



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: SEPTEMBER 21, 2010

ITEM NUMBER: \_\_\_\_\_

**SUBJECT:** REQUEST FOR A REHEARING OF CITY COUNCIL ADOPTION ON AUGUST 24, 2010 OF RESOLUTION NUMBER 10-62 FINDING THE PROPOSED LEASE AGREEMENT FOR THE ORANGE COUNTY FAIR AND EVENT CENTER TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

**DATE:** SEPTEMBER 9, 2010

**FROM:** DEVELOPMENT SERVICES DEPARTMENT

**PRESENTATION BY:** KIMBERLY BRANDT, AICP, DIRECTOR

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY BRANDT (714) 754-5270

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## **RECOMMENDATION:**

Provide direction.

## **BACKGROUND:**

On August 30, 2010, Sandra L. Genis filed the attached application for a rehearing of City Council's adoption on August 24, 2010 of Resolution 10-62 that found the proposed lease agreement for the Orange County Fair and Event Center to be categorically exempt from the California Environmental Quality Act. The August 24<sup>th</sup> meeting was a special joint meeting of the Costa Mesa City Council and Orange County Fairgrounds Authority.

Costa Mesa Municipal Code Section 2-304(3) states the following regarding a rehearing request.

“(3) To justify a rehearing the applicant must show in the application that there is new, relevant evidence which, in the exercise of reasonable diligence, could not have been produced, or which was improperly excluded, at the earlier hearing, or that the person or body failed to comply with the law, which contention was not asserted at the earlier hearing. The person or body may in its discretion decide whether to hear additional evidence than what is contained in the application. The decision whether to grant the rehearing is final and may not be appealed or reheard.”

Also attached for Council review is a copy of the adopted Resolution, staff report, and correspondence received for the August 24, 2010 meeting.

KIMBERLY BRANDT, AICP  
Development Services Director

DISTRIBUTION: City Manager  
City Attorney  
Assistant City Manager  
Public Services Director  
Transportation Svs. Manager  
City Clerk (2)  
Staff (4)  
File (2)

Sanda L. Genis  
1586 Myrtlewood  
Costa Mesa, CA 92626

ATTACHMENTS: 1 Application for Rehearing  
2 Council Resolution  
3 August 24, 2010 Staff Report  
4 Correspondence

File Name: 092110OCFECLeaseRehear	Date: 091610	Time: 1:01 p.m.
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RECEIVED  
CITY CLERK

CITY OF COSTA MESA  
P. O. Box 1200  
Costa Mesa, CA 92628-1200

FEE: \$ 1220.00

2010 AUG 30 PM 5:01  
APPLICATION FOR REVIEW, APPEAL OR REHEARING

CITY OF COSTA MESA  
Applicant Name Sandra L. Genis

Address 1586 Myrtlewood St.

Phone (714) 754-0814 Representing\* Self and Orange County Fairgrounds Preservation Society

REQUEST FOR:  REVIEW\*\*  APPEAL  REHEARING

Decision of which review, appeal or rehearing is requested: (give number of rezoning, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) Agenda Item VIII. 1. a. August 24, 2010, joint meeting of the Costa Mesa City Council and OCFA, Resolution of the City Council of the City of Costa Mesa, California, Finding the Proposed Lease Agreement for the Orange County Fair and Event Center to be Categorically Exempt from the California Environmental Quality Act

Decision by:

City Council Reasons for requesting review, appeal or rehearing: The City Council improperly found the proposed project to be categorically exempt. As detailed in the August 24, 2010 letter submitted by Sandra L. Genis, the proposed project has the potential to and most likely will result in significant environmental impacts. As stated in public comments, the proposed approach, looking at future proposals on an individual basis could result in a piecemeal approach. Later comments by decision makers and Mr. Guy Lemmon, representative of the proposed lessee, during the August 24 2010 meeting specifically indicate the intent to address future activities, projects, and therefore impacts on a piecemeal basis, confirming that on which one could only speculate as the City council addressed the categorical exemption. In addition, a presentation later in the meeting provided information regarding historical structures on the site which was not available and not anticipated as the City Council addressed the categorical exemption (partial transcript attached). As noted in the presentation, two of the three structures identified are under 5,000 square feet in area and, as noted previously could, under lease provisions, be demolished without further discretionary review subject to CEQA Staff and decision makers also indicated that they had not had time to adequately review or consider the letter submitted by Genis, which was admittedly not submitted until the meeting. However, documents were not released to citizens or decision makers until shortly before the meeting, rendering it difficult, if not impossible for citizens to prepare and submit comments in advance of the meeting.

Date: August 30, 2010 Signature: \_\_\_\_\_

For office use only — do not write below this line

SCHEDULED FOR THE CITY COUNCIPLANNING COMMISSION MEETING OF: If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

\* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency. Review may be requested only by City Council or City Council Member

Excerpt of the presentation of the Planning Director on August 24, 2010:

All three of these buildings [Farm building, Baja Blues Building, and Memorial Gardens Building] contribute to the significance of the site being a historic district. Our City Code has a Historic Resources Preservation Ordinance. However, inclusion on a local register is purely voluntary by the property owner. We do not mandate it within our City ordinance. So at this time, the Orange County Fairgrounds is not listed on our local register nor any of the three buildings that I just identified on our register as well.

When the fairgrounds did conduct their 2003 environmental impact report the conclusion of their consultant at that time was that the buildings on the property had been moved from their original location, that they have been altered significantly and therefore decreased their historic significance. But again, I think that significance is in the eye of the beholder and these still are remnants of the air base operations from World War II despite the fact that they have been altered.

## RESOLUTION NO. 10-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA FINDING THE PROPOSED LEASE AGREEMENT FOR THE ORANGE COUNTY FAIR AND EVENT CENTER TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

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WHEREAS, Final Program Environmental Impact Report (EIR) No. 1049 (State Clearinghouse Number 200031120) was prepared by the City of Costa Mesa for the 2000 General Plan and certified by City Council in January 2002;

WHEREAS, Final Program EIR for the 2000 General Plan addresses a full range of environmental issues associated with the 20-year planning horizon of the 2000 General Plan (2020). All impacts resulting from implementation of the 2000 General Plan were minimized to a level of significance with the exception of impacts related to transportation/circulation, air quality, and noise;

WHEREAS, the City Council of the City of Costa Mesa adopted the 2000 General Plan on January 22, 2002. The General Plan is a long-range, comprehensive document that serves as a guide for the orderly development of Costa Mesa;

WHEREAS, the Fair Board of Directors of the 32nd District Agricultural Association (DAA) adopted a 10-year strategic Master Plan and Final EIR in 2003. In conjunction with the City's General Plan EIR, this document served as environmental documentation for General Plan Amendment GP-09-01, which was adopted by City Council on February 16, 2010;

WHEREAS, the City of Costa Mesa 2000 General Plan designates the project site at 88 Fair Drive as Fairgrounds, a General Plan designation that recognizes the unique land uses associated with the 150-acre Orange County Fair and Event Center property (OCFEC);

WHEREAS, on June 22, 2010 the City Council and the Orange County Fairgrounds Joint Powers Authority (JPA) approved a Purchase and Sales Agreement with the State of California for the OCFEC;

WHEREAS, all of the documents referenced above are hereby incorporated by reference and are on file and available for public review in the City of Costa Mesa Development Services Department located at 77 Fair Drive, Costa Mesa;

WHEREAS, the JPA is proposing to enter into a ground lease agreement of the OCFEC with OC Fair and Event Center, L.P. (OC Fair);

WHEREAS, the proposed lease agreement with OC Fair would help achieve the City of Costa Mesa's goal of preserving the Fairgrounds in Costa Mesa;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), CEQA Guidelines, and City's environmental processing procedures, the proposed activity qualifies for the following five categorical exemptions:

1. CEQA Guidelines Section 15301, Class 1, Existing Facilities because activity involves the leasing of existing facilities with no expansion of the use beyond that existing at the time of the issuance of the exemption.
2. CEQA Guidelines Section 15323, Class 23, Normal Operations of Facilities for Public Gatherings because the activity involves the continuation of the normal operations of the existing facility for public gatherings for which the facility was designed, and that there is a past history of approximately 60 years of the facility being used for fair and event purposes.
3. CEQA Guidelines Section 15325, Class 25, Transfers of Ownership of Interest in Land To Preserve Existing Natural Conditions because the activity involves a ground lease agreement in order to preserve the existing fair and event center operations which are a significant recreational resource in the City of Costa Mesa and County of Orange; furthermore the activity facilitates preservation of the open space at the Fairgrounds, obligates the operator to continue the existing agricultural uses at Centennial Farms; and requires compliance with the Costa Mesa Municipal Code before any "Cultural Resources" can be modified.
4. CEQA Guidelines Section 15302, Class 2, Replacement or Reconstruction because this activity identifies that some of the existing facilities have suffered from deferred maintenance and repair work may need to be undertaken, and that these repairs should not change the purpose of the

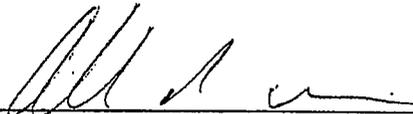
facilities being replaced, or should not expand the capacity of these structures. The ground lease also provides that no such repairs can be undertaken until all Applicable Laws have been complied with, including CEQA.

5. CEQA Guidelines section 15061(b)(3) because the activity does not authorize any physical change in the environment.

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BE IT RESOLVED that, based on the evidence in the record, the City Council of the City of Costa Mesa does hereby find the proposed lease agreement between the Orange County Fairgrounds Joint Powers Authority and OC Fair for the use of the OCFEC property for fair and event uses to be categorically exempt from the California Environmental Quality Act.

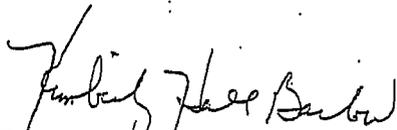
PASSED AND ADOPTED this 24th day of August, 2010.

  
\_\_\_\_\_  
Allan R. Mansoor, Mayor

ATTEST:

  
\_\_\_\_\_  
Julie Folcik, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF COSTA MESA )

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I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 10-62 and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 24<sup>th</sup> day of August, 2010, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS: MANSOOR, LEECE, BEVER, FOLEY, MONAHAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 25<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
JULIE FOLCIK, CITY CLERK

(SEAL)



## **CITY COUNCIL AGENDA REPORT**

MEETING DATE: AUGUST 24, 2010

ITEM NUMBER: \_\_\_\_\_

**SUBJECT:** CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION FOR THE ORANGE COUNTY FAIR AND EVENT CENTER LEASE AGREEMENT

**DATE:** AUGUST 19, 2010

**FROM:** DEVELOPMENT SERVICES DEPARTMENT

**PRESENTATION BY:** KIMBERLY BRANDT, AICP, DIRECTOR

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY BRANDT (714) 754-5270

### **RECOMMENDATION:**

By adoption of the attached resolution, determine that the proposed lease agreement between the Orange County Fairgrounds Joint Powers Authority (JPA) and OC Fair and Event Center, L.P. is exempt from the California Environmental Quality Act.

### **BACKGROUND:**

The JPA is considering whether to authorize execution of a ground lease with OC Fair and Event Center, L.P. (OC Fair) for the 150-acre Orange County Fair and Event Center (OCFEC) located at 88 Fair Drive. The JPA's decision is a discretionary one, triggering the need for the City of Costa Mesa, as the lead agency, to comply with the California Environmental Quality Act (CEQA).

The OCFEC's operations have been exhaustively studied by both the City and the 32<sup>nd</sup> District Agricultural Association (DAA) over the years. In 2002, the City certified its 2000 General Plan Final Program Environmental Impact Report (EIR) which examined the OCFEC's operations and impacts at a programmatic level. In 2003, the DAA certified an EIR in connection with approval of its Master Plan. This project-level EIR analyzed the impacts associated with its expansion plans for the fairgrounds. Since the State adopted legislation in 2009 authorizing the sale of the OCFEC, the City has pursued the acquisition of the property.

In December 2009, the Planning Commission adopted a resolution (PC-09-42) that found the City's proposed purchase, acquisition, and use of the OCFEC property to be in conformance with the City's 2000 General Plan and that the proposed acquisition is categorically exempt from CEQA.

In February 2010, Council adopted Resolution Number 10-12 approving General Plan Amendment GP-09-01 which amends the "Fairgrounds" land use designation to further describe the existing land use and traffic context and permitted and prohibited land uses. Additionally, Council determined that the City's 2000 General Plan Final Program EIR and DAA's OCFEC Master Plan Final EIR constituted the required environmental documentation for the proposed amendment.

All of the documents referenced above are on file in the City of Costa Mesa Development Services Department located at 77 Fair Drive, Costa Mesa.

**ANALYSIS:**

Although the proposed lease agreement is subject to CEQA, there are five exemptions to CEQA which are applicable, as discussed below. The JPA's approval to execute the ground lease will not lead to a change in the physical environment, as the ground lease consists of a conveyance of a leasehold interest from the JPA to OC Fair. The ground lease does not obligate or commit the JPA or OC Fair to undertake any activity which could lead to a change in the physical environment. Under the provisions of the ground lease, any possible subsequent action undertaken by either party to the ground lease cannot occur without compliance with all federal, state, and local laws and regulations, including CEQA. Further, the JPA has no permitting authority over any development applications which could be submitted. The ground lease specifically provides that it does not authorize any uses beyond what presently exists at the OCFEC, and any intensification of the authorized uses are subject to City review and approval and any other responsible public agency.

*Exemptions:*

1. CEQA Guidelines section 15301, Class 1, Existing Facilities. This exemption is applicable, to the leasing of public or private structures or facilities, involving negligible or no expansion of the use beyond what is existing at the time of the lead agency's determination. If the JPA authorizes the execution of the agreement, it would allow the lease of public structures and facilities to OC Fair. There would be negligible or no expansion of the use, as the ground lease does not authorize any changes to the OCFEC uses or facilities. No such changes can occur without City authorization, subject to subsequent compliance with CEQA and the City's normal regulatory processes. Therefore, this exemption is applicable to the proposed lease agreement.
2. CEQA Guidelines section 15323, Class 23, Normal Operations of Facilities for Public Gatherings. This exemption consists of the normal operation of existing facilities for public gatherings for which the facilities were designed, where there is a past history (at least 3 years) of the facility being used for the same or similar kind of purpose, and that there is a reasonable expectation that future occurrences would not represent a change in the operation of the facility. Examples of such facilities include racetracks, amphitheaters, and amusement parks. Possible execution of the ground lease does not authorize a change in the normal operation of the OCFEC (certainly an example of an existing facility for public gatherings), and the OCFEC has been used as a fairgrounds for approximately 60 years. There is also a reasonable expectation that there will not be a change in the future operation of the facility, as the City's 2000 General Plan designates the OCFEC as "Fairgrounds" which is the overarching regulation for the property. Any future change in operations must be found consistent with the General Plan. Additionally, any future General Plan amendments regarding the Fairgrounds designation shall require a public vote for adoption.

3. CEQA Guidelines section 15325, Class 25, Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions. This exemption consists of transfers of ownership interests in land to preserve open space, agricultural, and historical resources. If the JPA approves authorization of the ground lease, the JPA would transfer an ownership interest in the OC FEC to OC Fair. Among other things, based upon the terms of the ground lease, this approval would facilitate preservation of the open space at the fairgrounds, as the site will remain a fairgrounds, the ground lease obligates OC Fair to continue the existing agricultural uses at Centennial Farms, and the ground lease requires compliance with the Costa Mesa Municipal Code before any "Cultural Resources" can be modified.
4. CEQA Guidelines section 15302, Class 3, Replacement or Reconstruction. This exemption applies to replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Examples include replacement or reconstruction of existing utility systems, and replacing or reconstruction of public facilities to create earthquake resistant structures. The ground lease provides that some of the existing facilities have suffered from deferred maintenance, and also repair work may need to be undertaken, based upon a pending lawsuit against the State, where it is alleged that some of the Fairground facilities do not comply with the Americans with Disabilities Act (ADA). Although presently the scope and the magnitude of these required ADA and other repairs have not been determined, these repairs should not change the purpose of the facilities being replaced, or should not expand the capacity of these structures. The ground lease also provides that no such repairs can be undertaken until all Applicable Laws have been complied with, including CEQA.
5. CEQA Guidelines section 15061(b)(3), the "Common Sense" Exemption. The CEQA Guidelines include a general rule exemption which states that CEQA only applies to projects which have the potential for causing a significant effect on the environment. For this exemption to apply, Council must determine that it can be seen with certainty that there is no possibility that the authorization to execute the ground lease may have a significant effect on the environment. As discussed above, the proposed agreement conveys a ground lease interest from the JPA to OC Fair. The ground lease does not authorize any physical change in the environment. Physical change in the environment only may occur after there is compliance with all applicable federal, state, and local laws and regulations, including subsequent CEQA compliance.

*Exceptions to the Exemptions:*

The CEQA Guidelines include several exceptions to the application of the CEQA Categorical Exemptions to a proposed project. There are four potentially applicable exceptions, but as discussed below, staff has determined that they do not apply to the JPA's authorization of the proposed ground lease.

1. Cumulative impact. If the cumulative impact of successive projects of the same type, in the same place, over time, is significant, a CEQA exemption cannot be used. There is no such cumulative impact here, since the project, approval of execution of a ground lease, is unlikely to recur in the future. Also, as discussed above, execution of the ground lease is unlikely to result in any change in the physical environment.
2. Significant effect. A CEQA exemption cannot be used if there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Approval of execution of the ground lease is unlikely to have a significant effect on the environment, and there are no unusual circumstances present.
3. Hazardous waste sites. A CEQA exemption cannot be used for a project located on any state-designated list of hazardous waste sites. The OCFEC is not on any such list.
4. Historical resources. A CEQA exemption cannot be used for a project which may cause a substantial adverse change in the significance of a historical resource. The ground lease does not mandate any modification of any historical structures at the fairgrounds. Rather, the ground lease prohibits any modification of "Cultural Resources" without compliance with Costa Mesa Municipal Code Section 13-200 et seq., which is Costa Mesa's cultural resources protection ordinance.

#### **ALTERNATIVES CONSIDERED:**

Council's adoption of the attached resolution allows the JPA to authorize execution of the proposed ground lease agreement. Should Council not take action on the resolution, the JPA would not be able to take any action on the lease agreement.

#### **FISCAL REVIEW:**

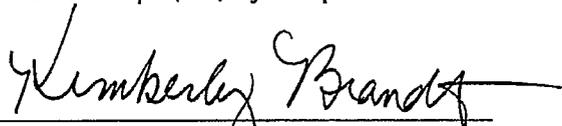
This determination does not require any fiscal review.

#### **LEGAL REVIEW:**

The City Attorney's Office has reviewed the resolution and approved it as to form.

#### **CONCLUSION:**

CEQA authorizes the use of multiple exemptions in connection with approval of a project. Staff recommends that Council determine that a decision by the JPA to authorize execution of the ground lease for the OCFEC is exempt, pursuant to five CEQA exemptions, by adoption of the attached resolution.



KIMBERLY BRANDT, AICP  
Development Services Director

DISTRIBUTION: City Manager  
City Attorney  
Assistant City Manager  
Public Services Director  
Transportation Svs. Mgr.  
City Clerk (2)  
Staff (4)  
File (2)

~~ATTACHMENTS: 1 Draft City Council Resolution~~

File Name: 082410CEQAOCFEC	Date: 081910	Time: 10:45 a.m.
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SANDRA GENIS  
1586 MYRTLEWOOD

COSTA MESA, CA. 92626

PHONE/FAX (714) 754-0814

August 24, 2010

Mayor Allan Mansoor and Costa Mesa City Council  
Costa Mesa city Hall  
77 Fair Drive  
Costa Mesa, Ca.

Subject: CEQA determination for OCFEC lease

Dear Mayor Mansoor and Members of the City Council:

The Costa Mesa City council proposes to adopt a finding that the proposed lease between the Orange County Fairgrounds Authority (OCFA) and OC Fair and Event Center, LP for lease of the property known as the Orange County Fair and Events Center is categorically exempt from the provision of the California Environmental Quality Act (CEQA). I believe that is inappropriate in this case.

**Lead Agency**

It is peculiar that the City of Costa Mesa is acting as the lead agency in this case, inasmuch as the City of Costa Mesa is not and will not be the owner of the property in question nor a party to the lease. The only action contemplated on the August 24, 2010 agenda will be taken by OCFA, and approval of the lease does not appear to be subject to the City of Costa Mesa as a separate and distinct agency.

Section 15051 of the Guidelines for the Implementation of CEQA (Guidelines) provides that:

Where two or more public agencies will be involved with a project, the determination of which agency will be the Lead Agency shall be governed by the following criteria:

- (a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency. ...
- (c) Where more than one public agency equally meet the criteria in subdivision (b), **the agency which will act first on the project in question shall be the Lead Agency.** [emphasis added]

In this case, not only is OCFA the first public agency to act on the lease, it is the *only* local public agency with authority to approve or deny the lease. Thus, OCFA must act as the lead

agency. It is inappropriate for an agency with no authority to approve, deny, review, or revise the lease act as the lead agency.

### Lease an Action Pursuant to CEQA

As stated in CEQA Section 21001(g), it is the intent of the California legislature to:

Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

In accordance with Section 15004 (a) of the Guidelines for the Implementation of CEQA (Guidelines):

Before granting any approval of a project subject to CEQA, every Lead Agency or Responsible Agency shall consider a final EIR or Negative Declaration or another document authorized by the Guidelines

Guidelines Section 15378 defines project as follows:

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency ...

(3) An activity involving the issuance to a person of a lease [emphasis added], permit, license, certificate, or other entitlement for use by one or more public agencies.

Guidelines Section 15352 defines approval as follows:

a) "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. ...

(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease [emphasis added], permit, license, certificate, or other entitlement for use of the project.

Thus, approval of the proposed lease is clearly a project subject to CEQA review.

### Previous Environmental Documentation

As noted in the City staff report:

The OCFEC's operations have been exhaustively studied by both the City and the 32nd District Agricultural Association (DAA) over the years. In 2002, the City certified its 2000 General Plan Final Program Environmental Impact Report (EIR) which examined the OCFEC's operations and impacts at a programmatic level. In 2003, the DAA certified an EIR in connection with approval of its Master Plan. This project-level EIR analyzed the impacts associated with its expansion plans for the fairgrounds.

While one might take issue with use of the term "exhaustively" in this regard, nonetheless Environmental Impact Reports (EIRs) were certified for the projects as described.

The EIR for the Costa Mesa General Plan Update Program (SCH # 2000031120) is identified as a Program EIR (p. 1-2). Pursuant to Guidelines Section 15168:

A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

- (1) Geographically,
- (2) A logical part in the chain of contemplated actions,
- (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or
- (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

In accordance with Guidelines Section 15168 (c):

Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

- (1) If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration.
- (2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.
- (3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.
- (4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.**

In any case, Section 8 of the General Plan Update EIR identified significant, unavoidable impacts to traffic, noise and air quality from both construction emissions and increases in vehicle miles traveled and stationary source emissions.

The 2003 EIR for the Orange County Fair and Exposition Center Master Plan (SCH # 1989010088) identified significant unavoidable impacts on air quality (Section 8.0). The Master Plan EIR also identified potentially significant impacts on air quality, cultural and scientific resources, earth resources and topography, hydrology and water quality, noise, public services and utilities, and traffic and circulation. The EIR identified twenty two measures to be used to mitigate impacts of the Master Plan.

### Categorical Exemption

Article 9, Section 15300 et seq provides a list of classes of projects which have been determined not to have a significant effect on the environment and which are, therefore, exempt from the provisions of CEQA. The City of Costa Mesa and, presumably, OCFA propose to declare the lease exempt from the environmental review provisions of CEQA. This is wholly inappropriate as discussed below.

It is suggested that the proposed lease should be categorically exempt under Per Guidelines Section 15301, Class 1, Existing Facilities. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The lease contemplates the expansion of use beyond that currently existing. Specifically, the lease stated that

Tenant may increase intensity of use as to non-fair events, to the level contemplated in the [OCFEC master plan] EIR, and may make re-use of the existing amphitheater, to the level contemplated in the EIR and subject to the noise mitigation measures set forth in the EIR (Section 6.1).

The Master Plan EIR, however, also identified other impacts associated with use of the amphitheater, including a long-term adverse impact on air quality which is both significant and unavoidable.

In addition, the revenue projections anticipated under the lease represent a significant increase from what is occurring now. In order to achieve that level of revenue, the facility would have to either increase the number of events or drastically increase fees. An increase in parking fees would undoubtedly result in increased parking in neighborhoods, with associated impacts due to noise and trash.

The Guidelines specifically state that:

An economic or social change by itself shall not be considered a significant effect on the environment. (Guidelines Section 15382)

and:

Economic or social effects of a project shall not be treated as significant effects on the environment. (Guidelines Section 15131(a))

At the same time, economic and social effects, such as an increase in parking fees cannot be dismissed entirely. Sections 15064(e), 15382, and 15131 (b) all recognize the importance of social and economic effects in determining the significance of a project's actual physical effects on the environment.

In accordance with Guidelines Section 15131(a):

An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes.

and Section 15064(e):

Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project.

This is stated more strongly in *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 [217 Cal.Rptr. 893], a case in which the plaintiffs contended, among other points, that decision makers should consider whether a new shopping center would draw business from the downtown shopping district, leading to business closures and eventual physical deterioration of the downtown area. The appellate court held that:

...the lead agency shall consider the secondary or indirect environmental consequences of economic and social changes, but may find them to be insignificant. Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered... subdivision (f) [of Guidelines Sec. 15064, since re-enumerated] expressly gives the agency **discretion to determine whether the consequences of economic and social changes are significant, which is not the same as discretion to not consider these consequences at all.** [emphasis added] Indeed, the physical change caused by economic or social effects of a project may be regarded as a significant effect in the same manner as any other physical change resulting from the project may be regarded as a significant effect.

Thus, the Court very clearly required that the public agency address the potential that physical blight in the downtown area would be caused by the proposed shopping center.

Similarly, in *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 441 [243 Cal.Rptr. 727], also addressing downtown blight, the court stated:

The potential economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the

downtown area. Therefore, on remand, City should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project.

The lease permits uses allowed under both the Costa Mesa General Plan and the OCFEC Master Plan. These include restaurant uses and equestrian uses which, if newly added or expanded could result in impacts on water quality. Certain actions, such as demolition of a structure less than 5,000 square feet in area which has not yet been officially declared of historic value, could happen by right. Issuance of a demolition or building permit is generally a ministerial action, not subject to CEQA review. In any case, as noted above both the General Plan and Master Plan EIRs identified significant unavoidable adverse impacts associated with implementation of the respective planning programs.

The City also suggests that the proposed lease should be categorically exempt per Guidelines Section 15303, Class 3, New Construction or Conversion of Small Structures. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Section 6.1 specifically gives the lessee the right to relocate and re-size certain uses and add new uses. Thus, it cannot be stated that only limited numbers of new, small facilities or structures would occur.

The City also suggests that the proposed lease should be categorically exempt per Guidelines Section 15323, Class 23, Normal Operations of Existing Facilities for Public Gatherings. AS stated in Section 15323:

For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility.

In this case, the amphitheater has not been utilized outside of the annual fair for over a dozen years. There is a reasonable expectation that the future occurrence of activities on-site would represent a change in operation of the facility in that Lease Section 6.1 allows the lessee to program on-site facilities absent review of OCFA and further contemplates increased use of the amphitheater. In addition, revenue projections included in Article 3 of the lease clearly anticipate significantly increased use of the facility.

The City also suggests that the proposed lease should be categorically exempt per Guidelines Section 15325, Class 25, Transfers of Ownership of Interests in Land in Order to Preserve Open Space, Habitat, Or Historical Resources. This exemption does not apply. The existing general plan already establishes a ceiling on floor area ratio for the site of 0.1. Thus, the proposed lease does nothing to preserve open space. No habitat has been identified on the site. The lease gives the lessee the right to demolish smaller structures by right, and it is the smaller structures that are most likely to retain some historic value.

Finally, the City suggests that the proposed lease should be categorically exempt under the "common sense" exemption. Guidelines Section 10565(b)(3) provides that a project is exempt from CEQA review if

The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

That is clearly is not the case here. As noted above, numerous impacts could occur as a result of the rights conferred by the lease. The staff report designed to justify the exemptions has identified previous environmental documents that found significant adverse impacts associated with implementation of the planning programs cited in the proposed lease. Section 6.1 of the lease specifies certain action which the lessee can take by right. Where remaining approvals are non-discretionary, such as issuance of a building permit or a demolition permit, no environmental review would occur. In accordance with Section 6.1, OCFA would have no oversight on facility programming, which could result in impacts on traffic and noise.

It is not enough to expect future investigations to eliminate all impacts. Such review may or may not occur and may not result in mitigation of all impacts to a level of insignificance. In any case, environmental documents are to be prepared as early as possible in the planning process in accordance with Guidelines Section 15004(b). Per *Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988 ) 47 Cal. 3d 376:

...the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. This problem may be exacerbated where, as here, the public agency prepares and approves the EIR for its own project.

The categorical exemption should not be approved as it would be contrary to the requirements laid out in the Public Resources Code (CEQA) and the Guidelines (Title 14).

Yours truly,

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