



# City of Costa Mesa

## Inter Office Memorandum

**TO:** CITY COUNCIL/ORANGE COUNTY FAIRGROUNDS AUTHORITY  
**FROM:** KIMBERLY BRANDT, AICP, DEVELOPMENT SERVICES DIRECTOR *KB*  
**DATE:** AUGUST 24, 2010  
**SUBJECT:** NOISE RESTRICTIONS APPLICABLE TO THE ORANGE COUNTY FAIR AND EVENT CENTER

Since the late 1970s there has been a settlement agreement and several court decisions that restrict noise levels associated with operations of the Orange County Fairgrounds and Pacific Amphitheater. The noise analysis included in the Final Environmental Impact Report for the Orange County Fair Master Plan (2003) provides a summary of the various court actions and agreement (Attachment 1).

### Costa Mesa 2000 General Plan

The City of Costa Mesa General Plan references the 1980 Settlement Agreement between the City and the 32<sup>nd</sup> DAA regarding fairground-related noise and documents the noise restrictions (see Attachment 2). These restrictions still apply to fairgrounds operations, with exception of the use of the Pacific Amphitheater, which is discussed further below.

### Pacific Amphitheater

The 1990 Court Order established the current noise restrictions for the use of the Pacific Amphitheater, which are as follows:

1990 Court Order	
Maximum Noise Level	Time Period
55 dB(A)	7:00 a.m. - 10:30 p.m. Sunday - Thursday
50 dB(A)	10:30 p.m. - 7:00 a.m. Sunday - Thursday
55 dB(A)	7:00 a.m. - 11:00 p.m. Friday and Saturday
50 dB(A)	11:00 p.m. - 7:00 a.m. Friday and Saturday

For comparison purposes, Section 13-280 of the Costa Mesa Municipal Code requires the following standards for the exterior of residential properties:

Noise Level	Time Period
55 dB(A)	7:00 a.m.—11:00 p.m.
50 dB(A)	11:00 p.m.—7:00 a.m.

In the event the alleged offensive noise consists entirely of impact noise, simple tone noise, speech, music, or any combination thereof, the Municipal Code requires that each of the above noise levels be reduced by 5 dB(A).

Although the 1990 Order is more restrictive than the City's noise ordinance, there is a provision in the order that the 5 dB(A) penalty for speech and music does not apply.

### Conclusion

The 1980 Settlement Agreement currently applies to the operations of the fairgrounds with the exception of the events at the Pacific Amphitheater. As stated previously, the use of the Pacific Amphitheater is subject to the 1990 Court Order.

- Attachments:
1. Orange County Fair Master Plan Final EIR excerpt
  2. 2000 General Plan - 1980 Settlement Agreement Noise restrictions

- DISTRIBUTION:
- City Manager
  - City Attorney
  - Public Services Director
  - City Clerk (2)
  - Staff (4)
  - File (2)

# ATTACHMENT 1 OC FAIR MASTER PLAN EIR

## 4.8 NOISE

The 32<sup>nd</sup> District Agricultural Association (DAA) is a State entity and therefore not normally subject to local ordinances and policies. However, the OCFEC has a significant history regarding noise issues, specifically pertaining to the Pacific Amphitheater (Amphitheater). This section synthesizes the various agreements, judicial orders, and litigation results in order to arrive at 1) a description of the existing setting; 2) determination of a threshold of significance; 3) potential impacts resulting from the proposed project; and 4) appropriate mitigation measure(s) to reduce potential impacts below levels of significance. Though not subject to local ordinances, the various agreements, orders, and litigation results refer to the County of Orange and City of Costa Mesa ordinances as points of reference. In summary, by observing the thresholds established by Case Numbers 42 07 28 and 55 65 08 (1990 Order), the proposed project will be generally consistent with the spirit, intent, and letter of these local ordinances.

This study discusses the current noise environment, evaluates short-term construction noise, assesses long-term noise effects from project related stationary and mobile sources, and identifies mitigation measures and their effectiveness. Finally, it is noted that the primary focus of this section (as with the rest of the environmental impact report) is the use of the facilities other than during the summer Fair.

### 4.8.1 EXISTING SETTING

#### Fundamentals of Noise

**Noise Definition.** Noise impacts can be described in three categories. The first category is audible impact that refers to increases in noise levels noticeable to humans. Audible increases in noise levels generally refer to a change of 3.0 decibels (dB) or greater, because these levels have been found to be barely perceptible in exterior environments. The second category, potentially audible, refers to a change in noise levels between 1.0 and 3.0 dB. This range of noise levels has been found to be noticeable only in laboratory environments. The last category is changes in noise levels of less than 1.0 dB, which are inaudible to the human ear. Only audible changes in existing ambient or background noise levels are considered potentially significant. Therefore, a 3-dB increase in long-term noise levels is used as a threshold of significant change in this noise analysis. The decreases in noise levels due to distance divergence were also used to analyze the effects of construction noise associated with the proposed project.

**Characteristics of Sound.** Sound is increasing to such disagreeable levels in our environment that it can threaten quality of life. Noise is usually defined as unwanted sound. Noise consists of any sound that may produce physiological or psychological damage and/or interfere with communication, work, rest, recreation, and sleep. To the human ear, sound has two significant characteristics: pitch and loudness. Pitch is generally an annoyance, while loudness can affect the ability to hear. Pitch is the number of complete vibrations or cycles per second of a wave that result in the tone's range from

## Background

The 32<sup>nd</sup> DAA is a State Agency, and therefore is not normally subject to local ordinances. However, noise issues have characterized the recent history of the 32<sup>nd</sup> DAA, specifically regarding the Amphitheater. The following paragraphs briefly describe these issues with the intent of developing an appropriate point of reference for assessing potential noise impacts and recommending any necessary mitigation measures in relationship to the proposed project.

**1980 Settlement Agreement.** In 1980, the 32<sup>nd</sup> DAA entered into an agreement with the City of Costa Mesa related to the implementation of the proposed 1977 Master Plan. This agreement, among other things, established guidelines (including sound standards) and actions to be taken by the 32<sup>nd</sup> DAA in implementing the 1977 Master Plan. Specifically regarding noise, this agreement referred to the Orange County Noise Code standards with amendments (effective at that time).

**1990 Order (Cases Number 42 07 28 and 55 65 08).** In 1990, a permanent injunction (1990 Order) was entered against the former operators of the Amphitheater, Ned West, Inc., the Amphitheater Partnership, and various other Nederlander-affiliated persons and entities. The 1990 Order provides "that the Ned West defendants" and any and all successors in interest, including the OCFEC, shall be subject to certain sound limits as measured at 947 Serra Way, Costa Mesa, California.

The following was issued by the court associated with Case Nos. 42 07 28 and 55 65 08:

The Ned West defendants, operators of the Pacific Amphitheater, and any and all successors in interest, including the 32<sup>nd</sup> District Agricultural Association, are ordered to refrain from permitting sound emanating from the Pacific Amphitheater to impact plaintiff Lusk's property located at 947 Serra Way, Costa Mesa, California, in a manner inconsistent with the following stair/step sound level standards (listed in Table 4.8.C):

**Table 4.8.C: Case Nos. 42 07 28 and 55 65 08**

Sound Level	Time Period	Days of Week
55 dBA	7:00 a.m. to 10:30 p.m.	Sunday–Thursday
50 dBA	10:30 p.m. to 7:00 a.m.	Sunday–Thursday
55 dBA	7:00 a.m. to 11:00 p.m.	Friday–Saturday
50 dBA	11:00 p.m. to 7:00 a.m.	Friday–Saturday

The sound levels shall not exceed:

- (1) The sound standard for a cumulative period of more than thirty (30) minutes in any hour; or

- (2) The sound standard plus five (5) dBA for a cumulative period of more than fifteen (15) minutes in any hour; or
- (3) The sound standard plus ten (10) dBA for a cumulative period of more than five (5) minutes in any hour; or
- (4) The sound standard plus fifteen (15) dBA for a cumulative period of more than one (1) minute in any hour; or
- (5) The sound standard plus twenty (20) dBA for any period of time.

In the event the ambient sound level exceeds any of the first four (4) sound limit categories above, the cumulative period applicable to said category shall be increased to reflect said ambient sound level. In the event the ambient sound level exceeds the fifth sound level limit category, the maximum allowable sound level under said category shall be increased to reflect the maximum ambient sound level.

No 5 dBA penalty for music or speech shall apply to the Amphitheater.

It should be noted that this judgement stated the following:

The court has determined that the Orange County Noise Ordinance is not applicable to the Pacific Amphitheater as a matter of law (see Court of Appeal decision in *Ned West v. City of Costa Mesa*, Case No. 437733).

**1993 Contract of Sale.** In 1993, the OCFEC purchased the remaining years of the Amphitheater lease from the Nederlanders. The contract of sale provided that to monitor compliance with the 1980 Agreement, the sellers could enforce a sound restriction ("Sound Covenant") against future events at the Amphitheater venue. The Sound Covenant was 92 dBA absolute maximum at the mix board and 86 dBA  $L_{eq}$  as measured for 10 minutes at the top of the berm. The OCFEC soon discovered that this Sound Covenant was far more restrictive than represented, that the two numbers contained in the Sound Covenant were not correlated, and that virtually all events, including an Easter Prayer Vigil, would violate the Sound Covenant. Certain Nederlander Defendants then assigned this Sound Covenant to certain neighbors in violation of the parties' agreement.

On October 27, 1995, the 32<sup>nd</sup> DAA sued the Pacific Amphitheater Partnership and various other Nederlander-affiliated persons and entities ("Nederlander Defendants"). The 32<sup>nd</sup> DAA alleged that the Sound Covenant was fraudulently induced; that the Sound Covenant was an illegal restraint on free trade designed to promote the Nederlander Defendants' interests in other, competing venues in Southern California; and that the assignment of the Sound Covenant to these neighbors violated the parties' agreement and was invalid. That lawsuit is titled *32<sup>nd</sup> District Agricultural Association v. James M. Nederlander, et al.*, Case No. 754881 (Superior Court of Orange County, the Honorable Robert E. Thomas presiding) (lawsuit). The neighbors intervened in the lawsuit (intervenors).

The lawsuit went to trial and on June 8, 1998, just after a verdict was returned but before it was read, the Nederlander Defendants settled certain monetary aspects of the 32<sup>nd</sup> DAA's claims. As part of

the settlement, the Nederlander Defendants agreed to waive any right to enforce the Sound Covenant, including the 86 dBA  $L_{eq}$  limit, if Judge Thomas subsequently ruled that 1) the 92 dBA portion of the Sound Covenant was invalid, and 2) the assignment to the Intervenors was invalid. Judge Thomas issued a written Statement of Decision and Judgement in which he made those two predicate findings ruling that 1) the Sound Covenant, which included the 92 dBA limit, was induced by fraud, constituted an illegal restraint on trade in violation of California antitrust laws, and was invalid, and 2) the assignment of the Sound Covenant to the neighbors violated the parties' agreement and was invalid. A copy of Judge Thomas's Statement of Decision and Judgement can be found in Appendix E.

Soon after the substance of that decision was announced (which satisfied the two predicates to waive any right to enforce the Sound Covenant) the Nederlander Defendants stated that they would not honor that settlement agreement. They claimed that they had not waived enforcement of the Sound Covenant, including the 86 dBA  $L_{eq}$  limit, but had only agreed to waive enforcement of the 92 dBA limit within the Sound Covenant. In short, the Nederlander Defendants claimed that they had "agreed" that if the 92 dBA limit were held to be invalid, they would "agree" not to attempt to enforce that invalid limit. Judge Thomas rejected the Nederlander Defendants' contention and issued another Decision confirming that the Nederlander Defendants had waived enforcement of the entire Sound Covenant, including the 86 dBA limit. Judge Thomas ruled that: "The two predicate findings have been made. The agreement may not be rewritten. The transcript referred to enforcement of the sound covenant not just the 92 dB(A) Max." A copy of Judge Thomas's second Decision and Judgement can be found in Appendix E.

The Nederlander Defendants then appealed that Decision to the California Court of Appeal. On March 22, 2002, the California Court of Appeals issued a unanimous 18-page Opinion rejecting the Nederlander Defendants' contention, affirming Judge Thomas's Decision, and ruling that the Nederlander Defendants had waived any right to enforce the Sound Covenant including the 86  $L_{eq}$ /dBA limit. A copy of the California Court of Appeal's Opinion is found in Appendix E.

Therefore, it appears that the most tangible point of reference for determining appropriate noise levels, potential impacts, and recommending any necessary mitigation measures is the 1990 Order (Case Nos. 42 07 28 and 55 65 08). Figure 4.8.1 indicates the location of 947 Serra Way in relation to the OCFEC and the Amphitheater. The OCFEC also has committed to abide by the 86  $L_{eq}$  at the top of the berm limitation in the Sound Covenant for so long as the berm remains in place, although the Nederlander Defendants have waived their right to enforce it, and, as described herein, the OCFEC plans to significantly downsize the Amphitheater.

For comparison purposes, application of the 1990 Order would result in a noise level standard of approximately 58 dBA (between 7 a.m. and 10:30 p.m. for Sunday through Thursday and between 7 a.m. and 11 p.m. for Friday and Saturday) at the nearest residence (to the Fairgrounds) within the same neighborhood as the Serra Way home. It was previously noted that the human ear cannot detect a change in noise if the change is 3dBA or less. Therefore, assuming compliance with the 1990 Order, the noise level at the nearest residence in this neighborhood would be exposed to noise levels emanating from the Fairgrounds that are representative of noise regulations contained within the City of Costa Mesa and County of Orange Noise Ordinance.



Three additional private heliports are located in north Costa Mesa at the following locations:

- ◆ Los Angeles Times, 1375 Sunflower Avenue
- ◆ Office Building, 555 Anton Boulevard
- ◆ Tridair Helicopter, 3000 Airway Avenue

The City regulates the siting of helipads in the City through a Conditional Use Permit. The City requires an analysis to identify potential noise impacts and the City may regulate the hours of operation and arrival, departure/arrival routes, and type of helicopters which may use the heliport in order to minimize impacts to sensitive land uses.

## ORANGE COUNTY FAIRGROUNDS

In 1980, a modified stricter Noise Ordinance for fairground operations was established in an agreement between the 32<sup>nd</sup> District Agricultural Association and the City of Costa Mesa. Table N-5, *Orange County Fairgrounds Modified Noise Ordinance*, applies to the activities within the Orange County Fairgrounds.

**TABLE N-5  
ORANGE COUNTY FAIRGROUNDS MODIFIED NOISE ORDINANCE**

Land Use	Noise Level Not to Be Exceeded	Maximum Allowable Duration of Exceedance
Residential	50 DbA	30 min/hour
	55 DbA	15 min/hour
	60 DbA	5 min/hour
	65 DbA	1 min/hour
	70 DbA	Not For Any Period of Time
Noise Zone	Noise Level (CNEL)	Time Period
1 & 2 Family Residential	60 dBA	7:00 a.m. to 11:00 p.m.
	50 dBA	11:00 p.m. to 7:00 a.m.
Multiple Dwelling Residential, Public Space, Commercial	60 dBA	7:00 a.m. to 11:00 p.m.
	55 dBA	11:00 p.m. to 7:00 a.m.
Title 4, Division 6 (Noise Control) of the Orange County Code, 1980.		

Several noise sources presently exist within the Orange County Fairgrounds property. A majority of the on-site stationary noise is due to sound reinforcement equipment utilized for the Speedway, the swap meet, and annual events such as Oktoberfest and Orange County Fair. Additionally motorcycle noise is generated during Speedway races. Parking lot activity during various fairground events also generates noise. The primary noise generators on the fairgrounds site are briefly described below.

### PACIFIC AMPHITHEATER

Noise levels generated by concert events at Pacific Amphitheater have exceeded the Costa Mesa Noise Ordinance on several occasions in nearby residential areas in past years, and the amphitheater has been in litigation since 1983 regarding repeated violations and was closed in 1997.