

OTAY RANCH PRESERVE JOINT POWERS AGREEMENT DISPUTE RESOLUTION PROCESS

Preserve Owner Manager Staff Recommendation

November 20, 2008

**Approved by the POM Policy Committee on 11/20/08.
Motion to approve by Chairman Greg Cox.
Motion seconded by Deputy Mayor Jerry Rindone.
Motion Carried 2/0.**

BACKGROUND:

The concept to utilize a non-binding neutral third party in the dispute resolution process was presented to the Policy Committee at their last meeting held July 17, 2008. The Policy Committee supported this concept and directed staff to draft a dispute resolution process. At the October 29, 2008 Preserve Management Team (PMT) meeting, the PMT recommended approval of the dispute resolution process as outlined below. The PMT did not take action on a preferred implementation method.

The proposed dispute resolution process may be formalized by amending the Otay Ranch Preserve Joint Powers Agreement (JPA). Amending the JPA requires action by the County Board of Supervisors and the City of Chula Vista City Council. Alternatively, the dispute resolution process may be approved by the Policy Committee and may be implemented as a POM policy.

POM Policy Decision Making System:

The "Joint Powers Agreement Between the City of Chula Vista and the County of San Diego for the Planning Operation and Maintenance of the Otay Ranch Open Space Preserve" (the "JPA") requires a quorum of both elected representatives of the POM Policy Committee for purposes of conducting business. There is currently no process in place to resolve issues on which the Policy Committee is unable to reach consensus. Section 5. of the JPA authorizes the Policy Committee to establish policies for the PMT. Accordingly, City staff recommends that the Policy Committee adopt a dispute resolution policy to allow the POM Staff to utilize a neutral third party for non-binding mediation, in the event the Policy Committee is unable to reach consensus on an issue related to the POM. The proposed process is outlined below.

Proposed Dispute Resolution Process:

- If a dispute arises out of or related to the POM that cannot be resolved by POM Staff and the PMT, the PMT on consensus may direct POM Staff to participate in non-binding mediation with a neutral third party mediator in order to resolve the dispute. In doing so, the PMT must also come to consensus on the maximum amount that may be spent on the mediation.
- If the PMT cannot not reach consensus to utilize mediation, the PMT will present the dispute to the Policy Committee for their consideration and direction. If the Policy Committee directs POM Staff to participate in mediation, the Policy Committee must also set the maximum amount that may be spent on the mediation.
- Each agency shall be responsible for determining the source of funds for its share of the mediation costs.
- The mediation shall be conducted by the National Conflict Resolution Center ("NCRC"), or a similar neutral mediation service within the County of San Diego. Once a mediator is

identified, POM Staff shall confirm that the mediator will prepare a written decision in the matter.

- The POM Staff shall agree on who shall conduct the mediation; if they are unable to agree, they shall defer to NCRC, or other selected mediation service, to choose the best-suited mediator to conduct the mediation.
- The POM Staff shall attend the mediation and shall be entitled to make written and/or oral presentations of their respective agencies' positions to the mediator.
- The POM Staff shall agree on the date and time for the mediation.
- At the conclusion of the mediation, POM Staff shall obtain the mediator's written recommendation regarding resolution of the disputed matter. The written recommendation shall be provided to the POM Staff. All mediation results and documentation, by themselves, shall be non-binding unless otherwise agreed upon, in writing, by both parties.
- After receiving the mediator's written recommendation, the POM Staff shall forward the recommendation to the referring body (PMT or Policy Committee). If the matter was referred by the PMT, the PMT shall consider the mediator's recommendation at their next scheduled meeting. The PMT may adopt the mediator's recommended resolution, in whole or in part, reject it, take no action on it, or take any other action it deems appropriate, and shall provide direction to POM Staff accordingly. If the PMT does not agree to adopt the mediator's recommended resolution, the matter shall be agendized for the consideration by the Policy Committee.
- Upon referral of the matter to the Policy Committee, the Policy Committee may adopt the mediator's recommended resolution in whole or in part, reject it, take no action on it, or take any other action it deems appropriate, and shall provide direction to POM Staff accordingly. If the mediation fails to resolve the dispute and consensus cannot be reached, the Policy Committee shall refer the matter back to the PMT for recommendation on an alternative course of action which may include any of the following:
 - Participate in additional mediation sessions;
 - Maintain the status quo;
 - Refer the matter to the Otay Ranch Sub-Committee as established by County Board of Supervisors Policy I-109;
 - Refer the matter to the legislative bodies of the City and the County for direction;
 - Take other action as permitted by the JPA; or
 - Any other legally permissible action which the Policy Committee may deem appropriate.