



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

ITEM NO. RA3a



ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM DISTRIBUTED AT THE CITY COUNCIL MEETING



RESOLUTION NO. _____

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ALLOWING ADDITION TO AGENCY AGENDA OF ITEM RELATING TO AGENCY LOAN FOR LOCATION OF SOLAR POWER MANUFACTURING FACILITY IN THE CITY OF MILPITAS

WHEREAS, it has come to the attention of City and Agency officials that there exists an opportunity to have located within the City of Milpitas a solar power manufacturing facility which will create an estimated 90 jobs; and

WHEREAS, the fact of this opportunity has only come to the attention of the Agency on April 15, 2010, at a time too late for placement on the April 20, 2010, Agency Agenda under the general provisions of the Open Government Ordinance; and

WHEREAS, the City/Agency is informed that approval of the loan by the Agency, at least in concept, must take place prior to April 22, 2010, for the City of Milpitas to be considered as the possible future location of the solar power manufacturing facility and the only scheduled Council/Agency meeting before that date is April 20, 2010; and

WHEREAS, due to the current economic climate and particularly the extremely high unemployment rate within the City, failure to take immediate action will result in loss of this employment opportunity which will favor employment of citizens of the City of Milpitas, such that the need to take immediate action is so imperative as to threaten serious injury to the public interest if action is deferred to a subsequent meeting.

NOW, THEREFORE, the Board of the Redevelopment Agency of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The Redevelopment Agency Board has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. There exists a need to take immediate action that is so imperative as to threaten serious injury to the public interest if action is deferred to a subsequent meeting. Based thereon, the item asking the Agency to consider a loan to facilitate location of a solar panel manufacturing facility within the City is hereby added to the Agency Agenda for April 20, 2010.

This matter requires a 2/3 vote for passage or if less than 2/3 are present, a unanimous vote.

PASSED AND ADOPTED this ___ day of _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Robert Livengood, Chair

APPROVED AS TO FORM:

Michael J. Ogaz, Agency Counsel



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ITEM NO. RA4
TAB NO. 5

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

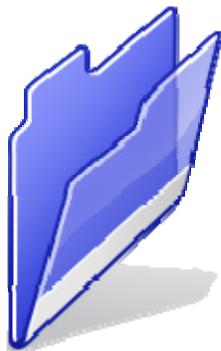


EXHIBIT C

WRITTEN FINDINGS IN RESPONSE TO WRITTEN OBJECTIONS RECEIVED BEFORE THE CLOSE OF THE JOINT PUBLIC HEARING CONCERNING ADOPTION OF THE THIRTEENTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1 AND THE SIXTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE GREAT MALL REDEVELOPMENT PROJECT

Section 33363 of the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; “CRL”) imposes upon a legislative body contemplating the adoption of a redevelopment plan or amendment to a redevelopment plan the obligation to consider any written objections received from an affected property owner or taxing entity before or at the noticed public hearing on said plan/amendment and to adopt written findings in response to each such written objection.

The Redevelopment Agency of the City of Milpitas (“Agency”) is proposing to amend (the “Thirteenth Amendment”) the Redevelopment Plan (“Redevelopment Plan”) for the Milpitas Redevelopment Project Area No. 1 (“Project Area No. 1” or “Project Area”) to: 1) extend by 10 years the effectiveness time limit and time period to repay debt/collect tax increment of the original Project Area (“Original Project Area”) and Amendment Areas No. 1 and 2 (collectively, the Original Project Areas and Amendment Areas No. 1 and 2 are referred to as the “Amendment Areas”); 2) repeal the debt establishment limit for the Amendment Areas; 3) increase the tax increment limit and bonded indebtedness limit and exclude the Midtown Added Area from the tax increment limit; 4) add projects and facilities to the list of eligible projects and facilities the Agency may fund; 5) reinstate eminent domain over non-residential uses in the Amendment Areas; 6) add territory totaling approximately 600 acres (“Thirteenth Amendment Added Area” or “Added Area”); and 7) make certain technical corrections, revise and update the various text provisions within the Redevelopment Plan to conform to the requirements of the CRL. Concurrently, the Agency is proposing to amend (the “Sixth Amendment”) the Redevelopment Plan for the Great Mall Redevelopment Project (“Great Mall Project”) to delete a non-contiguous area developed with a freeway sign (“Sixth Amendment Deleted Area”). The area identified for deletion is within the area proposed to be added to Project Area No. 1. Collectively, the Thirteenth Amendment and Sixth Amendment are referred to as the “Amendments.”

On April 6, 2010, the City Council of the City of Milpitas (the “City Council”) and the Milpitas Redevelopment Agency (the “Agency”) held a noticed joint public hearing to consider the proposed adoption of the Amendments. Written objections to the proposed adoption of the Amendments were received by the City Council and Agency from an affected property owner and an affected taxing agency, prior to the joint public hearing.

The following provides a summary of each of those comments and objections, together with the findings of the City Council in response thereto. This document is Exhibit C to the City Council Resolution adopting written findings in response to written objections to the adoption of the proposed Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 and the proposed Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project (hereafter, the “Council Response Resolution”).

A. Written Objections from WP Investments regarding property at 985 Montague (formerly known as Jones' Chemical Site):

Summary of Comments:

By letter dated March 8, 2010, property owner WP Investments objected to being included in the proposed Added Area, asserting "I do not believe some of the rights we might forgo by allowing the property to be included in the 'Added Area,' are worth the potential benefits of being included in the Redevelopment Area" (the letter via email is attached as Exhibit A to the Council Response Resolution).

Findings of the City Council in Response to Comments:

The inclusion of property in a redevelopment area does not thereby cause the property owner to forgo any rights. With respect to the proposed Added Area, as well as the existing Project Area within the Milpitas Redevelopment Project Area No. 1, the Redevelopment Plan permits development that is consistent with the City's General Plan, as it currently exists and as it may be amended from time to time. Consequently, property owners within the Added Area and the existing Project Area continue to have the same rights concerning the development and use of their property as they had prior to being included within a redevelopment area. The Redevelopment Plan provides the Agency with additional tools to promote and encourage new development and investment in the Added Area and existing Project Area with the goal of eliminating blighting conditions. As described in the Agency's Report to City Council for the Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 and the Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project ("Report to City Council"), the Agency's objective for the portion of the Added Area in which WP Investments' property is located (the Town Center) is to assist property owners in upgrading obsolete industrial buildings for viable contemporary use.

B. Written Objections from the County of Santa Clara:

By letter dated April 6, 2010, affected taxing entity County of Santa Clara (the "County") objected to all of the various amendments, asserting that the proposed Amendments do not meet the requirements of state law (the letter is attached as Exhibit B to the Council Response Resolution).

Summary of Comment #1 – "Blight" Requirements for Redevelopment Plan Amendments

Comment #1 describes the circumstances under which the Legislature modified the definitions of blight contained in the CRL by legislation enacted in 1993 (Assembly Bill 1290, Stats. 1993, ch. 942) and in 2006 (Senate Bill 1206, Stats. 2006, ch. 595).

Findings of the City Council in Response to Comment #1:

While no response to Comment #1 is required because it is not an objection, it is necessary to correctly state the "blight" requirements applicable to the Amendments.

The various areas comprising the existing Project Area No. 1 (also referred to in the Report to City Council and these responses to written objections as the "Existing Project Area") consist of:

- The Original Project Area, adopted on September 21, 1976; and
- Amendment Area No. 1, adopted on September 4, 1979; and

- Amendment Area No. 2, adopted on May 4, 1982; and
- Midtown Added Area, adopted on June 17, 2003.

As used in the Report to City Council and in these responses to written objections, “Amendment Areas” means and refers only to the Original Project Area, Amendment Area No. 1 and Amendment Area No. 2. The Amendment Areas were all adopted prior to 1994, a key date for purposes of CRL requirements. The Midtown Added Area and, if adopted, the proposed Thirteenth Amendment Added Area are considered “post-1993” areas for purposes of CRL requirements.

First, the County mischaracterized the 2006 amendments to the CRL. The 2006 amendments were enacted in response to the decision of the United States Supreme Court in *Kelo v. City of New London* concerning the use of eminent domain for private development in that community in Connecticut, not as a result of any abuse of redevelopment in California.

Second, there are separate and distinct “blight” requirements applicable to the various elements of the Amendments, as those individual elements are identified below:

- 1) Extend by 10 years the effectiveness time limit and time period to repay debt/collect tax increment in the Amendment Areas:

This is commonly referred to as an “SB 211 10-year extension amendment” because it was Senate Bill 211 (Stats. 2002, ch. 741) that authorized the extension of redevelopment plans adopted prior to January 1, 1994, in order to provide adequate time for those redevelopment plans to be completed. In enacting SB 211, the Legislature found and declared that —

“in 1993 the Legislature adopted time limits contained in Section 33333.6 of the Health and Safety Code that applied to project areas adopted prior to January 1, 1994. The Legislature further finds and declares that some community redevelopment agencies that adopted certain project areas prior to the establishment of these limits will not be able to eliminate blight within those project areas within those limits and that it is necessary to allow the limits within these project areas to be extended to eliminate significant remaining blight.”

For an SB 211 10-year extension amendment, it must be found that: (a) significant blight remains within the project area; and (b) the significant remaining blight cannot be eliminated without extending the effectiveness of the redevelopment plan and the receipt of property taxes. (CRL Section 33333.10(b).) “Blight” has the same meaning as set forth in CRL Section 33030 and “significant” means important and of a magnitude to warrant agency assistance. (CRL Section 33333.10(c).) And, of particular importance, significant blight can exist in a project area even though blight is not prevalent in a project area. (CRL Section 33333.10(d).)

- 2) Repeal the debt establishment limit for the Amendment Areas:

This is also an SB 211 authorized amendment. For an amendment repealing the debt establishment limit, all that is required is the adoption of an ordinance; neither the legislative body nor the agency is required to comply with any provision of the CRL relating to the amendment of redevelopment plans, except that the agency must make the payment to affected taxing entities under CRL Section 33607.7. (CRL Section 33333.6(e)(2)(B).)

- 3a) Increase the tax increment limit for the Amendment Areas and exclude the Midtown Added Area from the tax increment limit:

In accordance with CRL Section 33354.6(b): “When an agency proposes to increase the limitation on the number of dollars to be allocated to the redevelopment agency, it shall describe and identify, in the report required by Section 33352, the remaining blight within the project area, identify the portion, if any, that is no longer blighted, the projects that are required to be completed to eradicate the remaining blight and the relationship between the costs of those projects and the amount of increase in the limitation on the number of dollars to be allocated to the agency. The ordinance adopting the amendment shall contain findings that both (1) significant blight remains with the project area and (2) the blight cannot be eliminated without the establishment of additional debt and the increase in the limitation on the number of dollars to be allocated to the redevelopment project.”

- 3b) Increase the bonded indebtedness limit for all of Project Area No. 1 (the Amendment Areas, the Midtown Added Area and the proposed Added Area):

The CRL does not require any finding of blight in connection with an increase of the bonded indebtedness limit.

- 4) Add projects and facilities to the list of eligible projects and facilities the Agency may fund:

The CRL does not require any finding of blight in connection with the addition of projects and facilities to be identified in the redevelopment plan and funded by the redevelopment agency.

- 5) Reinstate eminent domain over non-residential uses in the Amendment Areas:

For redevelopment plans (and areas) adopted between October 1, 1976, and January 1, 1994, the time limit on eminent domain may only be extended by amendment after the agency finds that (a) significant blight remains within the project area; and (b) the significant remaining blight cannot be eliminated without the use of eminent domain. (CRL Section 33333.4(g)(2).)

- 6) Add territory:

The proposed new territory must satisfy the requirements of the CRL in the same way that would be required if it were being adopted as a separate project area. Although made part of an existing project area, the new territory must have its own time limits (CRL Section 33333.2(b)), must be predominantly urbanized (CRL Section 33320.1(d)), and must be found to be a blighted area (CRL Sections 33367(d)(1) and 33457.1). It is only as to the proposed Added Area that there must be at least one physical blighting condition and one economic blighting condition and that the combination of blighting conditions be “so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.” (CRL Section 33030(b).)

- 7) Make certain technical corrections, revise and update the various text provisions within the Redevelopment Plan to conform to the requirements of the CRL:

The CRL does not require any finding of remaining blight in connection with these minor changes.

In summary, for the majority of the amendments other than the addition of the proposed Added Area, the CRL requires that there be significant remaining blight within the Existing Project Area that justifies the proposed amendments. Because the Amendment Areas are the focus of the amendments to the Existing Project Area, the Agency's Report to City Council documents the significant remaining blight within the Amendment Areas. The only changes applicable to the Midtown Added Area are that (a) it is being excluded from the tax increment limit because it is an area that is not required to have a tax increment limit and (b) it will be subject to the increased bonded indebtedness limit. Under the CRL, redevelopment areas adopted or added after January 1, 1994, are not required to establish a tax increment limit because the other time limits applicable thereto sufficiently control the total allocation of tax increment. Focusing the evaluation of significant remaining blight on the Amendment Areas was considered to be the most conservative and logical approach given the nature of the amendments. The time limits on effectiveness of the Redevelopment Plan and the time period to repay debt/collect tax increment cannot be extended for the Midtown Added Area. And, the time limit to incur debt applicable to the Midtown Added Area cannot be repealed, although it may be extended upon a finding of significant remaining blight that would justify such an amendment -- such an amendment has not been proposed and is not part of the Thirteenth Amendment.

For the amendment adding the proposed Added Area, the CRL requires a finding that the proposed Added Area is a blighted area as defined in the CRL. The Agency's Report to City Council documents the prevalent and substantial blighting conditions affecting the proposed Added Area.

Summary of Comment #2 - Inadequate Evidence of Blight:

Comment #2 states that there is insufficient evidence of blight within the existing redevelopment areas or the area proposed to be added.

Findings of the City Council in Response to Comment #2:

There is substantial evidence of blight within the Amendment Areas and within the proposed Added Area as required by the CRL. As more particularly stated in the response to Comment #1, there are separate and distinct findings of blight applicable to the changes attributable to the Amendment Areas and to the addition of the Added Area. For the changes affecting the Existing Project Area (10-year extension, repeal of debt incurrence limit, etc.), the Agency and City Council must find that significant blight remains within the Existing Project Area. "Significant" refers to the level of remaining blight necessary to justify the amendment and is not the same standard of blight required for adding territory or adopting a new redevelopment plan. Furthermore, unlike an amendment to add territory or adopt a new project area, there is no requirement that significant remaining blight include both physical and economic blighting conditions. For the addition of the proposed Added Area, the Agency and City Council must find that the proposed Added Area is affected by at least one physical blighting condition and one economic blighting condition and that the combination of blighting conditions be prevalent and substantial.

In its comment, the County references the blighting conditions cited in the Report to City Council including unsafe and unhealthy building conditions for persons to live or work as demonstrated by serious code violations and properties subject to flooding. Reference is also made to conditions that prevent or substantially hinder the viable use or capacity of buildings and lots as

demonstrated by obsolete design. The Seifel Report addresses additional blighting conditions that are not referenced in the County's comments. The following response specifically addresses the issues raised by the County and the Seifel Report.

Flooding

As defined in CRL Section 33031, construction that is vulnerable to serious damage from geological hazards resulting in buildings in which it is unsafe or unhealthy for persons to live or work is a physical blighting condition. As described in detail in Part III of the Agency's Report to City Council, 19% of the Amendment Areas are subject to 100-year flooding as defined by Federal Emergency Management Agency ("FEMA"). An estimated 3,291 persons live within the flood zone and are therefore subject to hazards from flooding. These areas are also identified as "Special Flood Hazard Areas" ("SFHAS"). This is a high flood risk zoned designation which is given to areas with a history and geography of significant flooding. Within the 100-year floodplain, the Berryessa Creek flooded in 1967, 1980, 1982 and 1998. The flooding was most severe in 1998, when significant damage occurred to homes and automobiles. Potential damages from a 100-year flood on Berryessa Creek exceed \$52 million with average annual damages of \$3.6 million (1993 value). Within the proposed Added Area, substantial areas along Wrigley and Los Coches Creeks are within the 100-year floodplain. Approximately 41% of the parcels in the Added Area are within the 100-year floodplain. There are approximately 200 residential units, housing 704 people within the floodplain. The claim that Seifel observed no indication of water or flood damage to any of the structures in the Amendment Areas is irrelevant. FEMA does not calculate floodplain boundaries by observing water damage to individual properties. The Seifel Report also points out that there are no properties in the Amendment Area No. 2 that are affected by the 100-year floodplain. This is mainly due to the fact that the Agency has funded major public improvements to Coyote Creek which has greatly reduced flooding over the project duration. The frequency and seriousness of past flooding and the potential for future flooding without the proposed drainage and flood control improvements proposed to be funded by the Thirteenth Amendment is an unsafe and unhealthy condition for persons to live or work. This blighting condition contributes to the sum of blighting conditions in the Amendment Areas that result in significant remaining blight and contributes to the sum of the blighting conditions in the Added Area that are substantial and prevalent.

Serious Building Code Violations

The Seifel Report states that, "The Report's documentation of unsafe or unhealthy buildings does not include a recent parcel-by-parcel survey of buildings in the proposed Added Area, which is generally a best practice...." Seifel provides no basis for this statement. Data for the analysis in the Report to City Council was taken from surveys performed by qualified City staff with expertise in code violations over a period of eight years from 2002 to 2009. The assertion from the Seifel Report that there are no unsafe or unhealthy conditions in the Adams and Town Center areas is untrue. There has been a history of serious code violations in the Adams area that the City, working with property owners and managers without redevelopment, have been unable to permanently correct. This area is being considered for inclusion in the Project Area in part to further address the on-going serious building code violations. As described in the Report to City Council, between 2002 and 2009 there were 199 serious code violations within the Adams and Selwyn/Shirley areas. Serious code violations were cited for 81% of the properties (parcels under common ownership) within the Adams area. The serious code violations included structural hazards, waste and debris, and health and safety hazards. Contrary to the assertion that the Report to City Council relied on minor code violations these serious code violations included missing or damaged structural components, unpermitted construction, the accumulation of trash and junk, and tenant complaints regarding substandard living conditions and evidence of overcrowding. In regards to unsafe or unhealthy conditions in the Town Center, Map 7 of the Report to City Council illustrates the areas subject to 100-year flooding. This includes flooding along the length of Berryessa Creek which bisects the Town Center from north to south, portions

of the Los Coches and Piedmont Creeks that intersect Berryessa Creek and the northwest and southwest corners of the Town Center in the areas of Milpitas Boulevard and Piper Drive along Wrigley Creek.

Obsolescence

The quotation noted by the County that the Town Center is a “thriving and diverse agglomeration of industrial and research and development (R&D) businesses” was taken from the Seifel Report. Seifel provided no basis for this conclusion other than general observations from a windshield survey of the Added Area. The only documentation that Seifel provided for its conclusion was selected photographs of buildings with captions such as “modern building with full landscaping” and a list of companies located within the Town Center (one of which is actually outside of the Added Area). No information was provided on the methodology or approach used in the survey or the qualifications of the surveyors. In contrast, the information in the Report to City Council regarding obsolescence was based on a survey conducted by Sperry Van Ness who are commercial real estate advisors who have represented sales and leasing in Milpitas for many years and who evaluated each property in the Town Center and Oak Creek area on a parcel by parcel basis. The Seifel Report attempts to discount the findings of Sperry Van Ness by highlighting the fact that Sperry Van Ness included inadequate parking which is no longer included in the CRL definition of blight and noted conditions such as “highly visible weeds” do not demonstrate conditions that prevent or substantially hinder the viable capacity of buildings and lots. Seifel does not recognize that the Sperry Van Ness survey identified a wide range of building characteristics that affected the viable use of the properties including building condition, construction type, age, electrical power, utilities, truck loading facilities, minimum ceiling clearances, column spacing, and utilization of building/site coverage ratio or Floor Area Ratio (“FAR”). Landlocked parcels and those with insufficient ingress/egress were also considerations. Only those conditions that substantially impacted the viable use and capacity of buildings and lots were cited in the blight analysis.

Seifel also attempts to minimize the results of the Sperry Van Ness survey by pointing out that 175 parcels were surveyed and only 26 properties were identified as having some form of obsolescence. Seifel did not acknowledge that the properties surveyed include several properties that were excluded from the proposed Added Area as a result of a feasibility analysis conducted prior to the plan amendment process. After the results of the survey, the Town Center area portion of the Added Area was reduced to 147 parcels as shown in the Report to City Council.

Parcels of Irregular Shape and Inadequate Size in Multiple Ownership

There are eight parcels, all of which are under separate ownership, in the Selwyn/Shirley area that are located adjacent to Interstate 680, which are remnants of the construction of the freeway. These parcels are narrow and of irregular shape and inadequate size which impairs their development and use. The parcels range in depth from 75 to 170 feet and range in size from 0.25 to 1 acre. The parcels were originally developed as industrial uses but with few exceptions have transitioned to quasi-public uses including churches and a private school. The change in use is apparently the result of the small parcel size and complete separation from similar industrial uses on the opposite side of Interstate 680. The Seifel Report asserts that the development of these parcels has not been impaired by their irregular shapes and multiple ownership because the parcels are developed and are occupied by institutional and quasi-public uses. The premise of Seifel’s argument is that any use of a parcel is proof that it is not impacted by blighting conditions. Contrary to that premise, the mere occupancy of space is not an indication of a healthy area. The transition from industrial to non-industrial uses such as churches indicates an area in decline and that owners are settling for lower-rent tenants such as churches. In addition, the Report to City Council notes that the age of these buildings is 30 years and older and there has been no major reinvestment as a further indicator that the irregular shape and inadequate size of the properties hinders their uses. Furthermore, one of the parcels is vacant and another is used by

Caltrans as what appears to be a corporation or storage yard further indicating a lack of investment and development potential.

Depreciated or Stagnant Property Values

Two indicators of depreciated and stagnant property values were analyzed including current assessed values as reported by the County Assessor for the 2008-09 tax roll and property sales over a five-year period from 2004 through 2008. Both indicators were examined by use type (multiple-family residential, industrial, office, and retail) for the Added Area as applicable and compared to the assessed values and property sales in the balance of the City. The following is a summary of the key findings.

The average total assessed value of multiple-family dwellings in the Selwyn/Shirley area was approximately half of that of multiple-family properties in the City. There were eight multiple-family sales transactions in the Adams area from 2004 to 2008. The average total sales prices were 17% lower than the balance of the City and 12% lower per square foot of land. Retail property sales in the Selwyn/Shirley area were 72% lower than the balance of the City.

In the Town Center area, the assessed value price per square foot for office space was less than half (55% less) for office space citywide. The average sales price for office space was 16% lower in the Town Center area. Industrial uses in the Town Center area had an average total assessed value that trailed the City by 38%. In comparing flex space sales in the Town Center area to the balance of the City, the average sales price in the Town Center area was 8% lower and the price per square foot was 24% less. The average R&D sales prices were 8% lower and the price per square foot was 38% lower in the Town Center area than in the balance of the City. For manufacturing and warehouse uses, the average price of an industrial property that sold in the Town Center area was 35% less than the balance of the City. On a building square-foot basis, the properties sold for 4% less and on a price per square foot of land, the properties sold for 19% less. (Note that the 35% and 4% figures described above were included on Table 14 in the Report to City Council, but were incorrectly referenced in the text of the Report to City Council as 45% and 7% respectively.)

As noted above, industrial uses in the Town Center have an average assessed value that is 38% lower than the City. Seifel claims that this number is not supported and that there is no “basis for comparison such as price per square foot, price per unit, etc.” Table 5 in the Report to City Council presents the figures for this calculation. It shows that industrial uses in the City have an average total assessed value of \$6,883,734 (this is the average total value of an industrial use parcel). The Town Center had an average total assessed value of \$4,298,484 which is 38% lower than the City. The table shows that the properties compared are of the same use and of similar size. The Seifel study also cites Proposition 13 as causing artificial property stagnation. While lowered assessed values can be due to lack of turnover, a lack of turnover can be linked to a lack of reinvestment in property and would therefore be an additional indicator of blight. Seifel points out that no analysis is done on overall property values in the Added Area. This type of analysis is not required and would not be an accurate measurement of property values because comparing the combined values of different land uses in the Added Area to the combined land uses in the City is irrelevant. On Table 5 (page 50), the Report to City Council analyzes property land uses in each of the three areas of the Added Area (Adams, Selwyn/Shirley and Town Center) by land use and compares to similar uses citywide in order to provide an accurate “apples-to-apples” analysis at as detailed a level as possible.

The Seifel Report claims that the Report to City Council “failed to demonstrate that property values in the proposed Added Area are significantly lower than the rest of the city” after omitting several important figures from Tables 5 and 6 in the Report to City Council. Table 5 shows that the average assessed value per square foot in the Added Area is 29% and 55% lower than the City

average for multiple family residential and office uses, respectively, and shows that average total assessed values for industrial uses is 38% lower in the Added Area. Table 6 in the Report to City Council shows that the average sales prices in the Added Area for all uses are between 7% and 72% lower than the City. Even though Seifel claims that certain property value indicators were comparable to the City, the overall assessment shows that values in the Added Area are depreciated or stagnant.

Seifel attempts to discount the analysis of property values by stating that the stagnant or depreciated values can only be determined from a “time-series” analysis. This conclusion is nothing more than Seifel’s opinion. For the Report to City Council, Keyser Marston Associates compared assessed values and property sales by use type in the Added Area to similar use types citywide. The overall substantially lower assessed values and property sales demonstrate that the property values in the Added Area are depreciated and stagnant.

Hazardous Materials Contamination

The proposed Added Area and Amendment Areas include industrial and commercial uses both present and past that use and/or store hazardous materials. According to the Draft EIR, there are 13 sites in the Added Area and seven in the Amendment Areas that have moderate to severe contamination. (On page 22 of the Seifel Report, it was incorrectly stated that there were seven sites in the Added Area that have hazardous materials contamination, rather than the 13 sites described in the Report to City Council on pages 67 and 68.) These sites represent 9% of the commercial and industrial parcels in the Added Area. Within the Amendment Areas, the seven moderate to severe contamination sites represent 6% of the total acreage of the Amendment Areas, including 5% of the commercial and industrial parcels and 15% of the commercial and industrial acreage. The four contaminated parcels within Amendment Area No. 1 make up 8% of the commercial and industrial parcels and 37% of the commercial and industrial acreage. The Seifel Report claimed that there was not supporting evidence establishing the level of remediation that would be required and how that remediation would impair local property values. As noted in the Report to City Council, only those sites identified in the Draft EIR prepared for the Amendments as having moderate to severe contamination were included in the blight analysis. Many of the contamination sites were noted on multiple regulatory lists. As cited on page 70 of the Report to City Council, in an article published by the Royal Institution of Chartered Surveyors (RICS), it has been documented that seriously contaminated property will not sell at any price and that lenders are wary of contaminated properties resulting in difficulty obtaining mortgage financing for a seriously contaminated property. The worth of the property is decreased by anticipated reduced occupancy and rent, increased cost of insurance and monitoring costs after remediation.

Abnormally High Business Vacancies and Low Lease Rates

The industrial buildings in the Town Center portion of the Added Area are being outperformed by the similar industrial building types in the North San Jose submarket, as well as by the County as a whole. The average time on the market for industrial space in the Town Center area is 12.2 months, compared to 7.6 months in the North San Jose submarket area. Vacant industrial space countywide stays on the market for a comparable period of time (13.3 months) but rents at \$0.66 per square foot compared to \$0.54 per square foot in the Town Center area which is 18% lower.

The vacancy rate in the Oak Creek area is at 36%, which is abnormally high even in a depressed market. In comparison, the vacancy rate for research and development uses in the North San Jose submarket is at 16% and countywide is at 15%. The vacancy rate in the Oak Creek area has been consistently double that of the research and development uses in the North San Jose submarket and in Santa Clara County since 2004.

The Seifel review of the Report to City Council notes that the vacancy rates in the Town Center (9%) are comparable to (slightly higher than) the County (7%), but omits commentary on the second half of the analysis stating that the vacancy rates are only so similar because the average lease rate for the Town Center is 18% lower than the County. Seifel claims that the "Report does not provide specific [lease] rates." The Sperry Van Ness studies, which contain all of the specific lease rates summarized in the Report to City Council, are provided as appendices C and E to the Report. The Seifel Report also questions the comparison of the Town Center to the County and the North San Jose submarket area. The submarket was selected by Sperry Van Ness, experienced commercial real estate advisors who have a long history of representing industrial uses within Milpitas, as a neighboring "peer" submarket. Seifel's claim that there is no documentation of abnormally high vacancy rates ignores that the Report to City Council identifies a vacancy rate in the Oak Creek industrial area at 36%, which is twice as high as the North San Jose submarket and the County as a whole. Seifel discounts the fact that industrial space stays on the market twice as long in the Added Area as in the surrounding market as an impact on the vacancy rate. The higher vacancy rate in the Town Center combined with the prolonged time on the market is abnormal and indicates stagnation in the industrial market. While Seifel attempts to discredit the vacancy analysis, Seifel admits in its survey of the Town Center that "Seifel observed a number of business vacancies in the Town Center area."

There are eight hotels in the Existing Project Area with a total of 1,533 rooms representing 47% of the hotels and 57% of the rooms citywide. For fiscal year 2009/10, hotel revenues in the form of transient occupancy taxes (TOT) represent \$4.8 million of the \$69 million General Fund budget or approximately 7% of the City's revenues of which 62% (based on 2008/09 numbers) is generated in the Amendment Areas. The average TOT totals dropped 23% from \$379,431 per hotel/motel in fiscal year 2007-08 to \$293,023 in 2008-09. The average TOT revenues per room also dropped 23% from \$2,680.99 in 2007-08 to \$2,070.45 in 2008-09.

Seifel attempts to negate the analysis of abnormally low lease rates in the hotel sector within the Amendment Areas by stating that there is no comparison to citywide vacancy and room rates, that more TOT is collected from the Amendment Areas than the balance of the City, and finally, that a lack of a convention center is not a blighting condition. The Report to City Council quantifies the number of rooms and the revenues generated by those rooms in the Amendment Areas compared to the balance of the City. The decline in the TOT by 23% from 2007-08 to 2008-09 is evidence of abnormally low lease rates and high vacancy rates in this important business sector in the Amendment Areas. The lack of a convention center was not presented as blight but as a project that the Agency is proposing in order to address the declining TOT by attracting additional business travelers to the Amendment Areas.

Overcrowding

The Report to City Council indicates that the residential areas in the Added Area have significantly higher levels of residential overcrowding and larger household sizes than the City and County. Overcrowding was calculated using US Census Bureau data. Seifel noted that household size was based on City inspections. This, in fact, was a misidentified source in the Report to City Council; household sizes were provided by Claritas custom reports (Claritas is a nationally recognized demographics data provider). Approximately 54% of the residents in the Selwyn/Shirley area and 37% of the residents in the Adams area live in overcrowded conditions compared to 22% in the City and 23% in the County. The Seifel Report contends that there was no comparison of residential unit sizes in the discussion of residential overcrowding. However, the average unit size of 800 square feet was provided based on assessor data to calculate the number of persons per room to support the Census data. The average family size is 3.99 and 4.30 in the Adams and Selwyn/Shirley areas, respectively. The Seifel Report also incorrectly states that the average household size in the County is 3.52 persons, which is in fact the average household size in the City of Milpitas. The actual average household size in the County is significantly smaller at 2.98 persons per household. An 800 square-foot unit is assumed to be a

two-bedroom apartment with three habitable rooms (two-bedrooms and a living room). Using these statistics, the average housing unit in the Adams Area has approximately 1.33 persons per room and the Selwyn/Shirley area has approximately 1.43 persons per room, both areas having more than one person per room which is defined as overcrowded.

Crime

Although the Adams area has less than 1% of the City population, it has 6% of the gang related crimes. In the Selwyn/Shirley area, the proportion of gang related crimes was even higher at 10% compared to 3% of the population. This is consistent with the number of assaults. Between 2004 and 2008, there were 81.6 assaults per 1,000 people in the Selwyn/Shirley area and 46.9 assaults per 1,000 people in the Adams area compared to 39 assaults per 1,000 people citywide. It is noted in the Report to City Council that the Adams and Selwyn/Shirley areas both had significantly higher rates of rape, assault, and gang-related Part I crimes, therefore constituting "...a serious threat to the public safety and welfare" (CRL 33031(b)(7)). During the five-year period, there was an average of three crimes per property in Adams area and six crimes per property in the Selwyn/Shirley area compared to 0.8 crimes per property citywide. Seifel claims that measuring "crimes per property" is not a valid basis for comparison. However, this argument does not consider that the area being measured is a dense residential area. Measuring crimes per 1,000 residents in a small area with dense residential uses will naturally have the effect of lowering the crime rate relative to a low density residential area or a commercial area. It is for this reason that measuring crimes per property is relevant. The Seifel Report expressed concerns that the measurement of crimes per property is invalid because properties are not all the same size. Table 16 in the Report to City Council shows that the "Added Area-to-City" acreage percentages are very similar to percentages of properties in the Adams and Selwyn/Shirley areas, indicating that the parcel sizes are very similar to the average parcel size in the City.

Finally, Seifel attempts to discount the crime analysis because it does not include the Town Center. The CRL does not require that the same blighting condition affect all portions of the Added Area. Crime is a major impact in the Adams and Selwyn/Shirley areas but not in the Town Center. As described in the Report to City Council, the sum of the blighting conditions in the Added Area are prevalent and substantial.

Summary of Comment #3 "Insufficient Evidence that Allegedly Blighted Properties Constitute a Serious Physical and Economic Burden on the Community."

Comment #3 states that: "There is a lack of evidence showing that the purported blight conditions are so prevalent and substantial that they cause a reduction of, or lack of, proper utilization of the area such that they constitute a serious physical and economic burden on the community, as required by Section 33030."

Findings of the City Council in Response to Comment #3:

As previously stated in the response to Comment #1, for the amendments affecting the Existing Project Area, the requirement is that there be significant remaining blight that justifies the proposed amendments, and significant remaining blight can exist without being prevalent (CRL Section 33333.10(d)). The Agency's Report to City Council documents the significant remaining blight affecting the Amendment Areas. For the proposed Added Area, the Agency's Report to City Council documents the prevalent and substantial blighting conditions affecting the proposed Added Area and the corresponding burden on the community.

As a basis for this objection, the County simply footnotes "See generally Seifel Report." Due to the lack of specificity, it is difficult to provide a detailed response. Parts III and V of the Report to City Council document the various blighting conditions, the private sector's inability to correct these conditions without redevelopment and the resulting impact on the community. Within the

proposed Added Area, the burden to the community results from persons subject to living in substandard conditions resulting from serious code violations and overcrowding. These same residents are subject to high instances of violent crimes including gang related assaults. In addition to residents being burdened by substandard living conditions, the City of Milpitas has repeatedly employed the resources of various City departments to correct these substandard conditions. The on-going City resources expended in this area are disproportionate to the size of the area. The high industrial vacancy rate impacts employment in the City for both the Added Area and Amendment Areas. As noted by Sperry Van Ness, the presence of underutilized properties and the lack of investment in those properties within the Town Center area are a deterrent to private sector investment in the area. The underutilization in the industrial sector not only results in fewer jobs but is a deterrent to new investment which is reflected in depressed property values from fewer sales and lower sales values which in turn impacts property tax revenues. In the Amendment Areas the decline in the hotel industry has resulted in an additional economic impact to the City revenues. Transient occupancy taxes ("TOT") represent 7% of the City's budget in fiscal year 2009/10, of which 62% is generated from the Amendment Areas. In the past year TOT from the hotels dropped by 23% resulting from increased vacancies and lower room rates. Finally, the on-going threat of flooding represents a significant burden on the community. As described earlier and stated in the Report to City Council, potential damages from a 100-year flood on Berryessa Creek exceed \$52 million with average annual damages of \$3.6 million.

Summary of Comment #4 "Failure to Demonstrate the Purported Blight Conditions Cannot be Alleviated Without Redevelopment"

Comment #4 states that the Report to City Council fails to demonstrate that the purported blight conditions cannot be accomplished without redevelopment, asserting: "The Agency has not demonstrated why an area where private enterprise has developed successful R&D businesses, thriving shopping centers, new institutional buildings, and upscale residential construction requires redevelopment assistance."

Findings of the City Council in Response to Comment #4:

The County's conclusion that private enterprise has developed successful industrial/R&D businesses, thriving shopping centers, new institutional buildings and upscale residential is based on a windshield survey performed by Seifel and ignores the existence of blighted properties and does not consider physical and economic conditions that cannot be observed from a cursory view from the public right-of-way. Within the Town Center portion of the Added Area identified as successful industrial/R&D businesses, 26 properties representing 20% of the total properties and 38% of the net acreage were found to be characterized by conditions that prevent or hinder the viable use or capacity of the buildings land lots. These structures are approximately 30 years old and are not functionally competitive in the private market which is reflected in high vacancy rates and low lease rates. As described in Part III of the Report to City Council, among the characteristics of substandard and obsolete construction that hinder the use and viability of these buildings are substandard metal construction, inadequate building size, inadequate parcel size, insufficient electrical power, inadequate fire sprinklers, inadequate ceiling height, inadequate column spacing and inadequate parking. Within the Amendment Areas, the 350-acre Oak Creek industrial area is also impacted by obsolete and substandard design. Approximately 15% of the properties were determined to be obsolete totaling approximately one quarter of the industrial properties in Amendment Area No. 1. The market demand for space in this area is research and development/office space. Obsolete single use manufacturing or research and development facilities do not meet contemporary business needs. These facilities lack the ability to be easily subdivided for multiple tenants and lack window area that further hinders the ability to readapt the buildings for office use. The inability to reuse the space is evidenced by the high and prolonged vacancy rates. Eight of the 12 buildings have a combined 10-year historical average vacancy rate of 57% and 36% of the research and development space is vacant. An example of a

building that appears modern and well maintained but is impacted by obsolescence is the 25-acre site in the northern half of Amendment Area No. 2 originally developed in 1990 as a campus for Quantum Electronics. The building has been vacant and on the market since August 2008. The issue for this property is the difficulty in finding a single user to buy the facility or to readapt the space for multiple tenants. To reverse these conditions that the private sector has not been able to address, the Agency will work with business owners to rehabilitate and expand obsolete facilities including providing loans to facilitate the conversion of obsolete manufacturing to office space and market the industrial areas.

The “thriving shopping centers” include eight commercial properties within the Selwyn/Shirley area primarily developed with older neighborhood shopping centers and the Executive Inn hotel. The majority (75%) of the leasable space within the shopping centers is over 30 years old and has not been substantially renovated. There are two newer strip centers, one of which is over 40% vacant. One of these commercial uses, the Fiesta Plaza was identified by Seifel as exhibiting a combination of high business vacancies and outdated construction and was included in the areas identified by Seifel as having “potentially blighted parcels.” These commercial uses and the public/semi-public uses in this area have been included because they are integral to the effective planning of the area.

The institutional uses in the existing Project Area include the City Hall and local branch of the County library, both funded by redevelopment. The only other institutional use is the Humane Society facility in the proposed Added Area. This facility is unique in that it was all funded by private donations from donors from the greater Silicon Valley area and was/is not in any way funded by the City of Milpitas.

In regards to “upscale residential,” the Selwyn/Shirley area was described by Seifel as showing “indications of unsafe and unhealthy building conditions, such as extensive mold and/or dry rot, sagging roofs and misaligned structures.” The largest residential area is located within the Original Project Area. It was because of the Agency’s infrastructure improvements that this residential area was able to develop. However, as shown on Map 10 of the Report to City Council, much of this residential area is within the 100-year floodplain. Within the Original Project Area, it is estimated that there are approximately 825 units housing 2,904 residents. The Agency proposes to assist property owners in flood abatement by raising ground levels for new developments above the 100-year flood plain. For the Amendment Areas and the proposed Added Area, the estimated cost of these flood control improvements is in excess of \$160 million which cannot be borne by the residents or by the City alone, particularly when the City is experiencing budget cuts. (Note that an incorrect estimate of \$7 million in needed flood control improvement costs for the Amendment Areas was identified in the summary of blighting conditions in the Report to City Council, however the correct cost estimate of over \$160 million was identified elsewhere in the Report to City Council.)

Summary of Comment #5 “Insufficient Information Regarding Increase to Tax Increment Limit”

Comment #5 claims that to justify an increase to the tax increment limit, the Agency needs to explain the relationship between the proposed redevelopment projects and their costs and the increase in those costs, and that the Report to City Council does not adequately identify the projects that are required to eradicate the remaining blight, nor explain how the costs of such projects are related to the proposed increase to the tax increment limit.

Findings of the City Council in Response to Comment #5:

As documented in Part III of the Report to City Council, the conditions of significant remaining blight in the Amendment Areas include: 1) unsafe or unhealthy buildings for persons to live or work resulting from exposure to flooding; 2) factors hindering the economically viable use or capacity of buildings and lots resulting from industrial obsolescence; 3) impaired property values

resulting from hazardous materials contamination; and 4) abnormally high business vacancies and abnormally low lease rates including abnormally high industrial vacancy rates and abnormally low hotel lease rates and high vacancy rates evidenced by a sharp decline in TOT.

The proposed redevelopment program for Project Area No. 1 includes four primary programs: 1) Transportation and Public Infrastructure Improvements; 2) Community Infrastructure; 3) Economic Stimulation; and 4) Affordable Housing Program. With the exception of the Affordable Housing Program which addresses the CRL requirement for affordable housing production and addresses code violations within Added Area residential areas, the other three programs address the blighting conditions noted in response to Comments #2 and #3.

The Transportation and Public Infrastructure Improvements programs provide for funding public improvement projects to improve drainage and eliminate flooding conditions. As stated in Part IV of the Report to City Council, this program provides for storm drain improvement projects to increase capacity for existing and new development to ensure property drainage as well as major flood control improvement projects. This program provides for other improvements including street, public transit, water and sewer improvements. The combined costs for the specific projects listed within this program are estimated at \$587 million. With an allowance for inflation to account for the long-term horizon over which the projects would be implemented, costs for transportation and public infrastructure total \$10.7 billion. In addition to removing all properties from the 100-year floodplain, the goal of this program is to improve the basic infrastructure to entice business development and expansion. As stated in the Report to City Council, the improvements will reduce potential costs to property owners and developers and make the Project Area more attractive for investment. This in turn will further the development of underutilized properties and properties developed with obsolete structures.

The Community Infrastructure Program provides for the repair, rehabilitation, installation, acquisition of land for and improvement of parks, open spaces, playgrounds, libraries, community centers, transit facilities and other public buildings and structures that will adequately serve the residents of the Project Area. These improvements will assist in improving the overall character of the Project Area thereby attracting businesses, development and patronage and improving the quality of life for the Project Area and the larger City's residents. A major proposed improvement is the development of a conference center. As previously indicated, hotels have been hurt by both the downturn in the economy and changes in business practices that have resulted in fewer business travelers which has increased the competition for the remaining business travelers. The Agency is proposing to assist in the construction of a conference center to bring businesses to the City and increase the demand for hotel space. The specific projects listed in Part IV total approximately \$58 million. With an allowance for inflation to account for the long-time horizon over which the projects would be implemented, costs for community infrastructure projects total \$107 million.

The Economic Stimulation Program provides incentives to assist the private sector in improving obsolete building conditions that hinder the use and capacity of properties. The Economic Stimulation Program also provides funding to assist property owners in mitigating hazardous materials contamination. Abnormally high business vacancies and abnormally low lease rates is also addressed through the Economic Stimulation Program. Under this program, the Agency may assist with land acquisition, site preparation, off-site improvements, disposition of property and relocation assistance to existing property owners and tenants. The Agency may provide low interest loans for minor and major structural repairs and improvements. This could include activities ranging from façade improvements to site preparation for building expansion. These loans may be available to both tenants and property owners. Loans may also be made to owners and tenants of obsolete industrial space to upgrade systems, add windows and provide interior improvements to make the space adaptable to contemporary office use. In some instances, the Agency may acquire adjoining properties to provide expansion space or additional parking required by contemporary users. The Agency also intends to assist in monitoring and removal of

toxic materials/contamination from sites in the area. The Agency's assistance will include identifying available grants from the Environmental Protection Agency for hazardous waste cleanup and assisting in writing the grant application. Through these improvements, new investment will help to reduce vacancies, increase lease rates and improve property values. In addition to project financing, the Agency may assist in marketing the Project Area and in the development of vacant and underutilized sites through developer assistance in processing the necessary permits and issuing requests for proposals. Although largely dependent on owner and developer needs, based on past Agency activities and expenditures, the cost of this program is estimated at \$235 million.

The proposed non-housing projects and programs described in Part IV of the Report to City Council are estimated to cost \$1.4 billion. As described in Part V of the Report to City Council, without amending the Redevelopment Plan, Project Area No. 1 will generate \$359 million in discretionary non-housing revenues (after statutory housing set-aside requirements, debt service repayment, administration, contractual obligations, and payment to taxing agencies are met). This means the Agency anticipates a short fall of approximately \$1 billion needed to fund the proposed redevelopment program. This shortfall in funds required for the proposed redevelopment program consists of an estimated \$535 million shortfall in the Amendment Areas, a \$23 million shortfall in the Midtown Added Area, and a \$495 million shortfall in the proposed Added Area. The proposed 10-year extension of the duration and time period for collection of tax increment, the increase in the dollar limit on collection of tax increment, and the addition of territory combined with the repeal of the debt establishment limit will provide the Agency with the ability to assist projects that will improve the economic viability of the Project Area.

The proposed dollar limit on receipt of tax increment, as required by the CRL for inclusion in the Plan, is \$6.7 billion, an increase of \$4.3 billion over the existing limit of \$2.4 billion. The amount of the increase has been determined based on anticipated redevelopment implementation and administrative costs over the remaining life of the Plan necessary to implement the projects and programs of the Agency indicated above. Tables 21 through 28 of the Report to City Council demonstrate that all of the tax increment to be received from the Amendment Areas as a result of the increase in tax increment limit is necessary to fund the proposed redevelopment program after required pass through payments, the county administration fee, bond debt service, contractual obligations, Supplemental Educational Revenue Augmentation Fund requirements, operating expenses, and the required housing set-aside are taken into account. The proposed dollar limit is equivalent to the projected tax increment from the Amendment Areas from 2009-10 through the extended tax increment receipt time limit, a contingency factor of thirty percent (30%), plus the amount of tax increment already received by the Agency through 2008-09 (see Table 28: "Calculation of Tax Increment Limit Required" of the Report to City Council). Consistent with the requirements of the CRL, the Midtown Added Area and the proposed Added Area would not be subject to this limit; therefore, tax increment collected in these areas was not included in determining the required increase in the tax increment limit.

Summary of Comment #6 "Failure to Adequately Explain Need for Tax Increment Limit Increase and Identify Other Revenue Sources"

Comment #6 claims that the Report to City Council does not identify the sources and amounts of money other than tax increment that are available to finance the redevelopment projects and programs, or explain why the remaining blight cannot be alleviated without the use of tax increment revenues, and that the Report also fails to explain the relationship between the proposed redevelopment projects, the proposed costs, and why the tax increment cap needs to be increased and the debt limit needs to be eliminated.

Findings of the City Council in Response to Comment #6:

The Report to City Council does not identify specific sources and amounts of money other than tax increment to finance the redevelopment program because there are no other reliable or viable funding sources available to the Agency. As described in the Report to City Council, although the Agency may consider other funding sources permitted in the Plan, these sources may not be available and are not reliable and the Agency must consider the use of tax increment to finance the anticipated costs and revenue shortfalls. As described in the Report to City Council, even if alternative funding sources become available these funds alone and/or cumulatively without redevelopment tax increment are inadequate to accomplish the proposed projects and programs. Other funding sources, such as community development block grants, economic development administration grants, and Small Business Administration (SBA) loans and loan guarantees, derive from the Federal government. The availability of money from these programs, particularly Federal programs, has become less available and more restrictive in recent years. Other financing alternatives, such as enterprise zone funding, State commerce department grants and loans, and employment training grants and loans, derive from State government, while still others, such as industrial development and mortgage backed revenue bonds, private bank CRA financing, assessment district financing, and private/public financing sources, derive from private and “off-budget” governmental sources. This type of funding is difficult to implement because of certain restrictions. As an example, general obligation bonds require a two-thirds vote of the electorate. Most of the above-described financing alternatives are not under local control. All are subject to their own budgetary constraints, at the Federal or State level, and are further subject to lengthy application or arcane administrative procedures which make immediate application of their benefits to any given real estate transaction, in which “time is of the essence,” problematic at best. As a result, tax increment financing must remain the principal source of financing with consideration given to other methods in appropriate circumstances.

In regards to the comment that the Report fails to explain the relationship between the proposed redevelopment projects, the proposed costs, and why the tax increment cap needs to be increased, this question was answered in response to Comment #5. As a further explanation and as described in Part V of the Report to City Council, the proposed 10-year extension of the duration and time period for collection of tax increment and increase in the dollar limit on collection of tax increment will provide the Agency with an estimated \$559 million in additional funding within the Amendment Areas. The additional funding is needed to fund redevelopment projects and programs designed to eliminate significant remaining blighting conditions identified in the Amendment Areas. The 10-year extension of Plan time limits also provides additional time necessary to complete the proposed projects and programs. The timing of many of the proposed projects depends upon private sector initiation of the rehabilitation and redevelopment of remaining blighted sites within the Amendment Areas. Without the proposed Thirteenth Amendment, there will be only nine years of Plan effectiveness remaining in the Original Project Area and 12 and 15 years in Amendment Area Nos. 1 and 2, respectively, which is not anticipated to be sufficient for implementation of the proposed projects, particularly given the impact the severe downturn in the economy has had on the timing of private-sector development. The addition of territory will provide the Agency with the ability to implement the projects and programs identified within the Added Area and is estimated to generate \$278 million in additional funding needed for non-housing programs in the Added Area. The economic feasibility of the financing plan reflected in Table 21 of the Report to City Council is based upon the Agency’s issuance of new tax allocation bonds in addition to the outstanding 2003 bonds to generate approximately \$681 million in net proceeds. These bond issues are projected for fiscal years 2014-15, 2017-18, 2021-22, 2026-27, 2030-31, and 2035-36. All of the bond issues occur after the current debt establishment limit of 2014 and as a result the repeal of the debt establishment limit is necessary to provide bonding capacity to finance the redevelopment program.

Summary of Comment #7 “Failure to Justify Extension of Time”

Comment #7 claims that the Report to City Council fails to provide adequate justification for why the redevelopment plan needs to be extended by 10 years, including why the projects and programs cannot be completed without extending the time limits on the effectiveness of the plan and receipt of tax increment revenues.

Findings of the City Council in Response to Comment #7:

This comment has been previously addressed in response to Comments #5 and #6. As described in the response to comments above and as further summarized in the Executive Summary to the Report to City Council, the proposed 10-year extensions of Plan effectiveness and time period for collection of tax increment/repayment of debt would provide the Agency with additional tax increment revenue from the Amendment Areas which is needed to fund the completion of the Agency’s redevelopment program for blight elimination and production of affordable housing. Given the severe downturn in the economy, the additional 10 years of Plan effectiveness is also needed to provide time to complete the Agency’s projects and programs, which will largely be based upon private sector initiation of the rehabilitation and redevelopment of remaining blighted sites within the Amendment Areas. The additional 10 years will also provide needed time for the Agency to implement an extensive infrastructure improvement program.

Summary of Comment #8 “No Explanation Regarding Fiscal Merger”

Comment #8 claims that there is no explanation regarding why the fiscal merger is being done.

Findings of the City Council in Response to Comment #8:

The County has mistakenly made this claim since no fiscal merger is proposed as part of the Amendments. The Projects (Milpitas Redevelopment Project Area No. 1 and the Great Mall Redevelopment Project) were previously merged in 2006.

Summary of Comment #9 “Incomplete List of Public Improvements”

Comment #9 claims that Attachment No. 4 to the Amended and Restated Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 does not provide an adequate list of public improvements in that it is vague and generic.

Findings of the City Council in Response to Comment #9:

CRL Section 33445(b) states, “For redevelopment plans, and amendments to those plans which add territory to a project, adopted after October 1, 1976, acquisition of property and installation or construction of each facility shall be provided for in the redevelopment plan.” The Amended and Restated Redevelopment Plan fulfills the CRL’s requirement by identifying proposed public improvements and facilities. Attachment No. 4 of the Amended and Restated Redevelopment Plan includes six categories of potential public improvement projects and facilities including: 1) Traffic/Circulation; 2) Water, Sewer and Flood Control; 3) Parking; 4) Streetscape and Street Lighting; 5) Utilities; and 6) Parks, Open Spaces and Community Facilities. The specific types of improvements within the categories are described. For example, under Traffic/Circulation the types of improvements specified include construction, reconstruction, widening of roads, installation of traffic signals, realignment or removal of railroad tracks, construction of curbs, gutters, sidewalks, installation, reconstruction, reconstruction of bridges, over and underpasses, street medians, bicycle paths, bus shelters and other improvements. Section 326 of the Amended and Restated Redevelopment Plan also identifies potential public improvements that may be undertaken by the Agency in the Project Area, including sewers, natural gas distribution systems,

water distribution systems, parks, plazas and pedestrian paths, parking facilities, landscaped areas, street improvements and storm water facilities. Because the Amended and Restated Redevelopment Plan must provide for redevelopment over an extended period of time (e.g., 30 years for the proposed Added Area), detailed identification of every possible needed public improvement in terms of specific location and detailed construction specifications is not possible, reasonable or required by CRL Section 33445.

Summary of Comment #10 “Insufficient Evidence Regarding Effectiveness of Redevelopment”

Comment #10 claims that because of the claimed lack of evidence of blight, there is no substantial evidence in the record that the Amendments would redevelop the Amendment Areas and Added Area and eliminate blight.

Findings of the City Council in Response to Comment #10:

The evidence of significant remaining blight in the Amendment Areas and substantial and prevalent blight in the proposed Added Area is documented in Part III of the Report to City Council and summarized in the responses to Comments #2, #3 and #4. The programs and specific projects to eliminate the blight are described in Part IV of the Report to City Council and summarized in the response to Comment #5. The need for the Amendments to provide for the financing and time to implement the Agency’s redevelopment program is described in Part V of the Report to City Council and summarized in the responses to Comments #6 and #7.

Summary of Comment #11 “Failure to Update the Implementation Plan”

Comment #11 claims that no updated Implementation Plan has been provided, and that the Implementation Plan update must include an updated affordable housing production table that reflects the additional ten years proposed to be added to the redevelopment plan life.

Findings of the City Council in Response to Comment #11:

There is no requirement in the CRL that the Implementation Plan include an ***updated affordable housing production table***. Section 33333.11(e)(7) requires “An amendment to the agency’s implementation plan that includes, but is not limited to, the agency’s housing responsibilities pursuant to Section 33490.” Part VI of the Agency’s Report to City Council includes an amendment to the Agency’s Implementation Plan. The Agency has one Implementation Plan that governs the Agency’s two Redevelopment Projects. The Implementation Plan is divided into two primary sections, a Redevelopment Component and a Housing Component. The current Implementation Plan for the Project Areas is for the five-year period between fiscal year 2005/06 through 2009/10. The goals and objectives and projects and programs outlined within the current Implementation Plan are divided among the Midtown Added Area, the balance of Project Area No. 1 and the Great Mall. The amendment to the Implementation Plan combines and simplifies these goals and objectives for the Midtown Added Area and the balance of Project Area No. 1 into one set of goals and objectives that are applicable to Project Area No. 1 as amended to include the Added Area. As described in the amendment to the Implementation Plan, the 10-year extension of the Amendment Areas plan effectiveness and receipt of tax increment/repayment of debt limits will trigger an increase of the affordable housing set-aside from 20% to 30% of the gross tax increment beginning in Fiscal Year 2010-11 (the first fiscal year following adoption of the Thirteenth Amendment). Therefore, the affordable housing set-aside increase of 10% will not occur during the current Implementation Plan cycle. The increased affordable housing set-aside and amended goals and objectives will be reflected in the new 2010/11-2014/15 Implementation Plan. As described in the Implementation Plan, the Agency anticipates using the majority of these housing funds to support two general affordable housing themes: (1) expanding affordable housing opportunities through assisting projects that meet the Agency’s targeting requirements

and the community's needs; and 2) preserving the existing affordable housing stock through rehabilitation of units for qualified low income homeowners and rental properties.

Summary of Comment #12 "Failure to Explain Need to Extend to Exercise Eminent Domain"

Comment #12 claims that the proposed plan does not explain why the Agency's eminent domain power needs to be extended nor is there substantial evidence of remaining blight.

Findings of the City Council in Response to Comment #12:

As summarized in the Executive Summary to the Report to City Council and described in detail in Parts III and V of the Report to City Council, eminent domain may be needed to assemble small and irregularly shaped industrial and commercial sites to accommodate contemporary businesses that will contribute to the elimination of obsolete facilities, high vacancy rates and low lease rates. Sperry Van Ness surveyed and inventoried the conditions of properties in the Town Center area. Industrial and research and development uses were the focus of the Sperry Van Ness analysis which represented 87% of the Town Center Study Area. The industrial and research and development properties were evaluated for functionality and competitiveness. Sperry Van Ness determined that 27 industrial properties, 26 of which are included in the Added Area, were characterized or impacted by physical conditions that limited the viability of properties. Of the 26 industrial parcels, the average parcel size was approximately 4.5 acres with 13 under three acres. As described in the Report to City Council the average size nationally for a manufacturing and distribution facility is 150,000 square feet, with a lot to building ratio of 3:1. (Sperry Van Ness identifies proper utilization for manufacturers at 35 to 45%.) Based on these assumptions, the minimum desired lot size is approximately 10 acres. Three of the properties had a lot size of 10 acres or greater. A typical manufacturing/assembly facility requires a building size of 25,000 square feet, which based upon a 3:1 land to building ratio, would require a parcel size of 75,000 square feet (1.7 acres). Seven of the 26 properties cited are less than 1.7 acres. As described in Part IV of the Report to City Council, the Economic Stimulation Program includes Agency assistance in acquiring adjoining properties to provide for expansion space or additional parking required by contemporary users.

Within the Selwyn/Shirley portion of the Added Area, there are eight parcels located adjacent to Interstate 680, all of which are remnants of the construction of the freeway, are narrow and of irregular shape, and are under separate ownership. One parcel is used by Caltrans and another parcel has no improvements other than a freeway sign. The parcels range in depth from 75 to 170 feet and range in size from 0.25 to 1 acre. As noted above, a typical manufacturing/assembly use which can be accommodated in a smaller industrial space requires a minimum parcel size of 75,000 square feet which is larger than any of the eight remnant parcels. The parcels were originally developed as industrial uses but with few exceptions have transitioned to quasi public uses including churches and a private school. The change in use is apparently the result of the small parcel size and complete separation from similar industrial uses on the opposite side of Interstate 680. The age of the structures (30 years and older), lack of any major reinvestment and transition from industrial to public/quasi public use is evidence that the irregular shape and size of the parcels combined with the multiple ownership has impaired the use of these parcels for their purpose. Agency assistance may be needed to combine parcels with adjoining parcels to create parcels of adequate size for development or create developed sites that are large enough to be used for their intended industrial use.

Within the Amendment Areas, there are also properties which may require Agency assistance in the acquisition to provide for contemporary industrial users. Sperry Van Ness surveyed 78 properties in the 350-acre area commonly known as Oak Creek. The market demand for space in the Oak Creek area is for research and development/office space. What is being marketed as research and development includes structures originally built for manufacturing purposes as well as structures designed for research and development uses. The trend is away from single use to

multiple tenant buildings. Buildings that are designed for manufacturing purposes and those designed for single use research and development tenants require substantial retrofitting to accommodate multiple office tenants. An aspect that hinders the reuse of the buildings is lack of adequate parking. Manufacturing facilities generally provide two to three parking spaces per 1,000 square feet of building area compared to three plus spaces for research and development facilities and four spaces per thousand for office space. The Agency plans to help with marketing the industrial uses and providing loans to facilitate the conversion of obsolete manufacturing to office space. As part of this assistance, redevelopment may be required to assemble adjoining sites to create facilities that meet contemporary user needs including creating additional space for parking.

Summary of Comment #13 “Failure to Demonstrate Compliance with S.B. 211”

Comment #13 claims that the Report to City Council fails to fully explain how the proposed amendments comply with SB 211.

Findings of the City Council in Response to Comment #13:

The Seifel Report, in its analysis of SB 211 requirements, restates prior assertions that the Report to City Council does not demonstrate significant remaining blight, that the ten year time extension is not necessary to eliminate blight, and that there is no relationship between the proposed programs, projects and the elimination of blight. The documentation of significant remaining blight is provided in Part III of the Report to City Council and summarized again in response to Comments #2, #3, #4, and #12. The need for the ten-year extension is described in Part V of the Report to City Council and summarized in the response to Comments #5, #6 and #7. The relationship between the programs, projects and blight elimination is presented in Part IV of the Report to City Council and summarized in the response to Comment #5. Contrary to Seifel’s assertion, there is no CRL requirement that the Agency list infrastructure deficiencies as a prerequisite for identifying proposed infrastructure improvements. The Agency’s program of activity is not limited to curing infrastructure deficiencies but rather, as described in Part IV of the Report to City Council, is a part of a strategy to attain the Agency’s goals and objectives by funding infrastructure improvements to attract and stimulate private investment. It is proposed that, in some instances, infrastructure improvements will be specific to a site to assist in a proposed development and, in other instances, they will be undertaken on a Project Area wide basis to improve the overall aesthetics of an area and to eliminate a general deficiency that is inhibiting new construction or reinvestment. The construction or installation of infrastructure and circulation improvements will reduce potential costs to property owners and developers and make the Project Area more attractive to investment. This will in turn further the development of underutilized properties and properties developed with obsolete structures.

As described in the response to Comment #1, the Midtown Added Area will no longer be subject to the tax increment limit, but will be subject to the increased bonded indebtedness limit (the County mistakenly states that the bonded indebtedness limit will be eliminated). The amendment increasing the tax increment limit requires a showing of significant remaining blight in the Existing Project Area. The Report to City Council documents the existence of significant remaining blight in the Amendment Areas, which are the focus of the amendments affecting the Existing Project Area. The amendment increasing the bonded indebtedness limit does not require a blight finding.

Summary of Comment #14 “CEQA Compliance”

Comment #14 claims that the project description in the EIR is incomplete and inadequate because the Report to City Council and supporting documentation fail to include necessary information.

Findings of the City Council in Response to Comment #14:

As described in the responses to comments above, all necessary information was provided in the Report to City Council with full supporting documentation in compliance with the CRL. The project description adequately outlines the proposed programs for transportation and public infrastructure improvements, community and public facilities, economic stimulation, and affordable housing anticipated over the life of the Amendments, and describes the conditions of remaining blight and the other project components including eminent domain. The environmental impact report (EIR) is a Program EIR under CEQA as described on page 1.0-3 of the Draft EIR. Regardless of any assertion that the determination of blight was inadequate or eminent domain was not justified, the types of actions that redevelopment agencies can take and the list of proposed public improvements were sufficiently detailed for a programmatic analysis.

The Program EIR was prepared to analyze the full range of potential public and private activities or undertakings pursuant to or in furtherance of the Amendments and to evaluate the potentially significant effects of public improvements and development that may be funded by or encouraged by the elimination of barriers to development by redevelopment activities. Use of the Program EIR allows the Agency, as Lead Agency, to evaluate the potential impacts of redevelopment activities at a comprehensive level of detail, focusing on area-wide and cumulative impacts and programmatic mitigation measures. Potential direct impacts that could result in the Analysis Area from public improvements and facilities projects proposed as part of the Amendments were also considered. The Program EIR will serve as the environmental baseline for subsequent approvals as the Amendments are implemented. As individual activities pursuant to the Amendments are proposed subsequent to future listing in 5-year implementation plans over the life of the Amended and Restated Redevelopment Plan, the Agency will examine the individual activities to determine whether their effects have been fully evaluated in the Program EIR, and if not, what additional steps should be taken. Additional environmental review for the public and private activities or undertakings pursuant to or in furtherance of the Amendments would be required if any of the conditions outlined in CEQA Guidelines Sections 15162 or 15163 were to occur. This includes identification of significant impacts from detailed site and design information that were not identified in this programmatic level EIR. Additional steps may include preparation of an Addendum or Supplement to this EIR, preparation of a Project EIR, or a Negative Declaration.