

**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**

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**For AGENDA ITEM NO. RA4**

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY AMENDING THE  
JULY 2005 – JUNE 2010 IMPLEMENTATION PLAN**

**WHEREAS**, by Resolution No. 230, adopted on June 3, 1958, the City Council of the City of Milpitas (“City Council”) formed the Milpitas Redevelopment Agency (“Agency”) to formulate a redevelopment project or projects within the City of Milpitas; and

**WHEREAS**, on September 21, 1976, by Ordinance No. 192, the City Council adopted the redevelopment plan (“Redevelopment Plan” or “Plan”) for the Milpitas Redevelopment Project Area No. 1 (“Original Project Area”); and

**WHEREAS**, the Redevelopment Plan has been amended a total of twelve (12) times (as amended, the “Existing Plan”) to, among other things, add area to the Original Project Area (as amended, the “Project Area”), merge the Project Area with the Great Mall Redevelopment Project, increase the tax increment and bonded indebtedness limits, and extend the dates to incur debt, repay debt and collect tax increment; and

**WHEREAS**, on November 2, 1993, by Ordinance No. 192.8, the City Council adopted the redevelopment plan for the Great Mall Redevelopment Project (“Great Mall Redevelopment Plan”); and

**WHEREAS**, the Great Mall Redevelopment Plan has been amended a total of five (5) times to, among other things, add territory and merge with Project Area No. 1 (the “Merged Project Area”); and

**WHEREAS**, the Agency again desires to amend the Existing Plan (“Thirteenth Amendment” or “Amendment”) to: 1) extend by 10 years the effectiveness time limit and time period to repay debt/collect tax increment of the Original Project Area and Amendment Areas No. 1 and 2 (collectively, the Original Project Area 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 California Community Redevelopment Law (Health & Safety Code Section 33000, *et seq.*; “CRL”); and

**WHEREAS**, the Agency is proposing to concurrently 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 Milpitas Redevelopment Project Area No. 1; and

**WHEREAS**, on August 4, 2009, by Resolution No. 7909, the City Council designated a redevelopment survey area and directed the Planning Commission of the City of Milpitas (“Planning Commission”) to select the boundaries of the area proposed to be included within the Thirteenth Amendment Added Area from within the boundaries of the redevelopment survey area and formulate a preliminary plan for the redevelopment of the proposed Thirteenth Amendment Added Area; and

**WHEREAS**, on September 9, 2009, by Resolution No. 09-043, the Planning Commission selected and designated the boundaries of the Thirteenth Amendment Added Area, approved a Preliminary Plan for the Thirteenth Amendment Added Area (“Preliminary Plan”), and submitted said Preliminary Plan to the Agency; and

**WHEREAS**, on October 6, 2009, the Agency, by Resolution No. RA346, accepted the Preliminary Plan and directed preparation of the Preliminary Report for the Thirteenth Amendment and the transmittal of certain information to taxing officials; and

**WHEREAS**, the Agency has prepared a proposed Amended and Restated Redevelopment Plan incorporating the Thirteenth Amendment (“Amended and Restated Redevelopment Plan”) and has prepared the form of the proposed

Sixth Amendment (collectively, the Thirteenth Amendment and the Sixth Amendment are referred to as the “Amendments”); and

**WHEREAS**, on December 1, 2009, by Resolution No. RA349, the Agency approved the Preliminary Report for the Thirteenth Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 and the Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project and authorized transmittal of the report to the affected taxing agencies, the Department of Finance (“DOF”), the Department of Housing and Community Development (“HCD”) and other interested persons and organizations; and

**WHEREAS**, on December 1, 2009, by Resolution No. RA350, the Agency received the Amendments and authorized the transmittal of the Amendments to the Planning Commission for its report and recommendation and to the affected taxing agencies and other interested persons and organizations; and

**WHEREAS**, on December 1, 2009, by Resolution No. RA351, the Agency accepted and authorized the circulation of the Draft Environmental Impact Report prepared for the Amendments; and

**WHEREAS**, on December 1, 2009, by Resolution No. 7942, the City Council determined that a Project Area Committee need not be formed in the preparation of the Amendments and directed the Amendments be provided to and the Agency consult with residents, property owners, business owners, and existing civic and business organizations; and

**WHEREAS**, on December 9, 2009, the Planning Commission, by Resolution No. 09-056, determined the Amendments to be consistent with the City of Milpitas General Plan and recommended that the Agency and City Council approve and adopt the Amendments; and

**WHEREAS**, on February 16, 2010, the Agency, by Resolution No. RA362, approved and adopted the Agency’s Report to City Council on the proposed Amendments, submitted said Report and proposed Amendments to the City Council and consented to a joint public hearing with the City Council on the Amendments; and

**WHEREAS**, on February 16, 2010, the City Council, by Resolution No. 7961, acknowledged receipt of the Report to City Council and the Amendments from the Agency and consented to and called for a joint public hearing with the Agency on the Amendments; and

**WHEREAS**, on March 2, 2010, the Agency, by Resolution No. RA366, amended the Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in Milpitas Redevelopment Project Area No. 1; and

**WHEREAS**, CRL Section 33490(a) (1) (A) requires that on or before December 31, 1994, and each five years thereafter, each redevelopment agency that has adopted a redevelopment plan prior to December 31, 1993, shall adopt, after a public hearing, an implementation plan that shall contain the specific goals and objectives of the agency for the project area, the specific programs, including potential projects, and estimated expenditures proposed to be made during the next five years, and an explanation of how the goals and objectives, programs and expenditures will eliminate blight within the project area and implement the requirements of Section 33333.10, if applicable, and Sections 33334.2, 33334.4, 33334.6 and 33413 of the CRL; and

**WHEREAS**, on August 1, 2006, the Agency, by minute motion, adopted its July 2005-June 2010 Implementation Plan for the Milpitas Redevelopment Project Area No. 1 and the Great Mall Redevelopment Project (“2005-2010 Implementation Plan”); and

**WHEREAS**, on October 7, 2008, the Agency, by minute motion, amended the 2005-2010 Implementation Plan at the time of the mid-term review to update the list of anticipated projects, identify accomplishments and update projected expenditures; and

**WHEREAS**, CRL Sections 33333.11(e)(7) and 33451.5(c)(7) require, as a part of the procedure for adopting the Amendments, that the Agency amend the Agency’s 2005-2010 Implementation Plan including but not limited to the Agency’s housing responsibilities pursuant to Section 33490; and

**WHEREAS**, concurrent with the adoption of the Amendments the Agency desires to amend the 2005-2010 Implementation Plan to: 1) include the Added Area; 2) combine and simplify the goals and objectives for Milpitas Redevelopment Project Area No. 1, the Great Mall Project and apply the goals and objectives to the Added Area; and 3) acknowledge that the affordable housing set-aside requirement will increase from 20 percent to 30 percent for the Amendment Areas beginning in the first fiscal year following adoption of the Thirteenth Amendment; and

**WHEREAS**, CRL Section 33490(a)(1)(B) provides that adoption of an implementation plan shall not constitute a project within the meaning of Section 21000 *et seq.* of the Public Resources Code (California Environmental Quality Act; “CEQA”); therefore, no CEQA compliance is required prior to approval of the proposed amendment to the 2005-2010 Implementation Plan; and

**WHEREAS**, on April 6, 2010, the Agency and City Council conducted and concluded a duly noticed joint public hearing on the Amendments, including the amendment of the 2005-2010 Implementation Plan; and

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred.

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

**Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.

**Section 2.** Pursuant to CRL Sections 33490, 33333.11(e)(7) and 33451.5(c)(7), the Agency hereby amends its July 2005-June 2010 Implementation Plan as described in the Agency’s Report to City Council on the proposed Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 and proposed Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project incorporated herein by this reference.

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

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY CERTIFYING THE FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE PROPOSED THIRTEENTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1 AND THE PROPOSED SIXTH AMEDMENT TO THE REDEVELOPMENT PLAN FOR THE GREAT MALL REDEVELOPMENT PROJECT**

**WHEREAS**, by Resolution No. 230, adopted on June 3, 1958, the City Council of the City of Milpitas (“City Council”) formed the Milpitas Redevelopment Agency (“Agency”) to formulate a redevelopment project or projects within the City of Milpitas; and

**WHEREAS**, on September 21, 1976, by Ordinance No. 192, the City Council adopted the redevelopment plan (“Redevelopment Plan” or “Plan”) for the Milpitas Redevelopment Project Area No. 1 (“Original Project Area”); and

**WHEREAS**, the Redevelopment Plan has been amended a total of twelve (12) times (as amended, the “Existing Plan”) to, among other things, add area to the Original Project Area (as amended, the “Project Area”), merge the Project Area with the Great Mall Redevelopment Project, increase the tax increment and bonded indebtedness limits, and extend the dates to incur debt, repay debt and collect tax increment; and

**WHEREAS**, on November 2, 1993, by Ordinance No.192.8, the City Council adopted the redevelopment plan for the Great Mall Redevelopment Project (“Great Mall Redevelopment Plan”); and

**WHEREAS**, the Great Mall Redevelopment Plan has been amended a total of five (5) times to, among other things, add territory and merge with Project Area No. 1 (the “Merged Project Area”); and

**WHEREAS**, the Agency again desires to amend the Existing Plan (“Thirteenth Amendment” or “Amendment”) to: 1) extend by 10 years the effectiveness time limit and time period to repay debt/collect tax increment of the Original Project Area and Amendment Areas No. 1 and 2 (collectively, the Original Project Area 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 California Community Redevelopment Law (Health & Safety Code Section 33000, *et seq.*; “CRL”); and

**WHEREAS**, the Agency is proposing to concurrently 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 Milpitas Redevelopment Project Area No. 1; and

**WHEREAS**, the Agency has prepared a proposed Amended and Restated Redevelopment Plan incorporating the Thirteenth Amendment (“Amended and Restated Redevelopment Plan”) and has prepared the form of the proposed Sixth Amendment (collectively, the Thirteenth Amendment and the Sixth Amendment are referred to as the “Amendments” and the “Project”); and

**WHEREAS**, the Milpitas Redevelopment Agency (“Agency”) has prepared a Program Environmental Impact Report (the “EIR”) on the proposed Thirteenth Amendment and the proposed Sixth Amendment in accordance with the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*; “CEQA”), the Guidelines for Implementation of the California Environmental Quality Act (14 Cal. Code Regs. Section 15000, *et seq.*, hereafter the “State CEQA Guidelines”) and the local procedures adopted by the Agency pursuant thereto; and

**WHEREAS**, on September 9, 2009, the Agency filed a Notice of Preparation of the Draft Program EIR with the State Office of Planning and Research and local agencies soliciting comments on the probable effects of the Project and scope of the EIR in compliance with CEQA and the State CEQA Guidelines; and

**WHEREAS**, on December 3, 2009, the Agency filed a Notice of Completion of the Draft Program EIR with the State Office of Planning and Research – State Clearinghouse and provided copies of the Draft Program EIR to the affected taxing agencies and other interested persons and agencies for a 45-day public review period beginning December 3, 2009, and ending January 19, 2010; and

**WHEREAS**, on December 3, 2009, a Notice of Availability of the Draft Program EIR was published in the *Milpitas Post*, a newspaper of general circulation, which notice summarized the Project, provided the deadline for submittal of comments, and invited all interested persons and agencies to submit comments on the Draft Program EIR, and copies of the Draft Program EIR were made available for review at the office of the Redevelopment Agency in compliance with CEQA and the State CEQA Guidelines; and

**WHEREAS**, the Draft Program EIR was thereafter supplemented to incorporate comments received during the public review period, and to incorporate the Agency’s responses to said comments, and as so supplemented, a Final Program EIR was prepared by the Agency and sent to all persons and agencies that submitted comments, in compliance with CEQA and the State CEQA Guidelines; and

**WHEREAS**, the Final Program EIR consists of the Draft Program EIR, as supplemented to incorporate all comments received and the responses of the Agency thereto, and is part of the Agency’s Report to the City Council on the Redevelopment Plan prepared in accordance with the requirements of CRL Sections 33352, 33451.5, 33457.1 and 33333.11; and

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred.

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

**Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.

**Section 2.** The Agency hereby certifies that the Program EIR prepared for the adoption of the proposed Amendments has been completed in compliance with CEQA and the State CEQA Guidelines and that the Agency has reviewed and considered the information contained in said Program EIR prior to adopting this Resolution. The Agency hereby finds that the Program EIR reflects the independent judgment of the Agency.

**Section 3.** The Agency has evaluated all comments, written and oral, received from persons who have reviewed the Program EIR.

**Section 4.** The Agency hereby makes and adopts the Statement of Findings, Facts and Overriding Considerations relating to the potential significant environmental impacts of the Amendments as set forth in Exhibit A attached hereto and incorporated herein by this reference (including, without limitation, the mitigation measures therein set forth). Based upon such Statement of Findings, Facts and Overriding Considerations, the Agency hereby finds that all potentially significant environmental impacts have been eliminated or substantially lessened, except the following:

- (a) Climate Change, Impact 6.2-2: Individual redevelopment-assisted development projects could produce operational greenhouse gas emissions that contribute to global climate change;
- (b) Transportation and Circulation, Impact 6.7-1: Redevelopment activities and development engendered by the Amendments could result in increased traffic on currently impacted roadway segments and intersections where no mitigation is feasible; and

- (c) Transportation and Circulation, Impact 6.7-2: Redevelopment activities and development engendered by the Amendments could result in increased traffic on currently impacted freeway segments where no mitigation is feasible.

Based upon the foregoing, the Agency finds and determines that the proposed Amendments will have a significant effect upon the environment but that the benefits of the Amendments outweigh the unavoidable adverse impacts for the reasons set forth in the Statement of Findings, Facts, and Overriding Considerations, in particular, Section III thereof.

**Section 5.** The Agency hereby adopts the Mitigation Monitoring Plan set forth in the Final Program EIR.

**Section 6.** The Final Program EIR and other materials for the proposed Amendments that constitute the record of proceedings of the Agency on which this Resolution is based are on file and available for public inspection during normal business hours at City Hall located at 455 East Calaveras Boulevard, Milpitas, California. The custodian of these documents is the City Clerk of the City of Milpitas.

**Section 7.** The Agency Secretary, on behalf of the Agency Board, is hereby authorized and directed to file with the County Clerk of Santa Clara County, a Notice of Determination pursuant to Section 21152 of the Public Resources Code and Section 15094 of the CEQA Guidelines.

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

# **EXHIBIT A**

## **STATEMENT OF FINDINGS, FACTS AND OVERRIDING CONSIDERATIONS**

**PROGRAM ENVIRONMENTAL IMPACT REPORT**

**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**

(State Clearinghouse Number 2009092025)

Prepared for the Milpitas Redevelopment Agency

March 10, 2010

**REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS  
AND CITY COUNCIL OF THE CITY OF MILPITAS**

**STATEMENT OF FINDINGS, FACTS AND OVERRIDING  
CONSIDERATIONS IN CONNECTION WITH THE ADOPTION  
AND IMPLEMENTATION 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**

**I. PROCEDURAL FINDINGS**

- A. Based on the initial study conducted for the Thirteenth Amendment to the Redevelopment Plan for the Milpitas Project Area No. 1 and the Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project (proposed Project or Amendments), the Milpitas Redevelopment Agency (Agency) determined, on substantial evidence, that the Amendments may have a significant effect on the environment and prepared an environmental impact report (EIR) on the Project. The EIR was prepared, noticed, published, circulated, reviewed, and completed in full compliance with the California Environmental Quality Act ("CEQA"; Public Resources Code §21000 *et seq.*), the State CEQA Guidelines (14 California Code of Regulations §15000 *et seq.*), as follows:
1. A Notice of Preparation (NOP) of the Draft EIR was sent to the Office of Planning and Research – State Clearinghouse and each responsible and trustee agency on September 9, 2009, soliciting comments on the probable effects of the proposed Project by October 9, 2009.
  2. A Notice of Completion (NOC) and copies of the Draft EIR were distributed to the Office of Planning and Research – State Clearinghouse on December 3, 2009, to those public agencies that have jurisdiction by law with respect to the Project, or which exercise authority over resources that may be affected by the Project, and to other interested parties and agencies, including in particular the affected taxing entities, as required by law. The comments of such persons and agencies were sought.
  3. An official forty-five (45) day public comment period for the Draft EIR was established by the Office of Planning and Research – State Clearinghouse. The public comment period began on December 3, 2009 and ended on January 19, 2010.
  4. A Notice of Availability (NOA) of the Draft EIR was mailed to all interested groups, organizations, and individuals - who had previously requested notice in writing - on December 3, 2009. The NOA stated that the Agency had completed the Draft EIR and

that copies were available at Milpitas Redevelopment Agency, 455 East Calaveras Boulevard, Milpitas, CA 95035. The NOA also indicated that the official forty-five day public review period for the Draft EIR would end on January 19, 2010.

5. A public notice was placed in the Milpitas Post on December 3, 2009, which stated that the Draft EIR was available for public review and comment.
  6. A public notice was posted in the office of the Santa Clara County Clerk on December 10, 2009.
  7. Following closure of the public comment period, all comments received on the Draft EIR during the comment period, the Agency's written responses to the significant environmental points raised in those comments, and additional information added by the Agency were added to the Draft EIR to produce the Final EIR.
- B. The following information is incorporated by reference and made part of the record supporting these findings:
1. The Draft and Final EIR and all documents relied upon or incorporated by reference, as specified in Chapter 8.0 of the Draft EIR.
  2. The Mitigation Monitoring Plan for the Project.
  3. All records of decision, staff reports, memoranda, maps, exhibits, letters, synopses of meetings, and other documents approved, reviewed, relied upon, or prepared by any City or Agency commissions, boards, officials, consultants, or staff relating to the Amendments, including but not limited to the Milpitas General Plan.
- C. Pursuant to Guidelines section 15091(e), the administrative record of these proceedings is located, and may be obtained from, the Milpitas Redevelopment Agency, 455 East Calaveras Boulevard, Milpitas, CA 95035. The custodian of these documents and other materials is the City Clerk of the City of Milpitas.
- D. Upon approval of the Amendments, the City and Agency shall file a notice of determination with the County Clerk of Santa Clara County pursuant to the provisions of CEQA section 21152.

## **II. FINDINGS AND SUPPORTING FACTS REGARDING SIGNIFICANT ENVIRONMENTAL IMPACTS**

### **A. SIGNIFICANT IMPACTS WHICH CAN BE AVOIDED**

**Finding:** As authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulation Sections 15091, 15092, and 15093, the City and Agency find that changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant environmental impacts listed below, as identified in the EIR.

These findings are supported by substantial evidence in the record of proceedings before the City and Agency as stated below.

**1. Impact 6.1-2: Redevelopment-engendered development and infrastructure construction activities would generate short-term emissions of regional criteria pollutants.**

a. Potentially Significant Impact

With future development and infrastructure construction in the Analysis Area, air pollutants would be emitted by construction equipment and fugitive dust (PM) would be generated during interior grading and site preparation and by wind erosion over exposed earth surfaces and material stockpiles. Fugitive dust can exceed BAAQMD thresholds of significance for PM, and can further be a nuisance at neighboring properties, soiling exposed surfaces and requiring more frequent washing. Fuel combustion from heavy-duty equipment operation can also generate PM emissions. Ambient pollutant concentrations from combustion emissions of construction equipment would also increase from implementation of the Amendments, as infrastructure is constructed and new development occurs over time in the Analysis Area.

b. Facts in Support of Finding

The potentially significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented before demolition and construction:

**Mitigation Measure 6.1-2**

Future redevelopment projects shall comply with all current Basic Construction Mitigation Measures at the time of development approvals.

c. Explanation

The BAAQMD recommends the implementation of all Basic Construction Mitigation Measures outlined in the Draft CEQA Guidelines whether or not construction-related emissions exceed applicable Thresholds of Significance, as such measures represent best management practices (BMPs).

**2. Impact 6.1-4: Redevelopment-engendered development could increase the number of sensitive receptors exposed to significant levels of diesel particulate matter.**

a. Potentially Significant Impact

As stated in the CARB Air Quality and Land Use Handbook (April 2005), freeways may represent a significant source of toxic air contaminants that have the potential to adversely affect the health of future residents. The handbook states that residential receptors within 1,000 feet of a freeway, especially those within 300 feet, experience adverse health effects such as aggravated asthma symptoms and reduced lung function in children. The Analysis Area contains residential areas within 1,000 feet of I-680 and I-880.

b. Facts in Support of Finding

The potentially significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented during the project-specific entitlement process and during construction:

**Mitigation Measure 6.1-4a**

For any residential project within 1,000 feet of I-680 or I-880:

- a) Locate livable structures and associated heating, ventilating, and air conditioning (HVAC) intakes as far from the freeway as possible;
- b) Plant tiered redwood and/or deodar cedar trees between the freeway and livable structures; and
- c) Meet current Bay Area Air Quality Management District (BAAQMD) requirements for evaluating and mitigating diesel particulate matter (DPM) effects.

**Mitigation Measure 6.1-4b**

For any residential project that increases the number of dwelling units within 1,000 feet of I-680 or I-880, the applicant shall prepare a health risk assessment (HRA) to the satisfaction of the Bay Area Air Quality Management District (BAAQMD) and the Milpitas Redevelopment Agency.

c. Explanation

Using representative protocols, the risk tables assume 70 years continuous exposure to DPM at current levels. This is an extremely conservative assumption given that emissions of DPM are expected to decline significantly (by 90%+) over the next 10 years. Therefore, actual risk to residents in areas within 1,000 feet of I-680 would be 10 to 100 times lower than risks projected by the representative protocol, and any HRA over the life of the Amendments is not expected to identify a health risk.

**3. Impact 6.2-1: Redevelopment-engendered development and infrastructure construction activities would generate greenhouse gas emissions that could contribute to Global Climate Change.**

a. Potentially Significant Impact

With future development and infrastructure demolition and construction in the Analysis Area, GHG emissions would be emitted by construction equipment and the combustion of fossil fuels for construction vehicles and tools, construction vehicle trips, grid-delivered electricity for lighting and equipment, and construction waste.

b. Facts in Support of Finding

The potentially significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented during the project-specific entitlement process and during construction:

**Mitigation Measure 6.2-1**

Redevelopment construction activities shall implement the most current BAAQMD performance-based best management practices (BMPs) to the satisfaction of the BAAQMD, including but not limited to:

- a) Alternative-fueled (e.g., biodiesel, electric) construction vehicles/equipment of at least 15% of the fleet
- b) Local building materials of at least 10%
- c) Recycle at least 50% of construction waste or demolition materials

c. Explanation

Construction activities are regulated by the City and the BAAQMD. According to the 2009 BAAQMD Draft CEQA Guidelines, the threshold of significance for

construction-related GHG emissions is the presence of BMPs. Requiring implementation of the most current BAAQMD performance-based BMPs will reduce potential project specific impacts to less than significant.

**4. Impact 6.3-1: Redevelopment projects and redevelopment-engendered development could cause a substantial adverse change in the significance of an archaeological resource, including human remains.**

a. Significant Impact

The Analysis Area is located in an area of the City that was settled by prehistoric peoples for thousands of years and by historic peoples since 1852, and is anticipated to contain unknown sub-surface resources. One major site is known to exist under the Elmwood Correctional Facility; given historic patterns of habitation, other resources may be buried within the Analysis Area.

b. Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented during the project-specific entitlement process and during construction:

**Mitigation Measure 6.3-1a**

For any project involving ground penetrating activities, the Northwest Information Center (NWIC) at Sonoma State University shall be consulted to determine if a proposed project would require archaeological study and/or testing be conducted as part of the site specific environmental review. Recommended study and/or testing shall be completed prior to completion of environmental review.

**Mitigation Measure 6.3-1b**

Foremen and key members of major excavation, trenching, and grading for site preparation shall be instructed to be wary of the possibility of destruction of buried cultural resource materials. They shall be instructed to recognize signs of prehistoric use and their responsibility to report any such finds (or suspected finds) immediately, as specified by measure 6.3-1c below, so damage to such resources may be prevented.

**Mitigation Measure 6.3-1c**

Any unanticipated discovery of cultural resources during construction will be evaluated by a qualified archaeologist. If the find is determined to be potentially significant, the archaeologist, in consultation with the City and appropriate Native American group(s), will develop a treatment plan. All work in the immediate vicinity of the unanticipated discovery shall cease until the qualified archaeologist has evaluated the discovery, or the treatment plan has been implemented.

**Mitigation Measure 6.3-1d**

If human remains are encountered unexpectedly during construction excavation and grading activities, State Health and Safety Code §7050.5 requires that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to PRC §5097.98. If the remains are determined to be of Native American descent, the coroner has 24 hours to notify the Native American Heritage Commission (NAHC). The NAHC will then identify the person(s) thought to be the Most Likely Descendent of the deceased Native American, who will

then help determine what course of action should be taken in dealing with the remains.

c. Explanation

The mitigation measures provide for the identification, characterization, and treatment of any archaeological resources that may be uncovered during construction activities. These procedures adequately protect against a significant loss of subsurface cultural resources.

**5. Impact 6.3-2: Redevelopment projects and redevelopment-engendered development could cause a substantial adverse change in the significance of a paleontological resource.**

a. Potentially Significant Impact

Paleontological resources are the fossilized evidence of past life found in the geologic record. Despite the tremendous volume of sedimentary rock deposits preserved worldwide, and the enormous number of organisms that have lived through time, preservation of plant or animal remains as fossils is an extremely rare occurrence. Because of the infrequency of fossil preservation, fossils – particularly vertebrate fossils – are considered to be nonrenewable resources. Due of their rarity, and the scientific information they can provide, fossils are highly significant records of ancient life.

b. Facts in Support of Finding

The potentially significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented during the project-specific entitlement process and before demolition and/or construction:

**Mitigation Measure 6.3-2**

If paleontological resources, such as fossilized bone, teeth, shell, tracks, trails, casts, molds, or impressions are discovered during ground-disturbing activities, work will stop in that area and within 25 feet of the find until a qualified paleontologist can assess the significance of the find and, if necessary, develop and implement appropriate treatment measures in consultation with the City.

c. Explanation

The mitigation measures provide for the identification, characterization, and treatment of any paleontological resources that may be uncovered during construction activities. These procedures adequately protect against a significant loss of subsurface paleontological resources.

**6. Impact 6.3-4: Redevelopment projects and redevelopment engendered development could contribute to the cumulative degradation or loss of paleontological or archaeological resources, including human remains. This would be a significant impact.**

a. Significant Impact

Based upon previous research, the area that comprises the City and surrounding area has been inhabited by prehistoric peoples for thousands of years and by historic peoples since 1852. Redevelopment activities and projects, in combination with

other development in the City could contribute to the loss of significant archaeological resources. Because all archaeological resources are unique and non-renewable members of finite classes, all adverse effects or negative impacts erode a dwindling resource base. The loss of any one archaeological site affects all others in a region because these resources are best understood in the context of the entirety of the cultural system of which they are a part.

b. Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented during the project-specific entitlement process, before issuance of building permits, and before demolition and/or construction:

**Mitigation**

Implement Mitigation Measures 6.3-1a through 6.3-1d and 6.3-2

c. Explanation

Based on the lack of evidence of archaeological resources during excavation of recent projects surrounding the Elmwood Correctional Facility and the highly disturbed nature of the Analysis Area, the City does not anticipate that previously undiscovered resources will be uncovered during construction activities. The Agency and the City have determined that implementation of the above measures will reduce the effect on archaeological finds in the project area to less-than-significant levels.

**7. Impact 6.4-1: Redevelopment-engendered development and infrastructure project construction could disturb unidentified contaminated soil and structures.**

a. Significant Impact

Redevelopment activities often involve the rehabilitation or reuse of older properties that may result in the discovery of previously unidentified contaminated properties or provide for reuse of identified, but not yet remediated sites. Historical uses, which have created releases of hazardous substances or petroleum products, may be masked by the present or recent uses of the property. Excavation could damage unidentified USTs with some remaining petroleum products that could result in the exposure of construction workers and result in the associated significant adverse health effects. In addition, construction activity could uncover unknown sites of soil contamination that could result in the exposure of construction workers and result in associated significant adverse health effects.

b. Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented before demolition and/or construction:

**Mitigation Measure 6.4-1a**

A thorough examination of past property uses shall be required for redevelopment projects involving demolition or reuse of older properties or construction on vacant parcels, prior to demolition or construction. This examination shall conform to the Phase I Environmental Site Assessment (ESA) process established by the American Society for Testing and Materials (ASTM), and shall include a site reconnaissance, a review of regulatory databases, interviews with persons knowledgeable of the

property, and a review of past property uses using appropriate historical sources. A Phase II ESA shall be conducted if deemed necessary based on the Phase I ESA results.

**Mitigation Measure 6.4-1b**

If discolored soil, vapors, or contaminated groundwater are encountered during construction activities, all work shall cease until a qualified environmental professional assesses the situation and appropriate action is taken to ensure the safety of workers and the public.

**Mitigation Measure 6.4-1c**

If the Phase I/II indicates the potential for unremediated soil and/or groundwater contamination or underground storage tanks to be disturbed during construction, the Milpitas Redevelopment Agency (Agency) shall require in construction contract documents that a hazardous materials removal team be on-call and available for immediate response during site preparation, excavation, and other construction activities. Hazardous material removal activities must be contracted to a qualified hazardous materials removal contractor.

Construction contract documents shall require the hazardous material removal contractor or subcontractor to comply with the following:

(1) Prepare a hazardous material discovery and response contingency plan for review by the MFD. The MFD will act as the first responder to a condition of extreme emergency (i.e., fire, emergency medical assistance, etc).

(2) In the event that a condition or suspected condition of soil and/or groundwater contamination are discovered during construction, work shall cease or be restricted to an unaffected area of the site as the situation warrants and the City shall be immediately notified. Upon notification, the City shall notify the HCMD of the contamination condition, and the hazardous material removal contractor shall prepare a site remediation plan and a site safety plan, the latter of which is required by OSHA for the protection of construction workers. Similarly, the hazardous material removal contractor shall follow and implement all directives of the HCMD and any other jurisdictional authorities that might become involved in the remediation process.

(3) Preparation of any remediation plan shall include in its focus measures to be taken to protect the public from exposure to potential site hazards and shall include a certification that the remediation measures would clean up the contaminants, dispose of the wastes properly, and protect public health in accordance with federal, state, and local requirements.

(4) Obtain closure and/or No Further Action letters from the appropriate agency(ies).

(5) Construction contract documents shall include provisions for the proper handling and disposal of contaminated soil and/or dewatering water (including groundwater and contaminated rainwater) in accordance with federal, state, and local requirements.

c. Explanation

Demolition activities would be subject to all applicable federal, state, and local regulations to minimize potential risks to human health and the environment, and worker and public safeguards would be included in the demolition contract. The Agency and City have determined that implementation of the above measures will reduce disturbance to unidentified contamination to less-than-significant levels.

**8. Impact 6.4-2: Redevelopment could result in the rehabilitation or demolition of buildings likely to contain asbestos, lead-based paint, or other hazardous substances.**

a. Potentially Significant Impact

The Analysis Area contains a large number of residential and commercial structures built before 1975, which are likely to contain asbestos, lead-based paint, or other hazardous substances. The deteriorated condition of many of these buildings presents an ongoing risk of release of these materials into the environment. Demolition or rehabilitation of such structures could also result in a release of hazardous materials into the environment.

b. Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-potentially significant level with the following mitigation measure provided in the Amendments EIR, if implemented before demolition and/or rehabilitation:

**Mitigation Measure 6.4-2a**

Prior to any Agency rehabilitation or demolition activities, the Agency shall conduct an interior survey to evaluate the presence of ACM, lead based paint, PCB-containing electrical and hydraulic fluids, and/or chlorofluorocarbons (CFCs), as well as any other potential environmental concerns (i.e., aboveground/underground fuel tanks, elevator shafts/hydraulic lifts, floor drains/sumps, chemical storage/disposal) which may be present within structures on a project site.

**Mitigation Measure 6.4-2b**

A project applicant for a project subject to the Redevelopment Plan for Project Area No. 1 shall provide written documentation to the Agency that ACM and lead-based paint has been abated and any remaining hazardous substances and/or waste have been removed in compliance with applicable federal, state, and local laws and regulations.

c. Explanation

Demolition activities would be subject to all applicable federal, state, and local regulations to minimize potential risks to human health and the environment, and worker and public safeguards would be included in the demolition contract. The Agency and City have determined that implementation of the above measures will reduce disturbance to unidentified contamination to less-than-significant levels.

**9. Impact 6.5-1: Redevelopment-engendered development and infrastructure projects could result in construction noise at sensitive receptors.**

a. Significant Impact

Construction activities related to public and private projects undertaken as a result of the Amendments could result in an increase in ambient noise levels during construction.

b. Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the following mitigation measure provided in the Amendments EIR, if implemented before demolition and/or construction:

Future redevelopment construction activities within 1,500 feet of residential units or other sensitive receptors, as determined by the Planning Director, shall implement the following measures for the duration of the construction period:

**Mitigation Measure 6.5-1a**

Properly muffle and maintain all construction equipment powered by internal combustion engines.

**Mitigation Measure 6.5-1b**

Prohibit unnecessary idling of internal combustion engines.

**Mitigation Measure 6.5-1c**

Locate all stationary noise-generating construction equipment, such as air compressors, as far as practical from existing nearby residences and other noise sensitive land uses. Such equipment shall also be acoustically shielded.

**Mitigation Measure 6.5-1d**

Select quiet construction equipment, particularly air compressors, whenever possible. Fit motorized equipment with proper mufflers in good working order.

**Mitigation Measure 6.5-1e**

A noise disturbance coordinator responsible for responding to any local complaints about construction noise shall be designated. The disturbance coordinator shall determine the cause of any noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.

c. Explanation

The restriction of construction to specific daylight hours minimizes the annoyance from temporary noise impacts resulting from construction activities, and the Agency and City have determined that implementation of the above additional measures will reduce project-specific noise emissions to less-than-significant levels.

**B. SIGNIFICANT IMPACTS WHICH CANNOT BE AVOIDED**

**Finding:** The City and Agency find that, where feasible, changes or alterations have been required in, or incorporated into, the Project that reduce the significant environmental impacts listed below as identified in the EIR. However, specific economic, social, or other considerations make infeasible mitigation measures or project alternatives to reduce the following impacts to a less-than-significant level. This finding is supported by evidence in the record of the proceedings before the City and Agency, including the Draft and Final EIR prepared for these Amendments and the General Plan for the City of Milpitas. All available, reasonably feasible mitigation measures identified in the EIR are employed to reduce the magnitude of the impacts, even if the reduction is not to a less-than-significant level. Also incorporated into this section are the findings and facts stated in Section C that reject the Project Alternatives for failure or infeasibility to mitigate the potential effect and achieve the basic objectives of the Project.

**1. Impact 6.2-2: Individual redevelopment-assisted development projects could produce operational greenhouse gas emissions that contribute to global climate change.**

a. Potentially Significant Impact

The primary sources of GHG emissions generated within the Analysis Area are anticipated to be combustion of fossil fuels for operational vehicle trips; from grid-delivered electricity for lighting, appliances, and building cooling; and from building heating with natural gas. Even very large individual projects cannot generate enough GHG emissions to influence global climate change. However, each project makes an incremental contribution to GHG that, when combined with the cumulative increase of all other sources of GHG, can be considered to affect global climate change.

b. Facts in Support of Finding

No plan-level mitigation beyond the required CEQA process for project approval is available at this time. It is unknown whether project by project mitigation measures will be sufficient to reduce GHG emissions below BAAQMD significance thresholds.

c. Explanation

Case-by-case review of redevelopment-engendered development would be required until the City has completed a community-wide CAP. Future redevelopment projects that exceed the BAAQMD screening criteria are required to complete an URBEMIS analysis using BAAQMD protocols to determine GHG emissions during the CEQA review process, and appropriate and feasible mitigation measures must be incorporated. The nature and extent of each redevelopment-assisted project within the Analysis Area is unknown at this time, as is the feasibility of reducing GHG emissions to below the applicable adopted thresholds. Therefore, individual development projects engendered by adoption of the Amendments could result in a potentially significant increase in GHG emissions. This impact is potentially significant and unavoidable.

**2. Impact 6.7-1 Redevelopment activities and development engendered by the Amendments could result in increased traffic on currently impacted roadway segments and intersections where no mitigation is feasible. This would be a potentially significant and unavoidable impact.**

a. Potentially Significant Impact

The proposed Amendments are intended to remove existing barriers to planned development, and provide improved roadway and non-vehicular infrastructure in the Analysis Area. Traffic increases on Analysis Area roadways may result from infill development of underutilized properties within the Analysis Area on a project-by-project basis.

b. Facts in Support of Finding

Specific mitigation measures identified in the Transit and Midtown EIRs will be implemented as planned. Future redevelopment engendered projects will analyzed on a case-by-case basis for localized impacts and additional mitigation measures.

c. Explanation

Because the addition of redevelopment project-specific vehicle trips could exceed

City thresholds at currently impacted roadways and intersections where no mitigation is feasible, the Amendments may result in potentially significant and unavoidable localized traffic impacts.

**3. Impact 6.7-2 Redevelopment activities and development engendered by the Amendments could result in increased traffic on currently impacted freeway segments where no mitigation is feasible. This would be a potentially significant and unavoidable impact.**

a. Potentially Significant Impact

The proposed Amendments are intended to remove existing barriers to planned development, and provide improved roadway and non-vehicular infrastructure in the Analysis Area. Traffic increases on I-880 and I-680, and SR-237 may result from infill development of underutilized properties within the Analysis Area on a project-by-project basis. Segments of the freeways and SR-237 are already experiencing unacceptable level of service (LOS).

b. Facts in Support of Finding

Specific mitigation measures identified in the Transit and Midtown EIRs will be implemented as planned. Future redevelopment engendered projects will analyzed on a case-by-case basis for freeway impacts.

c. Explanation

Because the addition of redevelopment project-specific vehicle trips could exceed Caltrans thresholds at currently impacted freeway segments where no mitigation is feasible, the Amendments may result in potentially significant and unavoidable impacts on freeway segments.

**C. REJECTION OF ALTERNATIVES**

CEQA mandates that every EIR evaluate a no-project alternative. Alternatives provide a basis of comparison to the Project in terms of beneficial, significant, and unavoidable impacts. This comparative analysis is used to determine the most feasible project for implementation. The alternatives studied in the EIR are infeasible based upon the following specific economic, social, or other considerations.

**1. Alternative 1: No Project Alternative**

Section 15126(d)(2) of the State CEQA Guidelines requires that a “no project alternative” be evaluated in comparison to the Proposed Project. Under Alternative 1, the No Project Alternative, Project Area No. 1 would not be amended to expand the boundaries to include the Added Area, redevelopment powers would not be extended an additional 10 years in the Amendment Areas, the tax increment and bonded indebtedness limitations would not be increased for the Amendment Areas, and non-residential eminent domain would not be available to the Agency in the Amendment Areas. The proposed public improvements and development assistance that would be provided with redevelopment (such as public infrastructure improvements, industrial, commercial, and residential rehabilitation/ development, and low- and moderate-income housing assistance) would not be implemented with redevelopment funding in the Added Area, and would not be extended in the Amendment Areas for an additional 10 years. Under the No Project Alternative,

development in the Analysis Area would occur as defined in the City of Milpitas General Plan (General Plan) at a pace commensurate with prevailing market conditions and infrastructure improvements that the City could implement without the use of redevelopment tools and funding.

Under the No Project Alternative, Agency powers to assemble suitable sites for development and provide assistance would not be available in the Added Area, and would be limited in the Amendment Areas, thus integrated modern projects with greater community benefits would be unlikely to develop due to the conditions noted in the DEIR Project Description (Chapter 3). The amount of development would likely be substantially less and consist of less varied uses reflective solely of the limited market demand at a given time. The No Project scenario would be similar to any aged and blighted area, where the area suffers vacant and obsolete industrial buildings, a deteriorating housing stock, and lower property viability and value despite the underlying zoning. The ability for the industrial and commercial areas to compete economically would continue to decline with the increasing age of the buildings. The housing stock in the Added Area would likely continue to deteriorate, and with the adjoining commercial areas would be expected to continue to suffer increased criminal activity and blight.

a. Finding

Specific economic, social, or other considerations make infeasible the No Project Alternative identified in the EIR and described above, in that:

- (1) The No Project Alternative would fail to resolve conditions of blight in the Amendment Areas and the Added Area.
- (2) The No Project Alternative would not promote the City's General Plan policies related to promoting the rehabilitation and revitalization of existing commercial centers, and the preservation of existing housing stock.
- (3) The No Project Alternative would not achieve the basic goals and objectives of the Project, including housing, social, environmental, and economic goals for the Amendment Areas and the Added Area.
- (4) Development may occur haphazardly without addressing the physical and economic health of the remaining blighted areas, and street improvements, drainage and other infrastructure improvements, commercial and housing assistance, and rehabilitation of housing would probably not be funded to the extent anticipated as a result of the Amendments.
- (5) Significant effects of the Project are acceptable when balanced against this Alternative and the facts set forth in the Statement of Overriding Considerations.

b. Facts in Support of Finding of Infeasibility

- (1) Because general land use types, densities, and intensities that could be developed pursuant to the Amendments could ultimately be developed under this alternative, long-term environmental effects associated with future construction development under the No Project Alternative may be similar to

those of the Amendments. However, this alternative would not alleviate conditions of obsolete buildings, infrastructure deficiencies, oddly configured lots, and economic blight in the Analysis Area. The continuation of such conditions makes it unlikely that significant new development would occur in this area under the No Project Alternative.

- (2) The Agency's authority to establish indebtedness to undertake redevelopment activities in the Amendment Areas will terminate beginning before 2014. Under the No Project Alternative, the Agency would not have sufficient time to complete the Agency's redevelopment program for blight elimination and production of affordable housing given the severe downturn in the economy. No extensive infrastructure improvement program would be implemented by the Agency.
- (3) Blighting conditions, including factors hindering the economically viable use of lots, lots of irregular form and shape and inadequate size that are under multiple ownership, depreciated property values, vacant buildings and tenant space, serious building code violations, crime, and unsafe/unhealthy buildings would remain in the area. Because of these blighting conditions, the Analysis Area could be expected to continue declining, with physical deterioration, vacancies, and building code violation occurrences increasing under the No Project Alternative.
- (4) Seven sites within the Amendment Areas and thirteen sites within the Added Area were identified as having moderate to severe contamination issues. Under the No Project Alternative, the Agency would be precluded from or limited in its ability to use the Polanco Act or tax increment to assist in the remediation of such properties, and these contaminated properties may continue to lack the funds and/or incentives necessary for appropriate cleanup. The lack of or insufficient funding could also cause the delay of or inability to rehabilitate existing structures that may contain asbestos and lead based paint. Long-term exposure to contamination or ongoing contamination of groundwater would continue rather than being remediated through redevelopment activities. Hazards and hazardous materials impacts would be worse under this alternative compared to the Amendments.
- (5) The lack of or insufficient funding to construct necessary street improvements and provide incentives for new development would likely result in the delay of or inability to develop some of the planned mixed-use development in the Analysis Area. A lower level of new pedestrian and transit oriented infill development could result, in the short-term, in somewhat less construction and traffic air emissions within the Analysis Area. However, the inability to consolidate parcels, remediate contamination, and construct new development would also tend to push housing demand outside the urban core, as infill remains too expensive, with a resulting increase in traffic congestion, cumulative air emissions, and GHG emissions. Regional air quality would be worse under this alternative compared to the Amendments.

## **2. Alternative 2: No Added Area Alternative (Alternative Means of Revitalization of Added Area with Public Funds)**

Alternative 2 would amend the time and financial limits for the Amendment Areas, but would not increase the boundaries of the Existing Project Area by approximately 600 acres. This alternative considers utilization of public revenue sources other than tax increment financing to fund public improvements and other actions in the Added Area. Federal, state, county, and city programs exist that may initiate some development without the need for redevelopment tax increment financing. These sources of alternative funding typically include mortgage revenue bonds, Community Development Block Grant funds (CDBG), Economic Development Administration funds, state and federal Transportation Grants, Urban Development Action funds, and revenue bonds. Some of the potential funding sources are capped each year for the City, such as CDBG funds; many of these funds require applications and competition and cannot be relied upon to be available consistently over the next 30 years. Any such funds used in the Added Area are funds unavailable to alleviate blight in other parts of the City.

### **a. Finding**

Specific economic, social, or other considerations make infeasible the No Project Alternative identified in the EIR and described above, in that:

- (1) If consistently and continually available, with a focused effort by the City, these alternative-funding mechanisms could achieve the key objectives of the Amendments for the Added Area. However, the City has many demands on its available grants and other economic development and affordable housing resources, and shifting these funds to the Added Area would have to compete with the City's need to reduce blight in other parts of the City.
- (2) Each of these alternative sources of funds also has its own unique limitations on use – such as application requirements, eligibility, and funding priorities. Both the City and Santa Clara County (County) also have limited influence over the funding programs operated by other agencies. Thus, the continued availability of outside sources of funding cannot be guaranteed through the decades for which the Amendments could provide a steady source of public funding. If outside funding mechanisms are relied upon and those funds are no longer available, the necessary public improvements and other actions needed to alleviate blighting conditions in the Added Area may not be undertaken.
- (3) The City has been using other sources of funds to work with property owners and managers over several years to alleviate code violations and deter crime, particularly gang activity in the Added Area. Although these efforts produced short-term improvements, the residential areas continue to be impacted by blighting conditions.
- (4) The Amendments require 20% of tax increment to be set aside for the development and improvement of affordable housing in the Added Area and 30% for the Amendment Areas. Outside sources of funding may not provide comparable provision for this public need.

- (5) Limited sources of funding are available to assist in rehabilitating and redeveloping industrial and commercial property to meet contemporary user needs, in order to reduce vacancies and increasing property values. Abnormally low lease rates and stagnant and depreciated property values indicated by low property sales underscore that the physical blighting conditions are affecting the viability of the properties in these areas, and City resources to alter these conditions have been insufficient.
- (6) Due to the uncertainty of available funding for necessary public improvements and other blight removal actions and lack of a specific affordable housing provision, the achievement of the Amendments' goals could not be ensured. Therefore, this Alternative, although feasible, is considered unlikely to achieve the key project objectives.

b. Facts in Support of Finding of Infeasibility

- (1) Since these alternative-funding mechanisms could encourage some development in the Added Area, impacts associated with such development could be similar but not as extensive as those anticipated under General Plan build-out. Less redevelopment is anticipated to occur with the limitations in the funding sources and the large number of contaminated parcels and buildings with code violations. Development could also be delayed by inconsistent funding.
- (2) Thirteen sites within the Added Area were identified as having moderate to severe contamination issues. Under the No Added Area Alternative, the City would not use the Polanco Act or tax increment to assist in the remediation of such properties, and these contaminated properties may continue to lack the funds and/or incentives necessary for appropriate cleanup. The lack of or insufficient funding could also cause the delay of or inability to rehabilitate existing structures that may contain asbestos and lead based paint. Long-term exposure to contamination or ongoing contamination of groundwater may continue rather than be remediated through redevelopment activities. Hazards and hazardous materials impacts would be worse under this alternative compared to the Amendments.
- (3) The lack of or insufficient funding to construct necessary street improvements and provide incentives for new development may result in the delay of or inability to develop some of the planned transit-oriented mixed-use development in the southern portion of the Added Area. A lower level of new pedestrian and transit oriented infill development could result, in the short-term, in less construction noise, less traffic congestion on local street segments and intersections, and lower air emissions within the Added Area. However, the inability to consolidate parcels, remediate contamination, and construct new development would also tend to push housing demand outside the urban core as infill remains too expensive, with a resulting increase in cumulative traffic congestion, air emissions and GHG emissions. Older buildings lacking funding to upgrade to green building standards would contribute to cumulative GHG emissions. Regional air quality, GHG emissions, and traffic congestion could be worse under this alternative compared to the Amendments.

- (4) All of the significant and unavoidable impacts identified in this EIR would still occur under the No Added Area Alternative.

### **III. STATEMENT OF OVERRIDING CONSIDERATIONS**

Notwithstanding disclosure of the significant impacts and the accompanying mitigation, the City and Agency have determined pursuant to Section 15093 of the CEQA Guidelines that the benefits of the Project outweigh the adverse impacts.

With reference to the above findings and in recognition of those facts that are included in the record, the City and Agency have determined that the Project would contribute to environmental impacts that are considered significant and adverse, as disclosed in the EIR prepared for the Project.

The City and Agency specifically find that all significant effects on the environment with adoption and implementation of the Project have been eliminated or substantially lessened where feasible. Furthermore, the City and Agency have determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the overriding considerations described below:

1. The Amendments will serve a critical need, that being the elimination and prevention of the spread of blight and deterioration in the Amendment Areas and Added Area, and the conservation, rehabilitation and redevelopment of the Amendment Areas and Added Area in accordance with the Redevelopment Plan, the General Plan for the City of Milpitas and local codes and ordinances.
2. The promotion of new and continuing private sector investment within the Amendment Areas and Added Area will prevent the loss of and facilitate the capture of commercial sales activity.
3. The Amendments provide additional tools to alleviate code violations and deter crime, particularly gang activity, through the elimination of blight through rehabilitation and reconstruction and new residential development, and the assembly of parcels into more developable sites for more desirable uses.
4. The Amendments will ameliorate a high industrial vacancy rate and aging and obsolete buildings by assisting in rehabilitating and redeveloping property to meet contemporary user needs thereby reducing vacancies and increasing property values.
5. The Amendments would result in the retention and expansion of businesses by means of redevelopment and rehabilitation activities and by encouraging and assisting in the cooperation and participation of owners, businesses, and public agencies in the revitalization of the Amendment Areas and Added Area.
6. Revitalized industrial and commercial development will result in the creation and development of local job opportunities and the preservation of the area's existing employment base.
7. Revitalized industrial and commercial development will result in increased sales, business license and other fees, taxes, and revenues to the City of Milpitas.

8. The Amendments will result in an increase, preserve, or improve the community's supply of low- and moderate-income housing (inside or outside of the Amendment Areas and Added Area).
9. The Amendments will assist with the redevelopment of new uses within the Amendment Areas and Added Area in concert with the community vision for Milpitas as outlined in the City's adopted Specific Plans.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY MAKING CERTAIN FINDINGS  
IN CONNECTION WITH THE PROPOSED THIRTEENTH AMENDMENT TO THE  
REDEVELOPMENT PLAN FOR THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1**

**WHEREAS**, by Resolution No. 230, adopted on June 3, 1958, the City Council of the City of Milpitas (“City Council”) formed the Milpitas Redevelopment Agency (“Agency”) to formulate a redevelopment project or projects within the City of Milpitas; and

**WHEREAS**, on September 21, 1976, by Ordinance No. 192, the City Council adopted the redevelopment plan (“Redevelopment Plan” or “Plan”) for the Milpitas Redevelopment Project Area No. 1 (“Original Project Area”); and

**WHEREAS**, the Redevelopment Plan has been amended a total of twelve (12) times (as amended, the “Existing Plan”) to, among other things, add area to the Original Project Area (as amended, the “Project Area”), merge the Project Area with the Great Mall Redevelopment Project, increase the tax increment and bonded indebtedness limits, and extend the dates to incur debt, repay debt and collect tax increment; and

**WHEREAS**, on November 2, 1993, by Ordinance No. 192.8, the City Council adopted the redevelopment plan for the Great Mall Redevelopment Project (“Great Mall Redevelopment Plan”); and

**WHEREAS**, the Great Mall Redevelopment Plan has been amended a total of five (5) times to, among other things, add territory and merge with Project Area No. 1 (the “Merged Project Area”); and

**WHEREAS**, the Agency again desires to amend the Existing Plan (“Thirteenth Amendment” or “Amendment”) to: 1) extend by 10 years the effectiveness time limit and time period to repay debt/collect tax increment of the Original Project Area and Amendment Areas No. 1 and 2 (collectively, the Original Project Area 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 California Community Redevelopment Law (Health & Safety Code Section 33000, *et seq.*; “CRL”); and

**WHEREAS**, the Agency is proposing to concurrently 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 Milpitas Redevelopment Project Area No. 1; and

**WHEREAS**, on August 4, 2009, by Resolution No. 7909, the City Council designated a redevelopment survey area and directed the Planning Commission of the City of Milpitas (“Planning Commission”) to select the boundaries of the area proposed to be included within the Thirteenth Amendment Added Area from within the boundaries of the redevelopment survey area and formulate a preliminary plan for the redevelopment of the proposed Thirteenth Amendment Added Area; and

**WHEREAS**, on September 9, 2009, by Resolution No. 09-043, the Planning Commission selected and designated the boundaries of the Thirteenth Amendment Added Area, approved a Preliminary Plan for the Thirteenth Amendment Added Area (“Preliminary Plan”), and submitted said Preliminary Plan to the Agency; and

**WHEREAS**, on October 6, 2009, the Agency, by Resolution No. RA346, accepted the Preliminary Plan and directed preparation of the Preliminary Report for the Thirteenth Amendment and the transmittal of certain information to taxing officials; and

**WHEREAS**, the Agency has prepared a proposed Amended and Restated Redevelopment Plan incorporating the Thirteenth Amendment (“Amended and Restated Redevelopment Plan”) and has prepared the form of the proposed Sixth Amendment (collectively, the Thirteenth Amendment and the Sixth Amendment are referred to as the “Amendments”); and

**WHEREAS**, on December 1, 2009, by Resolution No. RA349, the Agency approved the Preliminary Report for the Thirteenth Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 and the Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project and authorized transmittal of the report to the affected taxing agencies, the Department of Finance (“DOF”), the Department of Housing and Community Development (“HCD”) and other interested persons and organizations; and

**WHEREAS**, on December 1, 2009, by Resolution No. RA350, the Agency received the Amendments and authorized the transmittal of the Amendments to the Planning Commission for its report and recommendation and to the affected taxing agencies and other interested persons and organizations; and

**WHEREAS**, on December 1, 2009, by Resolution No. RA351, the Agency accepted and authorized the circulation of the Draft Environmental Impact Report prepared for the Amendments; and

**WHEREAS**, on December 1, 2009, by Resolution No. 7942, the City Council determined that a Project Area Committee need not be formed in connection with the preparation of the Amendments and directed the Amendments be provided to and the Agency consult with residents, property owners, business owners, and existing civic and business organizations; and

**WHEREAS**, on December 9, 2009, the Planning Commission, by Resolution No. 09-056, determined the Amendments to be consistent with the City of Milpitas General Plan and recommended that the Agency and City Council approve and adopt the Amendments; and

**WHEREAS**, on February 16, 2010, the Agency, by Resolution No. RA362, approved and adopted the Agency’s Report to City Council on the proposed Amendments, submitted said Report and proposed Amendments to the City Council and consented to a joint public hearing with the City Council on the Amendments; and

**WHEREAS**, on February 16, 2010, the City Council, by Resolution No. 7961, acknowledged receipt of the Report to City Council and the Amendments from the Agency and consented to and called for a joint public hearing with the Agency on the Amendments; and

**WHEREAS**, on March 2, 2010, the Agency, by Resolution No. RA366, amended the Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in Milpitas Redevelopment Project Area No. 1 to include the Thirteenth Amendment Added Area; and

**WHEREAS**, Section 33333.10(h) of the CRL requires that the Agency adopt a resolution making certain findings prior to the adoption of an amendment pursuant to CRL Section 33333.10(a) and the proposed Thirteenth Amendment includes an amendment pursuant to CRL Section 33333.10(a).

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

**Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.

**Section 2.** The Agency hereby finds and determines that the City of Milpitas Housing Element, conceptually approved by the City Council of the City of Milpitas on June 16, 2009, has been determined by the Department of Housing and Community Development (“HCD”) to be in substantial compliance with the requirements of Article 10.6 of Chapter 3 of Division 1 of Title 7 of the Government Code. This finding is based on the letter dated February 11, 2010, from the State Department of Housing and Community Development acknowledging that the City’s draft Housing Element complies with statutory requirements.

**Section 3.** The Agency hereby finds and determines that during the three preceding fiscal years (2006-07, 2007-08 and 2008-09) the Agency was not included in the report sent by the State Controller to the Attorney General as an agency that had a “major violation” (as defined in CRL Section 33080.8). This finding is based on the facts that: (a) the State Controller is required to notify each affected agency and its legislative body when it reports them to the Attorney General and neither the Agency nor the City Council have been notified that the State Controller reported the Agency to the Attorney General as having a major violation during fiscal years 2006-07 through 2008-09 or any other fiscal year; and (b) the Agency’s independent financial audit reports for fiscal years 2006-07 through 2008-09 did not identify any “major violation” (as defined in CRL Section 33080.8).

**Section 4.** The Agency hereby finds and determines that the Agency has not accumulated an excess surplus (as defined in CRL Section 33334.12) in its Low and Moderate Income Housing Fund. This finding is based on the facts that: (a) the Department of Housing and Community Development reported in writing on February 26, 2010, that the Agency was not included on its list of redevelopment agencies having an excess surplus of housing funds; and (b) the annual report of the Agency for fiscal year 2008-09, prepared in accordance with CRL Section 33080.1, including the Agency's independent financial audit report, does not indicate that the Agency has an excess surplus of housing funds.

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

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY FINDING AND DETERMINING THAT THE USE OF MONIES FROM THE LOW AND MODERATE INCOME HOUSING FUND OUTSIDE THE BOUNDARIES OF THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1, AS AMENDED BY THE PROPOSED THIRTEENTH AMENDMENT, WILL BENEFIT THE PROJECT AREA, AND AUTHORIZING THE EXPENDITURE OF SUCH FUNDS**

**WHEREAS**, by Resolution No. 230, adopted on June 3, 1958, the City Council of the City of Milpitas (“City Council”) formed the Milpitas Redevelopment Agency (“Agency”) to formulate a redevelopment project or projects within the City of Milpitas; and

**WHEREAS**, on September 21, 1976, by Ordinance No. 192, the City Council adopted the redevelopment plan (“Redevelopment Plan” or “Plan”) for the Milpitas Redevelopment Project Area No. 1 (“Original Project Area”); and

**WHEREAS**, the Redevelopment Plan has been amended a total of twelve (12) times (as amended, the “Existing Plan”) to, among other things, add area to the Original Project Area (as amended, the “Project Area”), merge the Project Area with the Great Mall Redevelopment Project, increase the tax increment and bonded indebtedness limits, and extend the dates to incur debt, repay debt and collect tax increment; and

**WHEREAS**, on November 2, 1993, by Ordinance No. 192.8, the City Council adopted the redevelopment plan for the Great Mall Redevelopment Project (“Great Mall Redevelopment Plan”); and

**WHEREAS**, the Great Mall Redevelopment Plan has been amended a total of five (5) times to, among other things, add territory and merge with Project Area No. 1 (the “Merged Project Area”); and

**WHEREAS**, the Agency again desires to amend the Existing Plan (“Thirteenth Amendment” or “Amendment”) to: 1) extend by 10 years the effectiveness time limit and time period to repay debt/collect tax increment of the Original Project Area and Amendment Areas No. 1 and 2 (collectively, the Original Project Area 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 California Community Redevelopment Law (Health & Safety Code Section 33000, *et seq.*; “CRL”); and

**WHEREAS**, the Agency is proposing to concurrently 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 Milpitas Redevelopment Project Area No. 1; and

**WHEREAS**, on August 4, 2009, by Resolution No. 7909, the City Council designated a redevelopment survey area and directed the Planning Commission of the City of Milpitas (“Planning Commission”) to select the boundaries of the area proposed to be included within the Thirteenth Amendment Added Area from within the boundaries of the redevelopment survey area and formulate a preliminary plan for the redevelopment of the proposed Thirteenth Amendment Added Area; and

**WHEREAS**, on September 9, 2009, by Resolution No. 09-043, the Planning Commission selected and designated the boundaries of the Thirteenth Amendment Added Area, approved a Preliminary Plan for the Thirteenth Amendment Added Area (“Preliminary Plan”), and submitted said Preliminary Plan to the Agency; and

**WHEREAS**, on October 6, 2009, the Agency, by Resolution No. RA346, accepted the Preliminary Plan and directed preparation of the Preliminary Report for the Thirteenth Amendment and the transmittal of certain information to taxing officials; and

**WHEREAS**, the Agency has prepared a proposed Amended and Restated Redevelopment Plan incorporating the Thirteenth Amendment (“Amended and Restated Redevelopment Plan”) and has prepared the form of the proposed

Sixth Amendment (collectively, the Thirteenth Amendment and the Sixth Amendment are referred to as the "Amendments"); and

**WHEREAS**, on December 1, 2009, by Resolution No. RA349, the Agency approved the Preliminary Report 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 and authorized transmittal of the report to the affected taxing agencies, the Department of Finance ("DOF"), the Department of Housing and Community Development ("HCD") and other interested persons and organizations; and

**WHEREAS**, on December 1, 2009, by Resolution No. RA350, the Agency received the Amendments and authorized the transmittal of the Amendments to the Planning Commission for its report and recommendation and to the affected taxing agencies and other interested persons and organizations; and

**WHEREAS**, on December 1, 2009, by Resolution No. RA351, the Agency accepted and authorized the circulation of the Draft Environmental Impact Report prepared for the Amendments; and

**WHEREAS**, on December 1, 2009, by Resolution No. 7942, the City Council determined that a Project Area Committee need not be formed in the preparation of the Amendments and directed the Amendments be provided to and the Agency consult with residents, property owners, business owners, and existing civic and business organizations; and

**WHEREAS**, on December 9, 2009, the Planning Commission, by Resolution No. 09-056, determined the Amendments to be consistent with the City of Milpitas General Plan and recommended that the Agency and City Council approve and adopt the Amendments; and

**WHEREAS**, on February 16, 2010, the Agency, by Resolution No. RA362, approved and adopted the Agency's Report to City Council on the proposed Amendments, submitted said Report and proposed Amendments to the City Council and consented to a joint public hearing with the City Council on the Amendments; and

**WHEREAS**, on February 16, 2010, the City Council, by Resolution No. 7961, acknowledged receipt of the Report to City Council and the Amendments from the Agency and consented to and called for a joint public hearing with the Agency on the Amendments; and

**WHEREAS**, on March 2, 2010, the Agency, by Resolution No. RA366, amended the Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in Milpitas Redevelopment Project Area No. 1; and

**WHEREAS**, CRL Sections 33334.2 and 33334.6 require that no less than twenty percent (20%) of all taxes which are allocated to the Agency pursuant to CRL Section 33670 shall be deposited into a separate low and moderate income housing fund ("Low and Moderate Income Housing Fund") and used by the Agency for purposes of increasing, improving and preserving the community's supply of extremely low, very low, low and moderate income housing; and

**WHEREAS**, commencing in the first fiscal year following the date of adoption of the ordinance approving and adopting the Thirteenth Amendment, the amount of the deposit into the Low and Moderate Income Housing Fund attributable to the taxes allocated to the Agency from the Amendment Areas pursuant to Section 33670 of the Community Redevelopment Law shall be increased to 30 percent as required by CRL Section 33333.10(g) and shall be used by the Agency as required by the CRL except as specifically limited by subdivisions (f) and (g) of CRL Section 33333.10; and

**WHEREAS**, subsection (g) of CRL Section 33334.2 authorizes the Agency to use monies from the Low and Moderate Income Housing Fund inside or outside the Project Area but authorizes the Agency to use the funds outside the Project Area only upon resolutions of the Agency and the City Council finding that such use will be of benefit to the Project Area; and

**WHEREAS**, the Agency desires by this Resolution to declare that the expenditures of monies from the Low and Moderate Income Housing Fund outside the Project Area, as amended by the Thirteenth Amendment, for purposes authorized under the CRL are and will be of benefit to the Project Area, as amended by the Thirteenth Amendment.

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

**Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.

**Section 2.** The Agency hereby finds and determines that the expenditures of monies from the Low and Moderate Income Housing Fund outside the Project Area as amended by the Thirteenth Amendment for purposes authorized under the CRL are and will be of benefit to the Project Area, as amended by the Thirteenth Amendment.

**Section 3.** The Agency is hereby authorized to expend monies from the Low and Moderate Income Housing Fund inside and/or outside the Project Area, as amended by the Thirteenth Amendment, for purposes authorized by the CRL.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, Agency Clerk

\_\_\_\_\_  
Robert Livengood, Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, Agency Counsel