which the application period was open on or after September 8, 2008.

I. Purpose

The purpose of this MOU is to formalize the commitment among the Lead Agency and the Cooperating Agencies to work in partnership to coordinate and accelerate the review of projects for compliance with environmental and historic preservation (EHP) laws, including the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), and other applicable laws to ensure adequate compliance and to conduct environmental review and decision-making processes in a timely fashion. Appendix B provides a preliminary overview of the expected timetable for the EIS. Nothing in this MOU shall be construed as limiting or constraining the Lead Agency's obligation to make an independent assessment and decision regarding the appropriate level of EHP documentation and processing with respect to specific projects under NEPA, ESA, NHPA, and related statutes. As Lead Agency, FEMA is responsible for EHP compliance and is the ultimate decision-maker for

all issues involving EHP issues. The role of the Cooperating Agencies is to facilitate EHP review processes.

II. Background

FEMA has received four hazard mitigation applications for hazardous fire risk reduction projects in the East Bay Hills area. The proposed action is to fund the projects associated with these applications under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Mitigation Assistance Act (Stafford Act), Public Law 93-288, as amended, establishing the Hazard Mitigation Grant Program (HMGP) and Section 203 of the Stafford Act, establishing the Pre-Disaster Mitigation (PDM) grant program. The action area is approximately 1,000 acres of the Wildland-Urban Interface in the East Bay Hills running from Lake Chabot to Wildcat Canyon and Sobrante Ridge.

The need for coordination regarding FEMA's EHP compliance reviews is to streamline project development and implementation and is seen as necessary by all parties to this MOU to fulfill the mandates of NEPA, ESA, NHPA, and all other applicable Federal, State, and local EHP requirements and to ensure a timely completion of the projects. State and local EHP requirements may also be coordinated with FEMA's EHP compliance to facilitate project reviews by appropriate regulatory agencies.

This MOU identifies the Lead Agency and Cooperating Agencies for the preparation of an environmental impact statement (EIS) for compliance with NEPA. Additionally, this MOU identifies how the respective parties will concurrently coordinate activities taken to comply with ESA, NHPA, and other applicable laws. Particularly, this MOU establishes the responsibilities among the agencies for consultation, coordination, and concurrence of project requirements. Modifications to this MOU, or a secondary MOU (or other agreements), may be developed to address specific issues, projects, or other needs to further the intent of this MOU.

III. Commitments Common to All Agencies

In the spirit of cooperation and collaboration, and with the mutual understanding that this is a flexible working agreement among the Lead and Cooperating Agencies, all parties to this MOU hereby commit to undertake the following actions:

- a) Support concerted, cooperative, effective, and collaborative work to allow the efficient and effective conduct of the EIS process.
- b) Accelerate all project reviews to the extent possible under our respective jurisdictions.
- c) Each signatory shall designate a single, agency point of contact (POC) that will serve as the conduit for communications under this MOU.
- d) The Lead and Cooperating Agencies shall communicate with one another in a manner that is compliant with the communication protocol developed specifically for the EIS and this MOU.
- e) Address anticipated needs for funding, licensing, permitting, or other action that may result from a proposed project by ensuring that consultation, documentation, and design meet the needs for agency approval(s) and regulatory agency approval.
- f) Coordinate agencies' public involvement processes to the extent possible.
- g) Participate in the development of technical information, identification of impacts on resources, and mitigation recommendations.

- h) Review and provide timely comment on draft documentation regarding project EHP impacts and resulting mitigation.
- i) Participate in meetings as necessary to discuss such documentation and mitigation.
- j) Provide timely review and constructive comments on projects, focusing additional information requests on information that is needed to reach an informed decision.
- k) Identify solutions to reduce unnecessary project delays by using concurrent review of plans and projects and other means, and fully reviewing and commenting on the earliest provided draft documents.
- l) Share information on project reviews with Federal, State, and local agencies in order to avoid duplication of effort.
- m) Identify potential barriers to achieving project goals through meetings, conference calls, and participation in developing timely resolutions.

To aid in meeting these commitments the parties to this MOU agree to the following:

- a) Provide response and/or comment via e-mail to each agency's POC within the timeframe specified for the document or graphic being reviewed.
- b) Provide comments and propose mitigation at the earliest stage possible in project development.
- c) Share information, including that which is gathered by or in the possession of consultants, related to purpose and need, project development, impacts, review, and approval to assist other agencies in carrying out their responsibilities, where permitted.
- d) To the greatest extent possible, ensure close coordination and a consistent project management approach by ensuring all relevant information is delivered through FEMA, as the Lead Agency.

IV. Lead Agency and Cooperating Agency Commitments

Since the implementation of the proposed projects may involve funding, concurrence, or permitting from several Federal, State, and local agencies, each agency will be responsible for identifying the issues that must be addressed to satisfy its respective legal requirements. Additionally, in accordance with 40 CFR Part 1500, each of the signatories to this MOU will be responsible for the following:

A. Lead Agency

FEMA – will serve as the Lead Agency and coordinate all EHP compliance reviews appropriate for FEMA project funding and activities.

1. FEMA will manage the effort related to contracting resources for the development of documents required to ensure compliance with NEPA, Section 7 of the ESA, and Section 106 of the NHPA compliance processes, which must be successfully completed before project activities can be initiated.
2. FEMA staff within Hazard Mitigation Assistance Programs and Office of Environmental and Historic Preservation will be made available as necessary to support and coordinate efforts required to complete the NEPA, ESA, and NHPA process.
3. FEMA is legally responsible for compliance with applicable laws in relation to proposed projects submitted for FEMA grant funding, and accordingly, will

retain ultimate discretion regarding the final contents of the EIS and related studies or decision documents.

4. Further, FEMA has sole responsibility and authority to give instruction or direction to its contractors.

B. Cooperating Agencies:

Pursuant to 40 CFR Part 1501.6 and 1508.5, the participation of all Cooperating Agencies in the preparation of the EIS is expected to include, but is not limited to, the following activities:

- i. Attend and contribute to coordination and scoping meetings;
 - ii. Comment on EIS planning, including the schedule;
 - iii. Provide comments on the purpose and need, identification of the range of alternatives to be studied, criteria used to select and analyze the range of reasonable alternatives, and identification of environmental impacts;
 - iv. Review and comment as early as practicable on environmental and socioeconomic resources located within the project area;
 - v. As part of the Administrative Record, provide references and documentation for information provided, in a timely manner;
 - vi. Identify as early as practicable any issues regarding the project's environmental and socioeconomic impacts that could substantially delay or prevent the granting of any permit or other approval;
 - vii. Review and comment as early as practicable on administrative draft material, particularly sections relevant to each entity's purview;
 - viii. Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability, as practicable; and
 - ix. Use agency resources to further enhance and expedite the compliance process.
1. USFWS – as a Cooperating Agency for the preparation of the EIS, has legal jurisdiction over part of the project and special expertise with respect to threatened and endangered species.
 - a) In addition to the participation identified above, USFWS shall review and comment as early as practicable on administrative drafts of the EIS and EIS sections and any agreements that are developed to address environmental concerns.
 - b) In addition, USFWS shall identify issues, concerns, and any technical studies which would support FEMA and USFWS in efficiently fulfilling their responsibilities under the ESA.
 - c) Specifically, USFWS shall cooperate with FEMA to facilitate FEMA meeting its responsibility to comply with Section 7 of the ESA in a timely manner.
 2. NPS – as a cooperating agency for the preparation of the EIS, has special expertise with respect to hazardous tire risk reduction, tire behavior, tire ecology, forest ecology, and other issues related to the proposed action.
 - a) In addition to the participation identified above, NPS shall review and comment as early as practicable on administrative drafts of the EIS and

- EIS sections and any legal agreements that are developed to address environmental concerns.
- b) Specifically, NPS shall advise FEMA on the Purpose of and Need for Action, Alternatives (including the Proposed Action), and impacts related to ecology and tire risk.
3. USES – as a cooperating agency for the preparation of the EIS, has special expertise with respect to hazardous fire risk reduction, tire behavior, tire ecology, forest ecology, and other issues related to the proposed action.
 - a) In addition to the participation identified above, USES shall review and comment as early as practicable on administrative drafts of the EIS and EIS sections and any legal agreements that are developed to address environmental concerns.
 - b) Specifically, USFS shall advise FEMA on the Purpose of and Need for Action, Alternatives (including the Proposed Action), and impacts related to ecology and tire risk.
 4. Cal EMA – as a cooperating agency for the preparation of the EIS, has fiscal and programmatic monitoring and reporting requirements for the Pre-disaster Mitigation grants and proposed project subgrants, and special expertise with respect to certain hazard mitigation programmatic issues related to the proposed action.
 - a) As the applicant to FEMA program funding, in addition to the participation identified above, Cal EMA shall coordinate information, funding issues, and program requirements with UCB, EBRPD, the City of Oakland, and FEMA – as the lead agency – as they relate to the implementation of the project.
 5. UCB– as a Cooperating Agency for the preparation of the EIS, has legal jurisdiction over part of the project and special expertise with respect to certain environmental or hazard mitigation issues related to the proposed action.
 - a) As a sub-applicant to FEMA program funding, in addition to the participation identified above, UCB will provide project details to FEMA and be prepared to provide scientific sources relative to its proposed action, as referenced in 40 CFR 1502.24.
 - b) This will include funding information, design and operational requirements, State EHP requirements, and other data collected and studies undertaken related to the proposed project and alternatives.
 - c) UCB will be responsible for complying with all applicable State regulatory and permitting requirements, as well as complying with certain Federal environmental laws and regulations that it would be required to comply with regardless of FEMA’s involvement (e.g., Clean Water Act).
 6. EBRPD– as a Cooperating Agency for the preparation of the EIS, has legal jurisdiction over part of the project and special expertise with respect to certain environmental or hazard mitigation issues related to the proposed action.

- a) As a sub-applicant to FEMA program funding, in addition to the participation identified above, EBRPD will provide project details to FEMA and be prepared to provide scientific sources relative to its proposed action, as referenced in 40 CFR 1502.24.
 - b) Specifically, EBRPD will provide technical expertise regarding fire behavior and fire ecology.
 - c) This will include funding information, design and operational requirements, State EHP requirements, and other data collected and studies undertaken related to the proposed project and alternatives.
 - d) EBRPD will be responsible for preparing local and State environmental compliance documents and obtaining any permits, as well as complying with certain Federal environmental laws and regulations that it would be required to comply with regardless of FEMA's involvement (e.g., Clean Water Act).
7. City of Oakland – as a Cooperating Agency for the preparation of the EIS, has legal jurisdiction over part of the project and special expertise with respect to certain environmental or hazard mitigation issues related to the proposed action.
- a) As a sub-applicant to FEMA program funding, in addition to the participation identified above, the City of Oakland will provide project details to FEMA and be prepared to provide scientific sources relative to its proposed action, as referenced in 40 CFR 1502.24.
 - b) Specifically, the City of Oakland will provide technical expertise regarding fire behavior and fire ecology.
 - c) This will include funding information, design and operational requirements, State EHP requirements, and other data collected and studies undertaken related to the proposed project and alternatives.
 - d) The City of Oakland will be responsible for preparing local and State environmental compliance documents and obtaining any permits, as well as complying with certain Federal environmental laws and regulations that it would be required to comply with regardless of FEMA's involvement (e.g., Clean Water Act).

V. Implementation

This MOU may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. Nothing in this MOU is intended to conflict with current law or regulation or directives of the parties. If any terms and conditions of this MOU are inconsistent with such authority, then the terms and conditions shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect. Potentially, and upon the mutual agreement of the Lead Agency and Cooperating Agencies, other agencies may become parties to this MOU as project development progresses.

Nothing in this MOU shall be construed as limiting or constraining the obligations of UCB, Cal EMA, EBRPD, or the City of Oakland, as Cooperating Agencies subject to the laws of the State of California, to make independent assessments and decisions regarding the applicability of and

compliance with the California Environmental Quality Act (CEQA) and any other state or local laws and regulations.

VI. Nonbinding Agreement

This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies, and any agency obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

VII. Non-Liability

The parties signing this agreement do not assume liability for any third party claims for damages arising out of the awards subject to this MOU.

VIII. Participation in Similar Activities

This agreement in no way restricts any signatory party from participating in similar activities with other public or private agencies, organizations, and individuals.

IX. Endorsement

Any contributions made under this agreement do not by direct reference or implication convey endorsement of any other party's products or activities.

X. Amendments and Termination

- A. This MOU shall become effective upon signature by all parties. It shall remain in effect until the completion of the EIS process.
- B. For initial review and acceptance, all parties to this MOU shall review the document and provide comment within five (5) days of its receipt and submit any changes that may be necessary. The review and determinations may take place via a conference call or in a physical meeting as necessary. Quarterly reviews of this MOU shall occur until the completion of its terms.
- C. Following the execution of this MOU by all parties, an agency, upon giving ten (10) calendar days written notice to the other participants, may terminate its participation

or recommend amendments regarding its participation in this MOU without rendering the document invalid for all other participating agencies. In addition:

1. If any party to this MOU believes that its terms cannot be carried out, or that amendments to its terms are required, that party will immediately consult with the other parties to develop amendments. The process of amending this MOU shall take place by submitting a letter of amendment to all parties to the MOU. Amendments to the MOU are effective at such time when all parties execute written consent to the letter of amendment.
 2. If during the completion of the EHP processes any party determines that due to unforeseen events or circumstances that an extended burden is placed upon any party to this MOU, that agency may enter into consultation to seek an amendment or terminate its participation in the MOU. The party proposing to terminate its participation to this MOU shall notify all parties to this MOU, explaining the reasons for its action affording them at least ten (10) days to consult.
- D. Should consultation fail, the party proposing termination will be severed from the MOU and the responsibilities of that party shall be severed from the terms and conditions set forth in this MOU.
- E. All other conflicts not related to amendment of this MOU shall be resolved in accordance with Appendix C – Conflict Resolution Process.

XI. No Rights for Non-Parties

This MOU does not convey or intend to convey any rights or privileges to any individual or group that is not a signatory to this MOU.

XII. Commencement/Expiration Date

This MOU is executed as of the date of the last signature and is effective through the issuance of the Record of Decision for the EIS to which this MOU applies (but not to exceed five years from date of execution), at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

XIII. Conclusion

In signing or concurring with this MOU, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the parties agrees to pursue cooperation, communication, and efficiency to effectively ensure that projects comply with all applicable Federal compliance requirements.

XIV. Authorized Representatives

By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: _____
Nancy Ward, Regional Administrator

Date: _____

U.S. FISH AND WILDLIFE SERVICE

By: _____
Susan Moore, Field Supervisor

Date: _____

NATIONAL PARK SERVICE

By: _____
George Turnbull
Acting Regional Director

Date: _____

U.S. FOREST SERVICE

By: _____
Randy Moore
Pacific Southwest Regional Forester

Date: _____

Additional Agreement Articles Specific to the U.S. Forest Service

PRINCIPAL CONTACTS. Individuals listed in this agreement are authorized to act in their respective areas for matters related to this instrument.

NON-LIABILITY. See Article VII of the main agreement.

NOTICES. Any notice given by the U.S. Forest Service or the other Cooperating Agencies will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in this agreement.

To the other Cooperating Agencies at the addresses shown in this agreement.

PARTICIPATION IN SIMILAR ACTIVITIES. See Article VIII of the main agreement.

ENDORSEMENT. See Article IX of the main agreement.

NONBINDING AGREEMENT. See Article VI of the main agreement.

MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise there from, either directly or indirectly.

FREEDOM OF INFORMATION ACT (FOIA). Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).

COMMENCEMENT/EXPIRATION DATE. See Article XII of the main agreement.

AUTHORIZED REPRESENTATIVES. See Article XIV of the main agreement.

CALIFORNIA EMERGENCY MANAGEMENT AGENCY

By: _____
Francis McCarton
Governor's Authorized Representative

Date: _____

UNIVERSITY OF CALIFORNIA - BERKELEY

By: _____
Edward J. Denton, FAIA
Vice Chancellor – Facilities Services

Date: _____

EAST BAY REGIONAL PARK DISTRICT

By: _____
Dave Collins, AGM
Finance and Management Services

Date: _____

CITY OF OAKLAND

By: _____
Gerald Simon, Fire Chief

Date: _____

Appendix A

FEMA Mitigation Policy MRR-2-08-1

I. **TITLE:** Wildfire Mitigation Policy for the Hazard Mitigation Grant Program (HMGP) and Pre-Disaster Mitigation (PDM) Program

II. **DATE OF ISSUANCE:** September 8, 2008

III. **PURPOSE:**

Establish the wildfire mitigation policy for the HMGP and PDM program and establish the parameters to implement wildfire mitigation under sections 203 and 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5207. This policy will ensure national consistency in the use of HMGP and PDM funds for wildfire mitigation projects. In particular, it describes the availability of these funds for (1) defensible space, (2) structural protection through the application of ignition-resistant construction, and (3) limited hazardous fuels reduction to protect life and property.

IV. **SCOPE AND APPLICABILITY:**

Hazard Mitigation Grant Program (HMGP) and Pre-Disaster Mitigation (PDM) This policy applies to PDM and HMGP projects for which the application period is open on or after the Date of Issuance, as well as PDM FY08 eligible projects. HMGP and PDM were established to provide technical and financial assistance to States and local governments to assist in the implementation of long-term hazard mitigation measures that are cost-effective and are designed to substantially reduce risk of future damage and loss of life.

V. **AUTHORITY:**

Sections 203 and 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133 and 5170c, respectively.

VI. **BACKGROUND:**

In general, individuals and all levels of government minimize the impact of wildfires through various means. These include outreach and education measures for individuals and communities about wildfires; measures to reduce the damage from wildfires through maintenance of defensible space, hazardous fuel reduction, structural protection through the use of ignition resistant building materials and methods; and measures to prepare to respond to wildfires and facilitate wildfire suppression. Such actions occur on federal land, other public land, and private land in fire-prone areas (i.e. high risk of wildfire).

Wildfire mitigation is addressed by the Federal government through a comprehensive legislative framework. The Federal Emergency Management Agency (FEMA) recognizes

that other Federal departments and agencies such as United States Department of Agriculture (USDA) United States Forest Service (USFS), Natural Resources Conservation Service (NRCS), and the Department of Interior (DOI) bureaus of Fish and Wildlife Service (FWS), National Park Service (NPS), Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA) have primary wildland fire management responsibilities. These departments and agencies have the primary responsibility for addressing ongoing, forest management conditions, such as those caused, for example, by forest age, disease, or pest infestation spreading to and from the federal lands onto adjacent non-federal lands. While these and other Federal agencies have the primary authority to protect the watersheds, forests, soils, and timber resources, and address forest management conditions, they also have authority to address fire threat reduction activities, such as hazardous fuels reduction, with primary attention to areas on or in the vicinity of Federal lands. They may also assist State and local jurisdictions in efforts to protect the built environment in fire prone areas in forests, ranges, and grasslands.

The Stafford Act authorizes FEMA to provide funding for the purpose of reducing or eliminating risks to property and human life from future hazard events, including wildfire. FEMA mitigation authorities target at-risk structures without regard to benefits to Federal land and are for activities in areas outside the primary focus of other Federal agencies' fire threat reduction programs. FEMA hazard mitigation assistance for wildfires is ONLY focused on long-term and cost-effective actions taken to reduce the risk to specific property or structures from future wildfires. The FEMA goal of reducing the risk from wildfire hazards on human life and property, including loss of function to critical facilities is intended to complement, and not duplicate, the programs of numerous other Federal agencies, such as USFS or BLM, that address wildfire threat reduction.

VII. POLICY:

Wildfire mitigation activities for the primary hazard mitigation purpose of reducing the threat to at-risk structures through creating defensible space, structural protection through the application of ignition resistant construction, and limited hazardous fuels reduction to protect life and property beyond defensible space but proximate to the at-risk structure are generally eligible activities. These projects are intended to reduce or eliminate damage to the building structure and its contents, and to ensure continuation of a facility function. The wildfire mitigation projects may apply to residential and non-residential buildings or structures (including public and commercial facilities).

Funding under these programs is not available for wildfire mitigation in an extended range beyond the parameters described in this policy. In addition, FEMA will not consider funding for activities on federal land. With regard to land adjacent to federal lands, FEMA will ensure coordination with other appropriate Federal agencies, such as USFS or BLM, to ensure that the proposed project does not fall within the scope of another Federal agency's grant authority, as well as to ensure consistency with federal policy and priorities.

The HMGP and PDM programs are available to mitigate the risk to at-risk structures and associated loss of life from the threat of future wildfire through:

- Defensible space that involves the creation of perimeters around residential and non-residential buildings and structures through the removal or reduction of flammable vegetation;
- The application of non-combustible building envelope assemblies, the use of ignition-resistant materials and the proper retrofit techniques of new and existing structures; and
- Hazardous fuels reduction vegetation management, vegetation thinning or reduction of flammable materials to protect life and property beyond defensible space perimeters, but proximate to at-risk structures.

FEMA may fund above-code projects in communities with applicable fire-related codes. For homes and structures constructed or activities completed prior to the establishment of the local building codes, FEMA may fund activities that meet or exceed codes currently in effect. For communities without local fire codes in place, FEMA may fund activities when the materials and technologies are in accordance with the International Code Council (ICC), FEMA, United States Fire Administration, and the National Fire Protection Association (NFPA) Firewise recommendations, as appropriate. The Firewise program provides resources for communities and property owners to use in the creation of defensible space. Additional fire-related information and tools can be found at www.firewise.org or www.nfpa.org. These activities will be in accordance with the applicable fire-related codes and standards, including but not limited to the following:

- ICC Publication International Wildland-Urban Interface Code;
- NFPA 1144: Standard for Reducing Structure Ignition Hazards from Wildland Fire;
- NFPA 1141: Standard for Fire Protection Infrastructure for Land Development in Suburban and Rural Areas;
- NFPA 703: Standard for Fire-Retardant Treated Wood and Fire-Retardant Coatings for Building Materials; and
- NFPA 914: Code for Fire Protection of Historic Structures.

FEMA does not have authority to fund projects on federal land owned by another federal entity, or projects with the purpose of addressing forest health conditions, ecological or agricultural issues related to land and forest management (e.g., insects, diseases, weather-related damages, and pest infestations).

A. Eligible Wildfire Activities:

Wildfire mitigation projects may mitigate the risk to residential and non-residential structures (including public and commercial facilities). These projects must be located in, adjacent to or co-mingled with the built environment and provide protection to life and the built environment from future wildfire hazard.

Eligible wildfire mitigation activities include:

- 1. Defensible Space Activities** involve the creation of perimeters around residential and non-residential structures through the removal or reduction of flammable vegetation including vertical clearance of tree branches. Specifically, this involves minimizing the volume of vegetation; replacing flammable vegetation with less flammable species and clearing all combustibles (i.e. surface litter such as dry leaves, pine needles, dead and dying foliage and trees, and removal of propane tanks) in the safety zone around the structure. The description of requested defensible space activities must be provided for each property.

FEMA recognizes the importance of creating defensible space for residential and non-residential structures in accordance with local fire codes, ICC, the FEMA, United States Fire Administration, NFPA recommendations, or well established and proven techniques or practices of Firewise.

The required radius of defensible space around the building or structure is directly related to the degree of the hazard and therefore, the radius for defensible space may also vary from one jurisdiction to another. Local codes and standard may provide specific requirements for defensible space; however, the ICC Publication International Wildland-Urban Interface Code can be used as the default code. Table 603.2 of the ICC publication suggests a 30-foot safety zone for a moderate hazard. A second zone from 30 feet to at least 50 feet is recommended for a high hazard area. The most stringent requirement is based on an extreme hazard zone and recommends a minimum of 100 feet. While these distances are generally appropriate, the topography of the land, specifically the slope, and the amount and flammability nature of the vegetation may require this limit be extended to create an effective perimeter around the structure. In these cases, the proposed safety zone shall be justified in the project application.

- 2. Structural Protection through Ignition-Resistant Construction Activities** involve the use of non-combustible materials and technologies on new and existing structures. FEMA will only consider a subapplication for an ignition resistant construction project when:
 - The property owner has previously created defensible space and agrees to maintain the defensible space in accordance with this policy. The subapplicant must include a description of the defensible space for each property in the subapplication. FEMA will provide funding for ignition-resistant construction projects only after the subapplicant has demonstrated that the defensible space activity is complete and has provided documentation (i.e. photographs and description of the defensible space) if requested by the Applicant; or
 - The subapplication includes both the defensible space and ignition-resistant construction projects as part of the same project subapplication. The subapplicant must include a description of the

defensible space for each property in the subapplication. Each property owner must agree to maintain the defensible space in accordance with this policy.

FEMA may fund above-code projects in communities with applicable fire-related codes. For homes and structures constructed or activities completed prior to the establishment of the local building codes, FEMA may fund activities that meet or exceed codes currently in effect. For communities without local wildfire codes in place, FEMA may fund activities when the materials and technologies are in accordance with the ICC, FEMA, United States Fire Administration and NFPA Firewise recommendations, as appropriate.

Protection of homes, structures, and critical facilities through the use of ignition-resistant construction techniques or non-combustible building materials are eligible if they meet or exceed local codes, and in conformance with appropriate fire-related codes and standards listed above.

Eligible Activities include:

- Installation of roof coverings, roof sheathing, roof flashing, roof skylights, roof and attic vents, roof eaves and gutters that conform to any of the following ignition-resistant construction standards: 1) construction materials are fire-resistant in accordance with nationally recognized testing standards, 2) construction materials are non-combustible, and 3) construction materials constitute an assembly which has a minimum 1-hour-fire-resistant rating.
 - Installation of wall components such as the fascia, windows, window glazing, doors, window frames, and insulation that conform to any of the following ignition-resistant construction standards: 1) construction materials are fire-resistant in accordance with nationally recognized testing standards, 2) construction materials are non-combustible, and 3) construction materials constitute an assembly which has a minimum 1-hour-fire-resistant rating.
 - Protection of propane tanks or other external fuel sources.
 - Purchase and installation of external, structure-specific water hydration systems (sprinklers), dedicated power source and dedicated cistern if no water source (e.g., lake, river, swimming pool) is available. FEMA will only consider the project when assurances are provided in the operations and maintenance plan that a system (e.g., Geographic Information System) will be maintained to identify property addresses with wildfire sprinkler systems and made available to the appropriate fire department.
3. **Hazardous Fuels Reduction Activities** involve the removal of vegetative fuels proximate to the at-risk structure that, if ignited, pose significant threat

to human life and property, especially critical facilities. Hazardous fuels reduction includes vegetation thinning or reduction of flammable vegetative materials for the protection of life and property. This may include excess fuels or highly flammable vegetation (e.g., arundo donax, eucalyptus). These projects are implemented at the community level and extend beyond defensible space perimeters, however FEMA will only consider funding for hazardous fuels reduction projects limited in scope to be no farther than two miles from homes or structures, and that meet or exceed applicable tire-related codes and standards.

Hazardous fuels reduction may be accomplished using community owned equipment, rental equipment or use of contract resources and equipment for mechanical treatments such as disking, mowing, and/or chopping (i.e., chippers, saws etc.). Equipment used by communities for hazardous fuels reduction activities must not pose an additional risk of tire ignition (i.e., spark arrester).

Eligible activities include community level vegetation management, vegetation removal, vegetation clearing and/or thinning, slash removal, vertical clearance of tree branches, etc. to reduce the threat to human life and structures from future wildtires. Such activities may be no farther than two miles from structures and may include the following techniques:

- Chemical treatments, including herbicide applications with appropriate safeguards to ensure protection of human life, environment, and watersheds;
- Grazing or biomass conversion;
- Mechanical treatments such as disking, mulching, grinding, mowing, chopping and removal of such material; material left on site must meet appropriate depth practices;
- Biomass removal including clearing straw, dead or dry vegetation, thinning, removal of brush, pine straw or blown-down timber from wind throw, ice, or a combination thereof; and
- Other industry-accepted techniques at FEMA discretion.

B. Additional Conditions for Wildfire Projects

Operations and Maintenance Plan

FEMA will only consider for funding, HMGP and PDM wildfire projects for which (a) the application includes a draft operations and maintenance plan at the time of application, including information demonstrating that the requested wildtire project will be maintained to achieve the proposed hazard mitigation; and (b) a final operations and maintenance plan has been submitted to FEMA prior to performing any activities as part of the funded project and after the Grantee has affirmed that the plan is consistent with this policy, meets or exceeds local codes, and is in conformance with appropriate tire-related codes.

Other General Requirements

Mitigation activities must adhere to all other HMGP or PDM statutes, regulations, and requirements that apply to this project activity including: sections 203 and 404 of the Stafford Act; Hazard Mitigation Grant Program (44 CFR Part 206 Subpart N); Mitigation Planning (44 CFR Part 201); Floodplain Management and Protection of Wetlands (44 CFR Part 9); Environmental Considerations (44 CFR Part 10); Uniform Administrative Requirements for grants and cooperative agreements to State and local governments (44 CFR Part 13); Floodplain Management (44 CFR Part 60); and other applicable federal environmental and grants management laws as well as applicable program guidance including but not limited to Hazard Mitigation Assistance Program Guidance.

The Applicant must ensure prior to submission of the grant application that Duplication of Programs (DOP) between Federal agencies will not occur. FEMA requires that the Applicant include documentation in the grant application to ensure that no DOP will occur. This includes demonstration the Applicant has coordinated with other appropriate Federal agencies. Funding under these programs is not available for wildfire mitigation in an extended range beyond the parameters described in this policy. In addition, FEMA will not consider funding for activities on federal land. With regard to land adjacent to federal lands, FEMA will coordinate with other federal agencies to ensure the proposed project does not fall within the scope of another Federal agency's grant authority, as well as to ensure consistency with federal policy and priorities.

In addition, the following general program information must be included in the application:

- A description of the wildfire mitigation activities and the method to accomplish the activities;
- Map(s) showing the project area and relationship of structures to wildland urban interface or forested, range or grassland area; and
- Property-level rating of wildfire risk for each home or community along with the scale used to measure the rating levels, if applicable.

C. **Ineligible Wildfire Activities**

Certain project activities and their associated costs are not eligible for funding:

- Projects that do not protect homes, neighborhoods, structures, infrastructure;
- Projects on federally owned land, as well as on land adjacent to federal lands when the proposed project falls within the scope of other federal agencies' grant authority.
- Projects for hazardous fuels reduction in excess of two miles from structures;

- Projects to address ecological or agricultural issues related to land and forest management (i.e., insects, diseases, weather-related damages, and infestations);
- Irrigation of vegetation to avoid disease or drought-related infestation;
- Projects to protect the environment, watersheds or forest management;
- Projects for prescribed burning or clear-cutting;
- Projects for maintenance activities;
- Projects for the purchase of fire related equipment (i.e., vehicles and fire trucks) or communication equipment;
- Projects for creation and maintenance of fire breaks, access roads, staging areas;
- Purchase of equipment to accomplish eligible work (i.e., chainsaws, chippers);
- Projects for irrigation systems; and
- Development or enhancement of fire suppression capability through the purchase of equipment or resources (i.e., water supply or sources, dry hydrants, cisterns-not related to water hydration systems, and dip ponds).

D. ORIGINATING OFFICE:

Risk Reduction Division, Mitigation Directorate

E. SUPERSESION:

This policy clarification supersedes previous mitigation policies and guidance related to this subject including:

- HMGP Memorandum: November 8, 1994, Subject: Guidance on Eligibility of Response Vehicle and Equipment Purchases Through HMGP

F. REVIEW DATE:

This policy will not automatically expire, but will substantively be reviewed on or before three years from Date of Issuance.

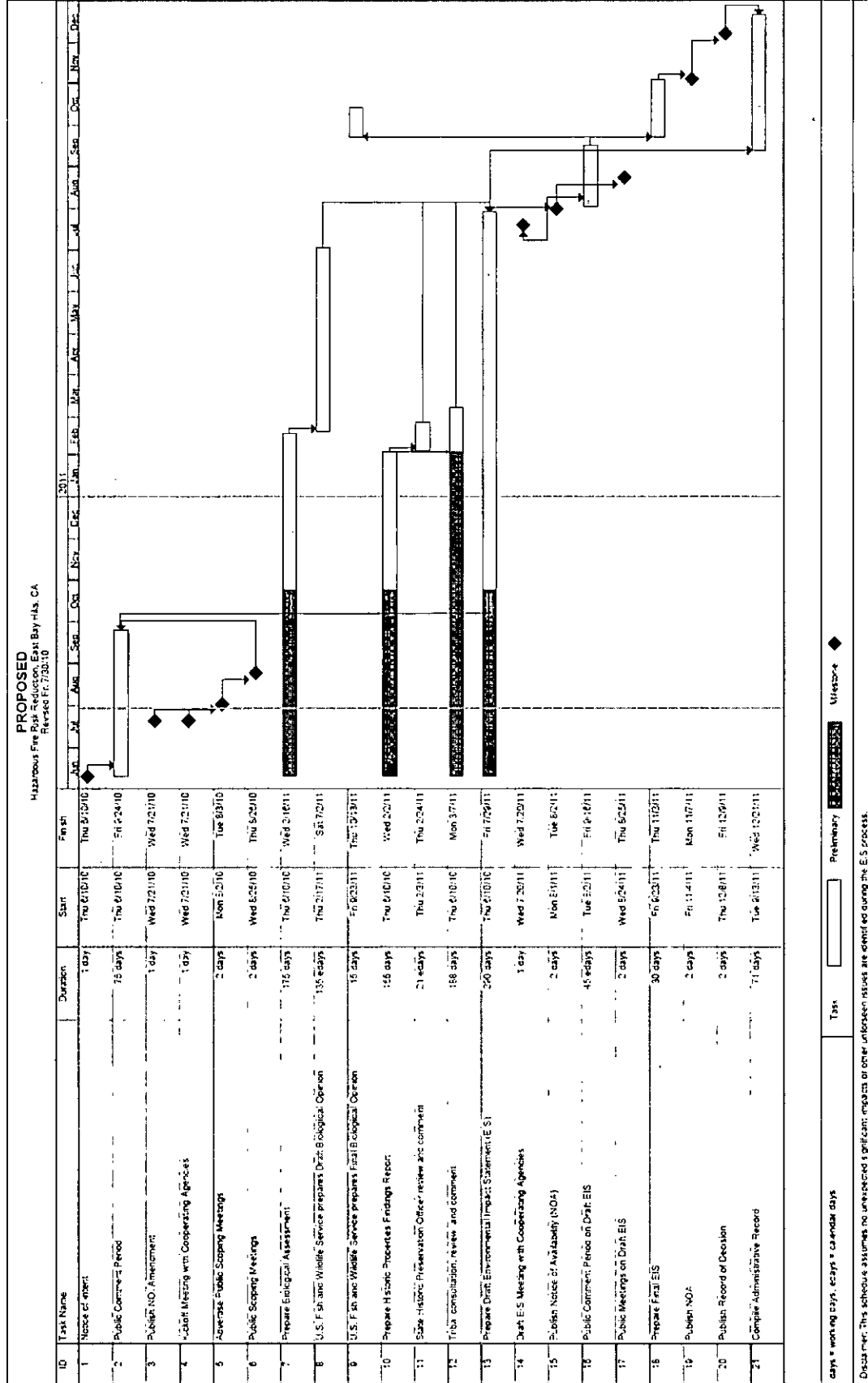
//signed//

David I. Maurstad
Assistant Administrator
Mitigation Directorate

This policy represents FEMA's interpretation of a statute or regulation. The policy itself does not impose legally enforceable rights or obligations but sets forth a standard operating procedure or agency practice that FEMA employees follow to be consistent, fair, and equitable in the implementation of the agency's authorities.

Appendix B

Milestone Schedule for Hazardous Fire Risk Reduction EIS, East Bay Hills, CA



Appendix C

CONFLICT RESOLUTION PROCESS

With multiple Federal, State, and local entities involved in the development of the East Bay Hills Environmental Impact Statement (EBH-EIS), differences of opinions may arise over the course of the process with regard to goals, objectives, purpose and need, impacts, alternatives, policies and procedures. The Lead Agency and Cooperating Agencies (collectively the “Parties”) to this MOU may have differing interests, priorities and needs, as well as distinct constituents. In cases where an impasse occurs, a conflict resolution process is needed that can be utilized to resolve such conflicts. This Appendix describes the process that will be used to resolve conflicts arising among the Parties to this MOU in the development of the EBH-EIS. This process is designed to be simple, user-friendly, and time efficient.

The two types of conflicts that may arise are issues and disputes. Issues are technical problems that are susceptible to informal solution by staff members of the Parties. Disputes are problems that require formal resolution. In either case, resolution is best settled through a mutually agreed-upon understanding between the disputing parties. When that is not possible, some form of binding resolution is needed.

Development of the EBH-EIS is a cooperative, collaborative process, and the Parties will likely be able to reach consensus on most issues and problems that arise during the development of the EBH-EIS. When occasions arise where the Parties cannot reach agreement on a particular issue, one or more of the disputing parties may petition a hearing of the issues before a Conflict Resolution Panel.

The Panel will be comprised of three people: one representative from FEMA and one representative chosen by each of the disputing parties from one of the other Cooperating Agencies. If FEMA is one of the disputing parties, FEMA will choose one of the other Cooperating Agencies to replace the FEMA representative. The third member of the Panel shall be chosen by the Cooperating Agencies not a part of the dispute. The Panel will hear each of the disputing parties’ cases and determine the appropriate outcome by majority vote. The decision of the Conflict Resolution Panel is binding upon the disputing parties.

As the Lead Agency, FEMA will arrange any meetings of the Panel. Meetings of the Panel may be in-person or by teleconference.

The following provides a detailed, step-by-step procedure that would be followed should a dispute arise during the development of the EBH-EIS.

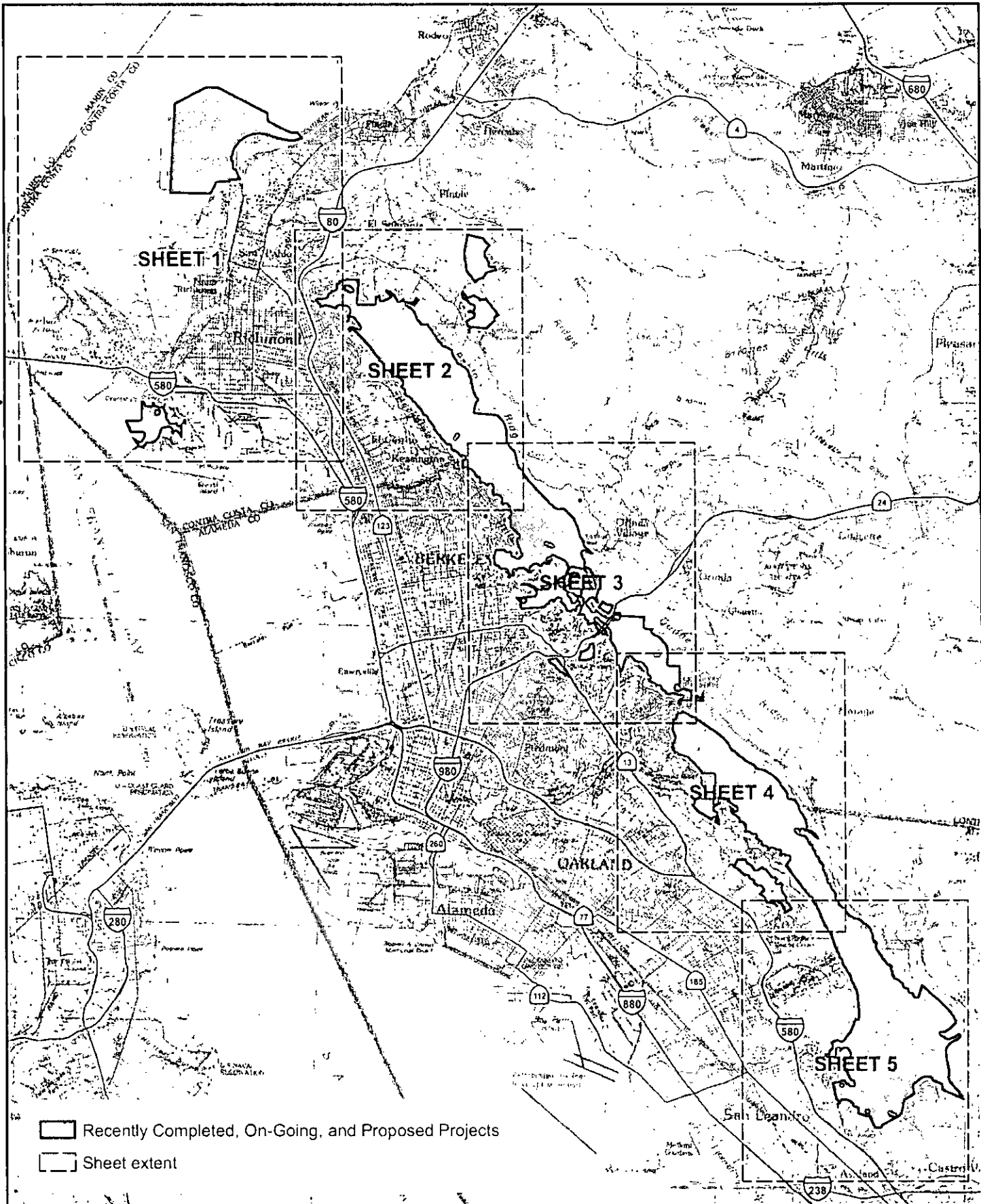
STEP 1 A disputing party would submit a complaint in writing (e-mail is sufficient) to FEMA explaining the dispute in as much detail as possible, describing their concerns and position along with documentation to support their position. Also, they would outline potential alternative solutions. If FEMA is the disputing party, FEMA will submit its complaint to another Cooperating Agency of its choosing who will substitute for the role of FEMA in the remaining steps.

- STEP 2 FEMA would review the complaint making sure that it clearly outlines the position of the disputing party and provides sufficient information supporting their position so the dispute in question can be readily understood by the members of the Conflict Resolution Panel. If FEMA determines that additional facts are needed to describe the dispute outlined in the complaint, FEMA will request, in writing, additional information that will clarify the position of the disputing party. FEMA will also request response materials from the other disputing party named in the complaint.
- STEP 3 Once the complaint is determined to be complete, within (5) business days FEMA staff will contact the disputing parties to select individuals to serve on the Conflict Resolution Panel. Where FEMA is a disputing party, FEMA's substitute will contact the non-disputing Cooperating Agencies to select the third member of the Panel. Before the selection process is completed, verification in writing (e-mail is sufficient) of a willingness to serve will have been completed.
- STEP 4 FEMA will arrange a meeting of the Conflict Resolution Panel within five (5) to ten (10) business days of the selection of the Panel members. FEMA will provide the complaint and any materials submitted by the other disputing party to the Panel members.
- STEP 5 The Conflict Resolution Meeting is held. FEMA will provide staff to document the proceedings of the meeting. Every effort on the part of the disputing parties will attempt to resolve the impasse at the meeting.
- STEP 6 If resolution is achieved, FEMA staff will prepare a memorandum documenting the issue and the mutually agreed upon resolution. The memorandum will contain three signature blocks, one for the FEMA representative of the Panel (or FEMA's substitute where FEMA is a disputing party) and two for the representatives of the disputing parties. By their signature, all parties will formally agree to the mediated result. A copy will be filed at FEMA.
- STEP 7 If no resolution is achieved between the disputing parties at the meeting, within five (5) business days following the conclusion of the conflict resolution meeting, the Panel will determine the appropriate resolution that will be binding upon the disputing parties. FEMA staff will prepare a memorandum documenting the issue and the decision of the Panel. The memorandum will contain three signature blocks, one for the FEMA representative of the Panel (or FEMA's substitute where FEMA is a disputing party) and two for the representatives of the disputing parties. By their signature, all parties will formally agree to the mediated result. A copy will be filed at FEMA.

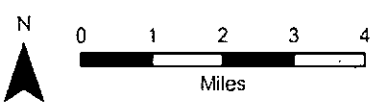
As the Lead Agency with legal responsibility for the EBH-EIS process, FEMA may revise or negate any resolution reached under this conflict resolution process if, in the determination of FEMA, such resolution would result in a violation of Federal law, regulation, other legal

authority, or FEMA policy. FEMA retains final decision making authority on all issues related to the EBH-EIS.

Nothing in this Appendix precludes the right of any Party to terminate its participation in the MOU in accordance with the terms of the MOU.





1. Project/On-Going, Vegetation Management 15/07/2010/AMXO Current Working Document/View-only Study Area of Proposed Project/Regional View, last time





RECENTLY COMPLETED, ON-GOING, AND PROPOSED PROJECTS - REGIONAL VIEW
 Cumulative East Bay
 Hills Fuel Management
 Feb 2010

PDMc-PJ-09-GA-2006-004, UC Berkeley


 PDMc-PJ-09-CA-2006-004, City of Oakland


 PDMc-PJ-09-CA-2006-004, EBRPD


 PDMc-PJ-09-CA-2005-003, UC Berkeley


 PDMc-PJ-09-CA-2005-011, UC Berkeley


Recently Completed or On-going Projects
HMGP 919-515-24, EBRPD


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 LBNL, Campus-Wide Fuelbreak

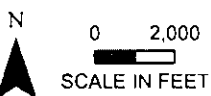
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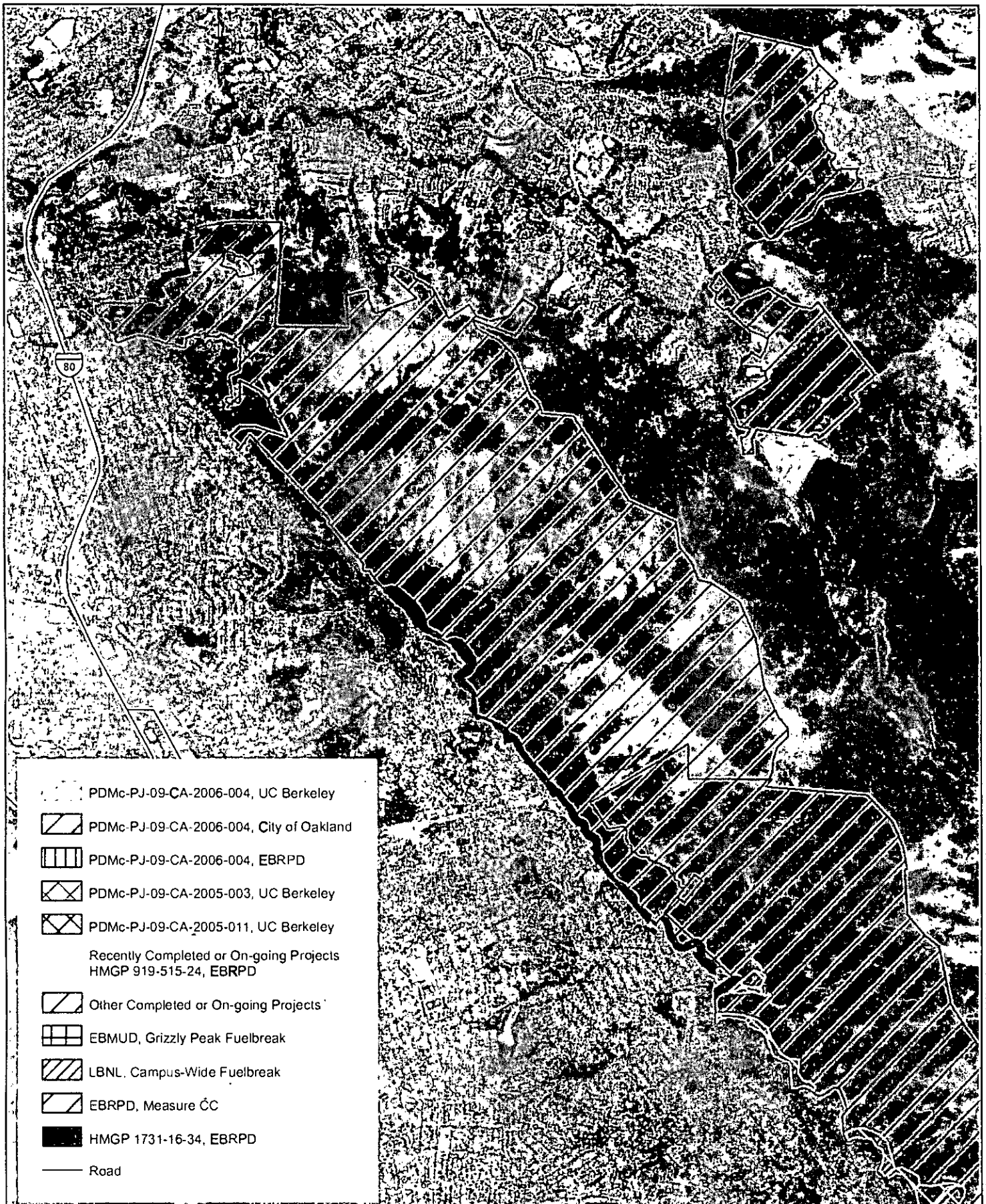
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






RECENTLY COMPLETED, ON-GOING, AND PROPOSED PROJECTS

Cumulative East Bay
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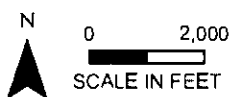


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-  PDMc-PJ-09-CA-2005-003, UC Berkeley
-  PDMc-PJ-09-CA-2005-011, UC Berkeley
- Recently Completed or On-going Projects
HMGP 919-515-24, EBRPD
-  Other Completed or On-going Projects
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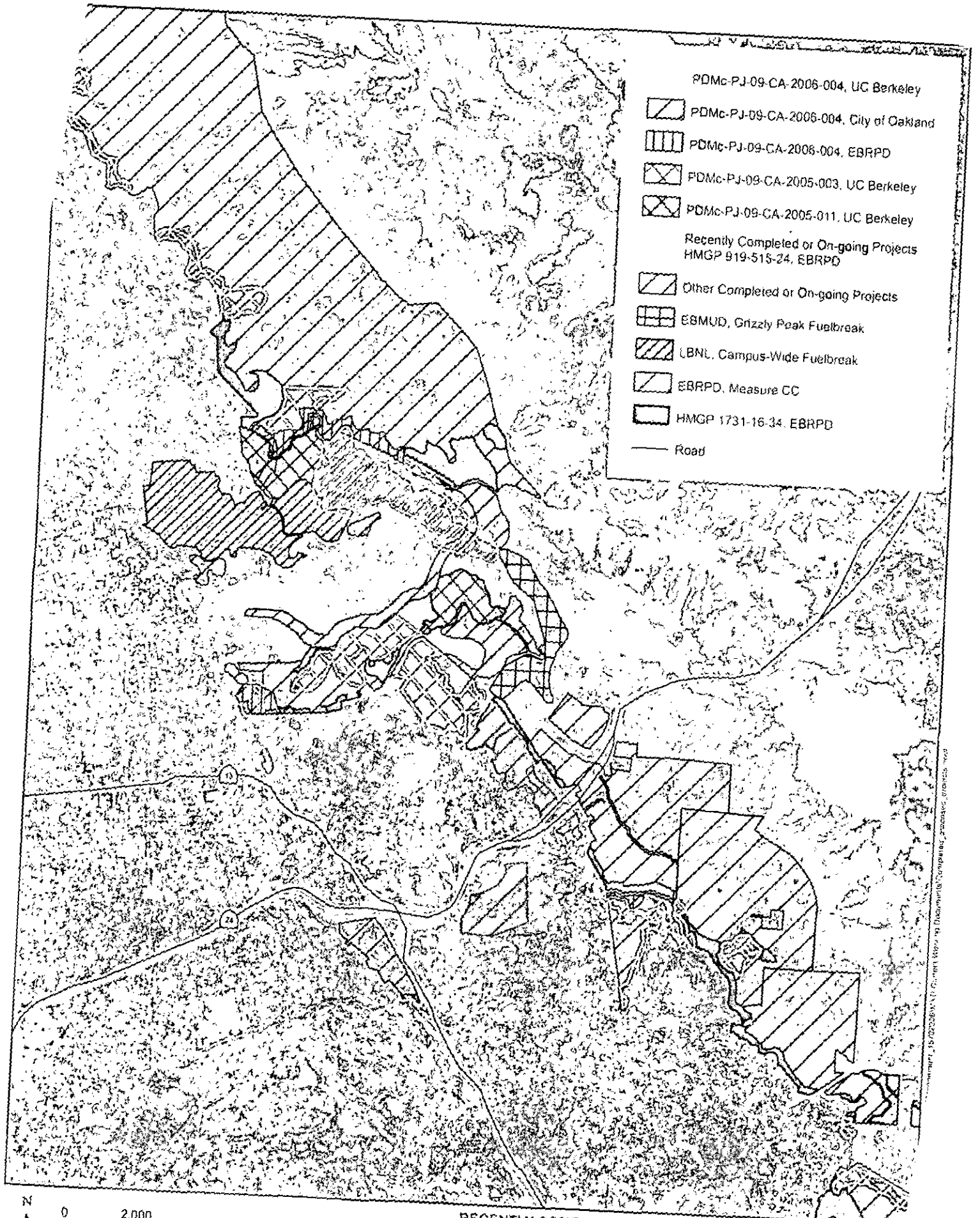
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
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
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
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
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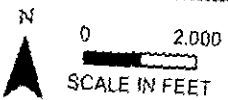
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 Road

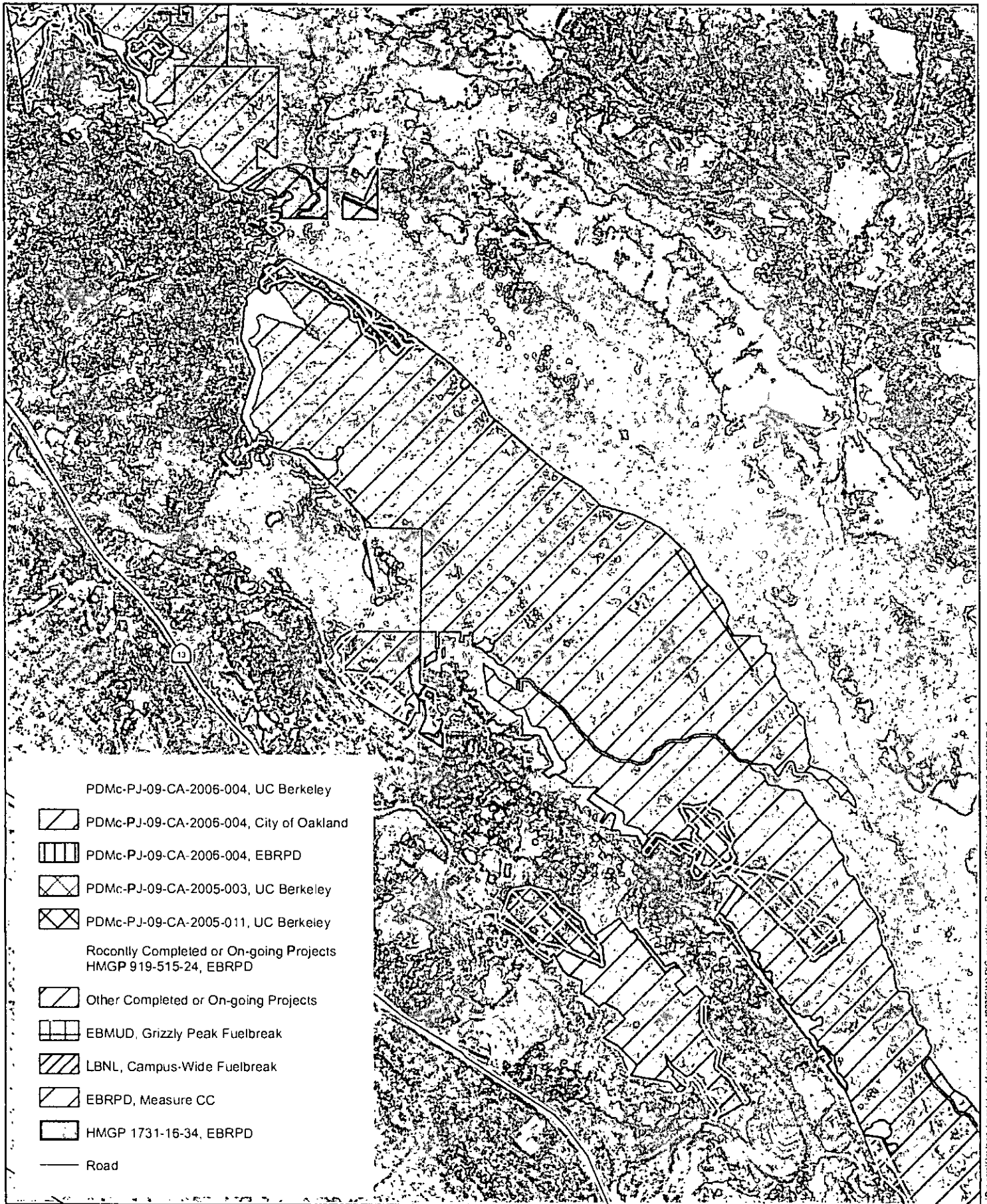
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








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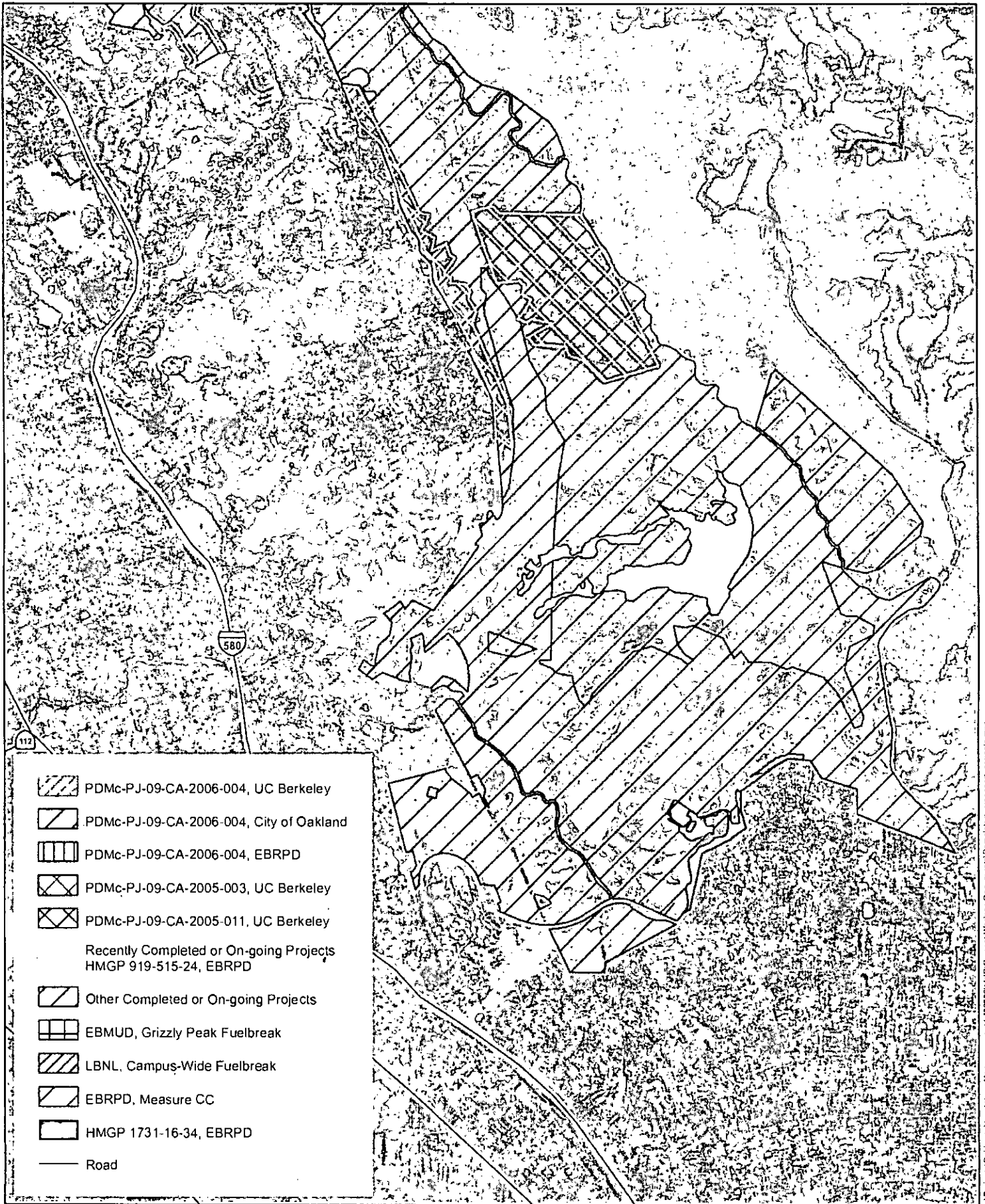













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Hills Fuel Management

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