2.11 Public Participation Process

Several commenters expressed concerns related to the Draft EIR public participation process. The majority of these concerns related to the following items:

1. The availability of the Draft EIR on the City website.
2. The potential for the Design Review Committee (DRC) of the City to consider the proposed project prior to the receipt of comments on the Draft EIR.
3. The potential need to recirculate the Draft EIR to comply with the CEQA.

Appendix A to the Draft EIR describes the public participation process for the preparation of the Draft EIR that included the Notice of Preparation (NOP). Appendix A to this Response to Comments describes the public participation process for the Draft EIR that included the Notice of Completion (NOC) and Notice of Availability (NOA) of the Draft EIR.

Section 15087, Public Review of Draft EIR of the CEQA Guidelines provides that,

> (a) The lead agency shall provide public notice of the availability of a draft EIR at the same time it sends a notice of completion to the Office of Planning and Research….

Section 15087 further provides that notice of the Draft EIR shall be given in the following manner,

> Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:
>
> (1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
>
> (2) Posting of notice by the public agency on and off the site in the area where the project is to be located.
>
> (3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

Related to the availability of the Draft EIR available Section 15087 provides that,

> (f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use area wide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, Lead Agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the Lead Agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

2.11.1 Availability of Draft EIR

Commenters expressed concern that the Draft EIR was not accessible on the City website and therefore not available. Section 15087 of the State CEQA Guidelines provided above establishes the requirements for the availability of a Draft EIR. Section 15105, Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negated Declaration, establishes that the public review period for a Draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances. This section further indicates that when a Draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

The City's *Local CEQA Guidelines* provide that,

> After completion of the draft EIR, a Notice of Completion (NOC) and the appropriate number of copies of the EIR shall be filed with the State Office of Planning and Research in accordance with CEQA Guidelines Section 15085 to begin the public review period. The State Clearinghouse transmittal form serves as the NOC. A public Notice of Availability (NOA) for public review of the draft EIR shall be prepared and distributed at the same time the NOC is sent, in accordance with CEQA Guidelines Section 15087.
>
> The NOA shall include a description of the project, project location, start and end dates for the public review period during which written public comments will be accepted, contact name and address (including email address) where written comments can be submitted, address where copies of the EIR are available for public review, the date time and location for any scheduled public meetings or hearings, and a list of significant environmental effects anticipated to result from the project. The NOA and the EIR shall be distributed (via any method of transmittal that provides a record of receipt) to all responsible agencies, trustee agencies, other agencies with jurisdiction by law over resources affected by the project, adjacent cities, and the County of Orange. If the project is a project of "statewide, regional or area wide significance" (as defined in CEQA Guidelines Section 15206), the NOA and the EIR shall also be distributed to affected transportation planning agencies (CEQA Guidelines Section 15086). In addition, for certain

projects, water agencies consulted during the NOP process are also required to receive the NOA and EIR (CEQA Guidelines Section 15083.5)

The NOA shall be direct mailed to any person who has requested (in writing) to be notified of the project review, and shall be otherwise made available to the public by all of the following three methods:

i. Publication in a local newspaper;

ii. Onsite posting; and,

iii. Direct mailing to owners and occupants of properties within 300 feet of the project site. (Exception: In the case of a General Plan Amendment or zoning ordinance amendment that does not involve a map change to a specific property, direct mailing and onsite posting is not required.)

The NOA is filed with the Orange County Clerk to begin the public review period. The public review period for an EIR shall be a minimum of 45 days. The public review period may be 60 days at the discretion of the Community Development Director. Any requests to shorten the required review period must be made by the Community Development Director to the State Clearinghouse. The State Clearinghouse-established review period for state agencies and the general public review period for the EIR should be coordinated whenever possible. (Pages 13 through 14, *Local CEQA Guidelines*)

The Draft EIR was made available to in accordance with both the *State CEQA Guidelines* and *Local CEQA Guidelines*. Appendix A of this Response to Comments provides the State Clearinghouse notification, Notice of Availability (NOA), the Notice of Completion (NOC), and notification list for the Draft EIR. The NOA states that the DEIR was hereby made available for public review and comment. The public review period for the document received a State-mandated 45-day public review period. The public review period began on May 16, 2013, and ended on July 1, 2013. Written comments were invited on the DEIR and requested that they be submitted in writing to the Lead Agency Contact (City). The end of the comment period was established in the NOA as no later than 5:00 PM on July 1, 2013. The NOA noted that any written comments received after this deadline were not required to be accepted and would be accepted at the discretion of the City. The NOA stated the locations of copies of the Draft EIR were available and instructions how to access the Draft EIR on the City's website. The Draft EIR was posted for public review on the City's website.

During the public review period the City Staff assisted the public with their review of the Draft EIR. While not included as a part of the public record, this included responding to questions at the public counter at Community Development Department, phone calls, and responses to electronic communications. The City Clerk's office provided assistance with access to the Draft EIR on the City's website. Additionally, electronic copies of the Draft EIR were available for purchase at the Community Development Department counter. It is noted that the City's efforts related to availability of the Draft EIR exceeded the requirements of CEQA. The City has efforts have been to, "…demonstrate to an

apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (People ex rel. Department of Public Works v. Bosio, 47 Cal. App. 3d 495.)

2.11.2 Design Committee Review of Draft EIR

Commenters expressed concern that the Design Review Committee (DRC) of the City would consider the proposed project prior the receipt of comments on the Draft EIR. The close of the comment period for the Draft EIR was July 1, 2012. The proposed project was scheduled for DRC prior to the close of the review period; however, it was continued and re-noticed. The DRC held public hearings on August 7, 2013 and October 2, 2013. There is no requirement for the DRC to review the final EIR.

2.11.3 Need for Draft EIR Recirculation

Commenters expressed concern of the potential need to recirculate the Draft EIR to comply with the CEQA. One commenter expressed a concern that their Notice of Preparation (NOP) comments were not addressed. One commenter expressed their opinion that the Draft EIR does not describe the proposed project; analyze its impacts; and, consider meaningful alternatives and mitigation measures.

Appendix A, *Public Participation Process* of the Draft EIR, includes a list of all comments received on the proposed project related to the Notice of Preparation. Within this appendix all written comments were divided into Agency and neighbor letters. Each section includes a table that listed the letters, summary of comments, and the section of the Draft EIR where the issue was evaluated. Additionally, the comments from the previous NOP (2009) were also included in Appendix A, *Public Participation Process* and detailed out in a similar format.

Some commenters expressed the opinion that recirculation of the Draft EIR was required because on the fact that the Draft EIR fails to adequately evaluate the project's environmental impacts. Noting that it was their opinion that:

- The Draft EIR fails to analyze the full development potential of the project.
- The Draft EIR analysis of project alternatives is legally inadequate.

In light of the information provided in response to public review comments, the City considered the need to recirculate the EIR pursuant to CEQA. CEQA Section 15088.5(e) requires that an EIR which has been made available for public review, but not yet certified, be recirculated whenever significant new information has been added to the EIR. The entire document need not be recirculated, if revisions are limited to specific portions of the document. The recirculated portions or document must be sent to responsible and trustee agencies for consultation and fresh public notice must be given in the manner provided for a Draft EIR. New information is not presumed to be significant simply because it is new. Indeed, pursuant to State CEQA Guidelines Section 15088.5:

> New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect . . . that the project's proponents have declined to implement.

State CEQA Guidelines, § 15088.5(a):

In order to be "significant," the new information must constitute one of the following:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from other previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponent decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(State CEQA Guidelines, §15088.5(a)(1)-(4); *Laurel Heights II*, 6 Cal.4th at 1120.)

Neither the additional analyses provided in the Section 2.0, *Master Responses*, and Section 3.0, *Response to Comment*, nor any project design feature nor mitigation measures discussed or amplified in the responses to comments results in new or substantially increased significant impacts, and therefore no recirculation is required. It is common, and in most cases necessary, for responses to comments to amplify and elaborate on the analysis of an EIR. Such amplification, however, does not constitute significant new "information" unless it triggers one of the four categories described in State CEQA Guidelines Section 15088.5(a). State CEQA Guidelines Section 15088.5(b) provides that "recirculation is *not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications* in an adequate EIR." [emphasis added]. The responses to comments and associated analysis properly fall within State CEQA Guidelines Section 15088.5(b) and do not implicate State CEQA Guidelines Section 15088.5(a).

City Staff expressed concern that these new project design features or mitigation measures could be construed as "significant new information" requiring recirculation. However, simply adding project design features or mitigation measures does not trigger recirculation. Instead, the test is whether new information added to an EIR changes the document in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project. None of the project design features or mitigation measures or the analysis in the responses to comments identities a substantial adverse environmental effect of the proposed project not identified in the Draft EIR. Therefore, recirculation is not required.