

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS 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

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 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, on April 6, 2010, the City Council and the Agency held a joint public hearing to consider adoption of the Amendments; and

WHEREAS, the City Council has provided an opportunity for all persons to be heard and has considered all written comments received and all evidence and testimony presented for or against any and all aspects of the Amendments; and

WHEREAS, Section 33363 of the CRL provides that, before adopting the Amendments, the City Council shall make written findings in response to each written objection received before or at the noticed public hearing from an affected property owner or taxing entity; and

WHEREAS, the City Council and Agency received written objections to the Amendments from one (1) affected property owner (WP Investments) and one (1) affected taxing entity (County of Santa Clara) before the close of the joint public hearing on adoption of the Amendments, as set forth in the letters attached hereto as Exhibits A and B and incorporated herein by reference; no other written objections were received from an affected taxing entity or property owner prior to the close of the joint public hearing; and

WHEREAS, the City Council desires to adopt written findings in response to the written objections received from WP Investments and the County of Santa Clara prior to acting on adoption of the Amendments.

NOW, THEREFORE, the City Council of the City of Milpitas 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 City Council hereby adopts the “Written Findings in Response to Written Objections Received before the Close of the Joint Public Hearing Concerning 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,” as set forth in Exhibit C, attached hereto and incorporated herein by reference.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT A - LETTER OF OBJECTION



REAL ESTATE
DEVELOPMENT
AND
INVESTMENTS

W P I N V E S T M E N T S

March 8, 2010

Via E-mail & Certified Mail

Ms. Diana Barnhart
CITY OF MILPITAS
455 East Calaveras Blvd.
Milpitas, CA 95035-5479

RE: 985 Montague/Former Jones' Chemical Site

Dear Ms. Barnhart,

It was a pleasure talking to you today regarding your letter dated March 5, 2010, advising us of the upcoming Public Hearing on April 6, 2010 to consider the proposed Thirteenth Amendment to the Redevelopment Plan. Our 4.6 acre site at 985 Montague (formerly known as the Jones' Chemical Site) is under consideration to be included in the "Added Area". Though I believe we, and the City of Milpitas, are on the same wavelength with regard to quality redevelopment of that site, 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. Accordingly, please consider this formal notice to the City of Milpitas and the Milpitas Redevelopment Agency, that we object to being included in the "Added Area".

By the way, our environmental consultants (LFR/Arcadis), have advised us that the ground water contaminants at the 985 site has now been substantially remediated, and that, going forward, the remaining issue with future development will be how to mitigate the vapor trapped in the soil. Please do not hesitate to call with any questions you may have.

Sincerely,

WP INVESTMENTS

A handwritten signature in black ink, appearing to read 'Dave Denton', written over a horizontal line.

Dave Denton

DD:tsm

S:DD1/Barnhart, D. - City of Milpitas (13th Amdmt)

EXHIBIT B - LETTER OF OBJECTION

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

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April 6, 2010

Mayor Robert Livengood
City Council
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035-5479

Milpitas Redevelopment Agency
455 East Calaveras Blvd.
Milpitas, CA 95035-5479

Re: Objections to Redevelopment Plan Amendments (4/6/10 agenda items RA4, RA5)

Dear Mayor, City Council and Redevelopment Agency Board members:

The County of Santa Clara ("County") objects to all of the various redevelopment plan amendments proposed by the City of Milpitas ("City") and Milpitas Redevelopment Agency ("Agency"). The proposed amendments do not meet the requirements of state law. Instead of addressing blight, the amendments are an improper attempt to siphon limited tax dollars away from the County, school districts and other public agencies.¹ The environmental impact report prepared for the amendments also fails to comply with state law.

The County retained the services of Seifel Consulting Inc. ("Seifel"), an independent professional redevelopment consulting firm, to review and evaluate the proposed amendments. Seifel concluded that the proposed amendments do not meet the criteria established by the Community Redevelopment Law ("CRL"), Health & Safety Code § 33000 *et seq.* A copy of the Seifel report ("Seifel Report") is attached to this letter and is incorporated by reference herein. This letter and the points raised in the Seifel Report constitute the County's comments on the redevelopment plan amendments. Detailed responses to these comments must be provided before the proposed amendments are adopted, and these responses must be supported by good-faith, reasoned analysis.²

¹ The County Controller-Treasurer has estimated that the proposed amendments will result in adverse financial impacts of approximately \$343 million to the County and \$1.232 billion to local school districts. These estimates are net of ERAF and A.B. 1290 pass-through payments.

² Health & Saf. Code § 33363. All further statutory references are to the Health and Safety Code, unless otherwise indicated.

“Blight” Requirements for Redevelopment Plan Amendments

“The touchstone of redevelopment is the elimination of blight”³ [I]t is not sufficient to merely show that the area is not being put to its optimum use, or that the land is more valuable for other uses.”⁴ Redevelopment “never can be used just because the public agency considers that it can make a better use or planning of an area than its present use or plan.”⁵

Due to abuses of redevelopment power, the Legislature has amended the CRL to strengthen the blight requirements.⁶ The CRL requires that areas must suffer from at least one physical blighting condition and at least one economic blighting condition, and that these conditions must 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.”⁷

The purpose of these amendments was to curb abuses of redevelopment power. The Legislature felt so strongly about this issue that it included the following findings in its 2006 legislation:

SECTION 1. In enacting this act, the Legislature finds and declares all of the following: . . .

(c) These hearings allowed legislators to review the statutory changes enacted by the Community Redevelopment Law Reform Act of 1993, Chapter 942 of the Statutes of 1993. The hearings also permitted legislators to review the subsequent appellate court decisions that interpreted those statutory changes, particularly the opinions relating to the statutory definition of blight. As a result of those reviews, several legislators believe that they should propose additional reforms to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(d) In *Regus v. City of Baldwin Park* (1977) 70 Cal.App.3d 968, the court warned that by “misemploying the extraordinary powers of urban renewal a redevelopment agency captures pending tax revenues which it can then use as a grubstake to subsidize commercial development within the project area in the hope of striking it rich.” In *Emmington v. Solano County Redevelopment Agency* (1987) 195 Cal.App.3d 491, the court declared that “the blighted

³ *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 544.

⁴ *Sweetwater Valley Civic Assn. v. City of National City* (1976) 18 Cal.3d 270, 277.

⁵ *Id.*, quoting *Redevelopment Agency v. Hayes* (1954) 122 Cal.App.2d 777, 812.

⁶ Assembly Bill 1290 Stats. 1993, c. 942; Senate Bill 1206, Stats. 2006, c. 595.

⁷ § 33030(b).

condition of the area is the very basis of the redevelopment agency's jurisdiction to acquire the property by eminent domain and expend public funds for its redevelopment." In *Beach-Courchesne v. City of Diamond Bar* (2000) 82 Cal.App.4th 511, the court declared that the "determination of blight is a prerequisite to invoking redevelopment."

(e) It is the intent of the Legislature, in amending Sections 33030, 33031, 33320.1, 33333.6, 33352, 33367, 33485, and 33486 of the Health and Safety Code to restrict the statutory definition of blight and to require better documentation of local officials' findings regarding the conditions of blight. The legislative purpose of these statutory amendments is to focus public officials' attention and their extraordinary redevelopment powers on properties with physical and economic conditions that are so significantly degraded that they seriously harm the prospects for physical and economic development without the use of redevelopment.

(f) It is the intent of the Legislature, in amending Sections 33328.7, 33378, 33500, and 33501 of, and adding Sections 33328.1, 33360.5, 33451.5, 33501.1, 33501.2, 33501.3, and 33501.7 to, the Health and Safety Code, to lower the barriers to challenge local officials' decisions regarding redevelopment and, in particular, to increase the opportunities to review local officials' findings regarding the conditions of blight. The legislative purpose of these statutory amendments and additions is to increase the opportunities for oversight of redevelopment activities by property owners, residents, voters, the Attorney General, and other public agencies and officials.

(g) It is the intent of the Legislature that the statutory changes made by the act be liberally construed to effectuate their purposes.

Inadequate Evidence of Blight

There is insufficient evidence of blight within the existing redevelopment areas or the areas proposed to be added. (See Seifel Report, Section II.)

The documentation supporting the proposed amendments attempts to rely on the fact that some of the properties are in the 100-year floodplain. This bare assertion does not provide sufficient justification for a "blight" determination.⁸ The documentation fails to substantiate why the location of properties within the floodplain rises to the level of "blight" as required by the

⁸ See, e.g., *Emmington v. Solano County Redevelopment Agency* (1987) 195 Cal.App.3d 491, 499, in which the court held that a redevelopment agency's finding that an area was subject to occasional flooding and lacked infrastructure was insufficient to establish "blight" where there was no showing that the land had become stagnant or unproductive, or that those conditions had substantially interfered with the land's present use or had caused the area to become a serious social or economic burden to the community.

CRL. As discussed in the Seifel Report, there are no indications that buildings in the Town Center and Adams sub-areas are unsafe and/or unhealthy. To the contrary, the Town Center features a “thriving and diverse agglomeration of industrial and research and development (R&D) businesses”⁹

The documentation also attempts to rely on minor code violations to justify “blight” findings. These types of vague, overbroad characterizations have already been rejected by the courts.¹⁰

Insufficient Evidence that Allegedly Blighted Properties Constitute a Serious Physical and Economic Burden on the Community

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 33030.¹¹

Failure to Demonstrate that Purported Blight Conditions Cannot be Alleviated Without Redevelopment

The Report to Council¹² fails to demonstrate that the purported blight conditions cannot be accomplished without redevelopment.¹³ The Agency has not demonstrated why an area where private enterprise has developed successful industrial/R&D businesses, thriving shopping centers, new institutional buildings, and upscale residential construction requires redevelopment assistance.

Insufficient Information Regarding Increase to Tax Increment Limit

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. Section 33354.6(b) provides:

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

⁹ See Seifel Report, p. 4.

¹⁰ See *Graber v. City of Upland* (2002) 99 Cal.App.4th 424, 440.

¹¹ See generally Seifel Report.

¹² Report to the 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 (Feb. 2010) (“Report to Council”).

¹³ See, e.g., Seifel Report, Section III.

of those projects and the amount of increase in the limitation on the number of dollars to be allocated to the agency.

The Report to 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.

Failure to Adequately Explain Need for Tax Increment Limit Increase and Identify Other Revenue Sources

The Report to Council also fails to comply with the requirements of Section 33451.5, including but not limited to subsection (e)(6), which requires:

The proposed method of financing these programs or projects. This description shall include the amount of tax increment revenues that is projected to be generated as a result of the proposed plan amendment, including amounts projected to be deposited into the Low and Moderate Income Housing Fund and amounts to be paid to the affecting taxing entities. This description shall also include sources and amounts of moneys other than tax increment revenues that are available to finance these projects or programs. This description shall also include the reasons that the remaining blight cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without the use of the tax increment revenues available to the agency because of the proposed amendment.

Among other things, the Report to Council does not identify all of the sources and amounts of moneys other than tax increment that are available to finance the redevelopment projects or programs, or explain why the purportedly remaining blight cannot be alleviated without the use of tax increment revenues. For example, the Report to Council (p. 113) states:

Although other funds may be available to the Agency, the feasibility cash flow shown on Table 21 only reflects tax increment revenues and the expenditure line items that are funded from tax increment.

The failure to provide this information also violates Section 33333.11(e)(6).

The Report to Council 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.¹⁴ These flaws violate the requirements of the CRL, including Sections 33445 and 33333.11. Without this information, there is no way for the public to understand why the additional revenue is needed or to offer meaningful comments.

¹⁴ See Seifel Report, Sections III, IV.

Failure to Justify Extension of Time

The Report to Council fails to provide adequate justification for why the redevelopment plan needs to be extended by 10 years. Section 33333.11(e)(5) requires the report to contain "[t]he reasons why the projects or programs cannot be completed without extending the time limits on the effectiveness of the plan and receipt of tax increment revenues."

No Explanation Regarding Fiscal Merger

There is no explanation regarding why the fiscal merger is being done. This merger is not analyzed in the Report to Council, as required by Section 33486(a).

Incomplete List of Public Improvements

Section 33445 requires that a list of public improvements to be constructed or installed pursuant to the redevelopment plan be provided. Attachment No. 4 (entitled "Potential Public Improvements") to the Amended and Restated Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 (Draft, Nov. 2009) falls woefully short of meeting this requirement. It consists of 1¼ pages of vague descriptions of generic public improvement projects that "may" be provided in the project area, such as "[t]he construction, reconstruction, widening or other improvement of streets and roadways within or serving the Project Area."

Insufficient Evidence Regarding Effectiveness of Redevelopment

Among other findings that must be made is that the amended plan would result in redevelopment of the added area and amended areas and would effectuate the purposes of the CRL. In light of the lack of evidence of blight, there is no substantial evidence in the record that the plan amendments would, in fact, result in the intended redevelopment of the added areas and effectuate the purpose of the CRL to eliminate blight.

Failure to Update Implementation Plan

No updated Implementation Plan has been provided, as required by Section 33333.11(e)(7).¹⁵ Among other things, this updated Implementation Plan must include information regarding the Agency's housing responsibilities pursuant to Section 33490. This should include an updated affordable housing production table that reflects the additional ten years proposed to be added to the redevelopment plan life.

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¹⁵ These requirements were added by Senate Bill 211 (Stats. 2001, c. 741).

Failure to Explain Need to Extend Time to Exercise Eminent Domain Power

The proposed plan does not explain why the Agency's eminent domain power needs to be extended. Section 33333.2(a)(4) requires a redevelopment plan to include the following:

(4) A time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, both of the following:

- (A) That significant blight remains within the project area.
- (B) That this blight cannot be eliminated without the use of eminent domain.

The plan does not provide this explanation. Nor is there substantial evidence in the record to support the extension of eminent domain power. As discussed above and in the Seifel Report, there is no substantial evidence of blight remaining in the project area that meets the CRL requirements.

Failure to Demonstrate Compliance with S.B. 211

The Report to Council fails to fully explain how the proposed amendments comply with S.B. 211 or whether the Agency meets all of the S.B. 211 eligibility requirements.¹⁶ Section III of the Seifel Report discusses some of these deficiencies.

For example, the Report to Council contains no analysis or maps of conditions in the Midtown Area, even though the amendments would increase the total amount of tax increment revenues the Agency will be able to collect in this Area and will also remove the cap on bonded indebtedness. The amendments to the Midtown Area are major amendments under the CRL, and the lack of analysis of this Area is a significant oversight.

CEQA Compliance

As explained above, the Report to Council and supporting documentation fail to include several items of information that are required by the CRL. This failure necessarily renders the Environmental Impact Report ("EIR") prepared for the proposed amendments inadequate under the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.* Failure to include the necessary information, including information regarding proposed projects and programs, renders the project description incomplete and, therefore, inadequate.

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¹⁶ Senate Bill 211 (Stats. 2001, c. 741).

An accurate project description is crucial to having an adequate EIR.¹⁷ The absence of an adequate project description results in the failure to disclose all of a project's impacts, and thereby thwarts CEQA's purposes of furthering public disclosure and informed environmental decision making.¹⁸ The EIR's project description (Chapter 3.0) fails to describe the project in a way that adequately informs the reader how the proposed amendments would cause or facilitate activities that would physically impact the environment. The description of the proposed programs and activities is so generic and conclusory that it is meaningless for purposes of complying with CEQA's environmental review requirements.¹⁹

This incomplete project description necessarily renders the entire EIR deficient because it results in an incomplete analysis of the project's environmental impacts, mitigation measures and alternatives.²⁰ It also deprives the public, including public agencies like the County, of the opportunity to provide meaningful comments on the EIR and the project's environmental impacts, mitigation measures and alternatives.²¹

For example, the Report to Council (pp. 95-104) identifies numerous projects that would impact the physical environment. These projects range from the very specific (e.g., Berryessa Pump Station and Hidden Lake Improvements costing \$3 million; Conference Center renovation costing \$5 million) to the generic (e.g., construction of "various community facilities improvements" costing \$49 million).²² But the EIR does not analyze the impacts of any of these projects on the grounds that the proposed amendments are not proposing any site-specific or project-specific activities.²³ This does not comply with CEQA, which requires the lead agency to "use its best efforts to find out and disclose all that it reasonably can."²⁴

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¹⁷ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.Appl.3d 185, 199.

¹⁸ *Id.*

¹⁹ See Draft EIR, pp. 3.0-13 through 3.0-17.

²⁰ See, e.g., *County of Inyo, supra*; *Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App.3d 818, 829; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.

²¹ *Id.*

²² Report to Council, p. 104.

²³ See, e.g., Draft EIR, pp. 6.6-12, 6.7-9.

²⁴ CEQA Guidelines, § 15144.

Letter to Milpitas City Council, Milpitas Redevelopment Agency
Re: County Objections to Redevelopment Plan Amendments
Date: April 6, 2010
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Conclusion

The Report to Council and other documentation supporting the proposed amendments suffer from serious flaws, do not meet the requirements of the CRL, and fail to provide substantial evidence to support the findings required for the proposed amendments. Moreover, the EIR prepared for the proposed amendments does not comply with CEQA. Therefore, the County respectfully requests that the City and Agency not proceed with the proposed amendments.

Very truly yours,

MIGUEL MÁRQUEZ
Acting County Counsel



LIZANNE REYNOLDS
Deputy County Counsel

Attachment: Analysis of Plan Amendment by Seifel Consulting Inc.

c: Michael J. Ogaz, Milpitas City Attorney
Board of Supervisors
Jeffrey V. Smith, County Executive

FINAL

**Santa Clara County
Milpitas Plan Amendment Review 2010**

Review of Report to City Council

Prepared for:

Santa Clara County

March 2010

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I. Summary of Review of Report to Council

Seifel Consulting Inc. (Seifel) has prepared this report summarizing its review and analysis of the blight documentation presented in the Report to Council as required by the California Community Redevelopment Law (CRL) to support 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 (Plan Amendments). The review focuses on the set of amendments to Project Area No. 1.

Overview of Plan Amendments

The Project Area No. 1 Plan Amendments would achieve, among other actions, the following:

- Add 600 acres to the Project Area (Added Area Amendment);
- Extend by 10 years the time limits on plan effectiveness and collection of tax increment of the Original Project Area No. 1 and Amendment Areas No. 1 and 2, collectively termed the "Amendment Areas" in the Report to Council (SB 211 Amendment);¹
- Increase the combined limit on tax increment collection (TI cap) from \$2.4 billion to \$6.7 billion and exclude the Midtown Area (Amendment Area No. 3) from the TI cap (TI Cap Amendment);
- Increase the total amount of outstanding bonded indebtedness for Project Area No. 1 (including the Original Project Area, Amendment Area No. 1, Amendment Area No. 2, the Midtown Area, and the Added Area) from \$498 million to \$1.3 billion (Bonded Indebtedness Cap Amendment); and
- Extend the time limit on eminent domain authority over non-residential properties in the Amendment Area (Eminent Domain Amendment).

The proposed Amendments to the Redevelopment Plan for the Great Mall Project Area would not change time or financial limits. Thus, we did not analyze these amendments. The Agency also proposes to make a number of additional technical amendments, which also are not analyzed in this report.

Methodology and Analysis

In January 2010, the County retained Seifel's services to review the documentation of existing conditions and the Agency's Redevelopment Program described in the Report to the City Council (Report or Report to Council) prepared by Keyser Marston Associates (KMA). In order to understand the context in which the Plan Amendments are being undertaken, Seifel also conducted a field survey of the proposed Added Area and the Amendment Areas on March 9, 2010. Seifel's analysis evaluated the documentation in the Report in relationship to the requirements set forth in the CRL as amended by SB 1206 (Chapter 595, Statutes of 2006).

¹ Report to Council, February 2010, p. 15. Note that the Midtown Added Area, although part of Project Area No. 1, would not be subject to the SB 211 Amendment.

Summary Conclusions

Our field survey and analysis of the documentation presented in the Report to Council indicate that the requirements of the CRL concerning the existence of blight have not been satisfactorily met, and that the inclusion of the 600-acre Added Area into redevelopment and the amendment to the fiscal and time limits of the Amendment Areas are not adequately supported by the Report to Council. Specifically, our conclusions are as follows:

- No physical condition is sufficiently documented with specific, quantifiable evidence to support a finding of prevalent and substantial blight in the Added Area or remaining blight in the Amendment Area.
- No economic condition is sufficiently documented with specific, quantifiable evidence to support a finding of prevalent and substantial blight in the Added Area or remaining blight in the Amendment Area.
- Seifel's field survey indicates that only a small portion of the proposed Added Area may meet the CRL blight definitions under SB 1206.
- Seifel's field survey indicates that most of the parcels where the Agency indicates the presence of remaining blight in the Amendment Area do not exhibit blighting conditions that meet the CRL definitions under SB 1206.
- The Report to Council does not demonstrate that the Redevelopment Program projects and activities are linked to blight alleviation. Further, it does not document inadequate transportation improvements or inadequate water or sewer facilities, even though a substantial portion of the Redevelopment Program is allocated to improvements to transportation infrastructure and water and sewer utilities.
- The Report to Council does not include a map that satisfies the requirements of CRL Section 33451.5(c). The composite blight map included in the Report to Council does not identify the conditions in the Midtown Area as required by the CRL.
- The Report to Council does not include a map that satisfies the requirements of CRL Section 33354.6(b). The Report to Council has not documented the conditions in the Midtown Added Area as required by the CRL.
- The Report to Council does not demonstrate that physical and economic blighting conditions are so prevalent and substantial that, collectively, they seriously harm the entire project area, as required by CRL Section 33352(b).
- The Report to Council does not adequately demonstrate why the Agency needs an additional \$4.3 billion dollars of tax increment and ten additional years of plan effectiveness in order to alleviate existing blight, as is required by the CRL.

II. Insufficient Blight Documentation

This section presents Seifel's review and analysis of the Report to Council's documentation of existing physical and economic conditions in the proposed Added Area and in the Amendment Area. Section A reviews the Report's description of conditions in the proposed Added Area and addresses CRL requirements for redevelopment plan amendments to add territory or change the boundaries of a project area. Section B presents Seifel's review and analysis of the documentation presented to support the SB 211 Amendment, the TI Cap Amendment and the Bonded Indebtedness Amendment (collectively, the Fiscal Amendments) and draws from requirements in the CRL for these types of amendments.

A. Insufficient Blight Documentation in the Proposed Added Area

The CRL requires that an area proposed to be added to a redevelopment plan meet the same legal eligibility requirements as a new project area. Pursuant to CRL Section 33030, an added area must be both predominantly urbanized and characterized by one or more conditions of physical blight and one or more conditions of economic blight.

(a) It is found and declared that there exist in many communities blighted areas that constitute physical and economic liabilities, requiring redevelopment in the interest of the health, safety, and general welfare of the people of these communities and of the state. (b) A blighted area is one that contains both of the following: (1) An area that is predominantly urbanized, as that term is defined in Section 33320.1, and is an area in which the combination of conditions set forth in Section 33031 is 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. (2) An area that is characterized by one or more conditions set forth in any paragraph of subdivision (a) of Section 33031 and one or more conditions set forth in any paragraph of subdivision (b) of Section 33031.

Given the CRL requirement for a combination of prevalent and substantial blighting factors with at least one physical condition and at least one economic condition, if the documentation for either category of blighting conditions is not adequate, the Added Area would not qualify for redevelopment.

1. Summary of Seifel Field Survey of Proposed Added Area

On March 9, 2010, Seifel conducted a windshield survey of the proposed Added Area to determine whether the area exhibits observable physical and economic blighting conditions under relevant CRL definitions. Seifel only observed potential physical blighting conditions in a small portion of the Selwyn/Shirley sub-area of the proposed Added Area, totaling less than 40 acres, or roughly 7 percent of the total proposed Added Area. Specifically, Seifel found that the residential development along Selwyn Drive and Shirley Drive showed indications of unsafe and unhealthy building conditions, such as extensive mold and/or dry rot, sagging roofs and misaligned structures. Additionally, the Fiesta Plaza strip mall on Dempsey Road exhibited a combination of

high business vacancies and outdated construction that may indicate economic blight in the area. Figure 1 shows a map of the proposed Added Area and demonstrates areas in which Seifel observed physical blighting conditions as well as areas where indications of blight were not observed.²

Seifel did not observe any indications that the buildings in the Town Center and Adams sub-areas were unsafe and/or unhealthy for its occupants or had significant conditions hindering their use. In fact, the Town Center area, which makes up 75 percent of the acreage of the Added Area, is a thriving and diverse agglomeration of industrial and research & development (R&D) businesses, including global companies such as Kovio (semiconductor manufacturing), SAE Magnetics, Flextronics International (design and logistics), and Iron Mountain (information management). The Town Center area also includes new institutional campuses for the Humane Society Silicon Valley and the India Community Center. While Seifel observed a number of business vacancies in the Town Center area, nothing indicated that these vacancies are the result of physical blighting conditions of (a) unsafe or unhealthy buildings or (b) conditions hindering the viable use of buildings. These vacancies appear more likely to be a result of the current downturn in the business cycle than a result of physical deficiencies in the buildings. The presence of vacant buildings, in and of itself, is not a blighting condition, and thus cannot justify the inclusion of the proposed Added Area into redevelopment. Figure 2 includes photographs taken by Seifel demonstrating that most of the areas in which the Report has identified physical blighting conditions in the Report to Council are developed with visibly unblighted buildings. Appendix A includes larger versions and descriptions of the photographs included in Figure 2.

2. Insufficient Documentation of Blight in the Proposed Added Area

When an agency proposes to add new territory into a redevelopment project area, CRL §33352(b) requires that the Report to Council include documentation of physical and economic blighting conditions. CRL Section 33352(b) requires:

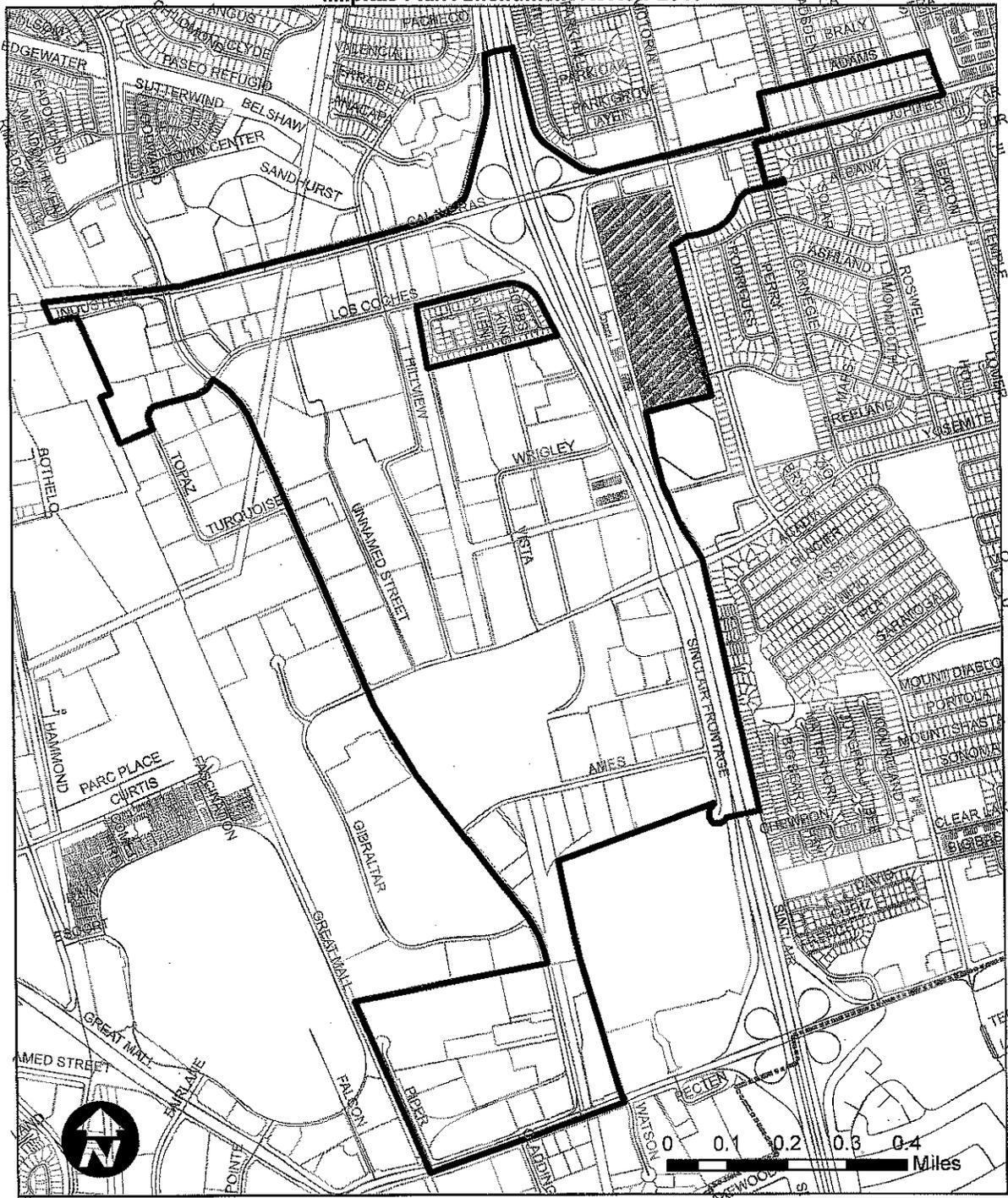
(b) A description of the physical and economic conditions specified in Section 33031 that exist in the area that cause the project area to be blighted. The description shall include a list of the physical and economic conditions described in Section 33031 that exist within the project area and a map showing where in the project the conditions exist. The description shall contain specific, quantifiable evidence that documents both of the following: (1) The physical and economic conditions specified in Section 33031, and (2) That the described physical and economic conditions are so prevalent and substantial that, collectively, they seriously harm the entire project area.

a. Insufficient Documentation of Physical Conditions of Blight

The Agency does not present specific, quantifiable evidence documenting that physical blight is substantial and prevalent in the proposed Added Area. Following are definitions of the CRL factors of physical blight, along with an assessment of the documentation of each condition as contained in the Report to Council.

² The Agency would need to conduct a more comprehensive survey to make a determination of whether these parcels are in fact blighted. Section II.A, below, includes a detailed analysis of the Agency's documentation of blight in the proposed Added Area.

Figure 1
Potentially Blighted Parcels - 13th Amendment Proposed Added Area
Milpitas Plan Amendment Review 2010



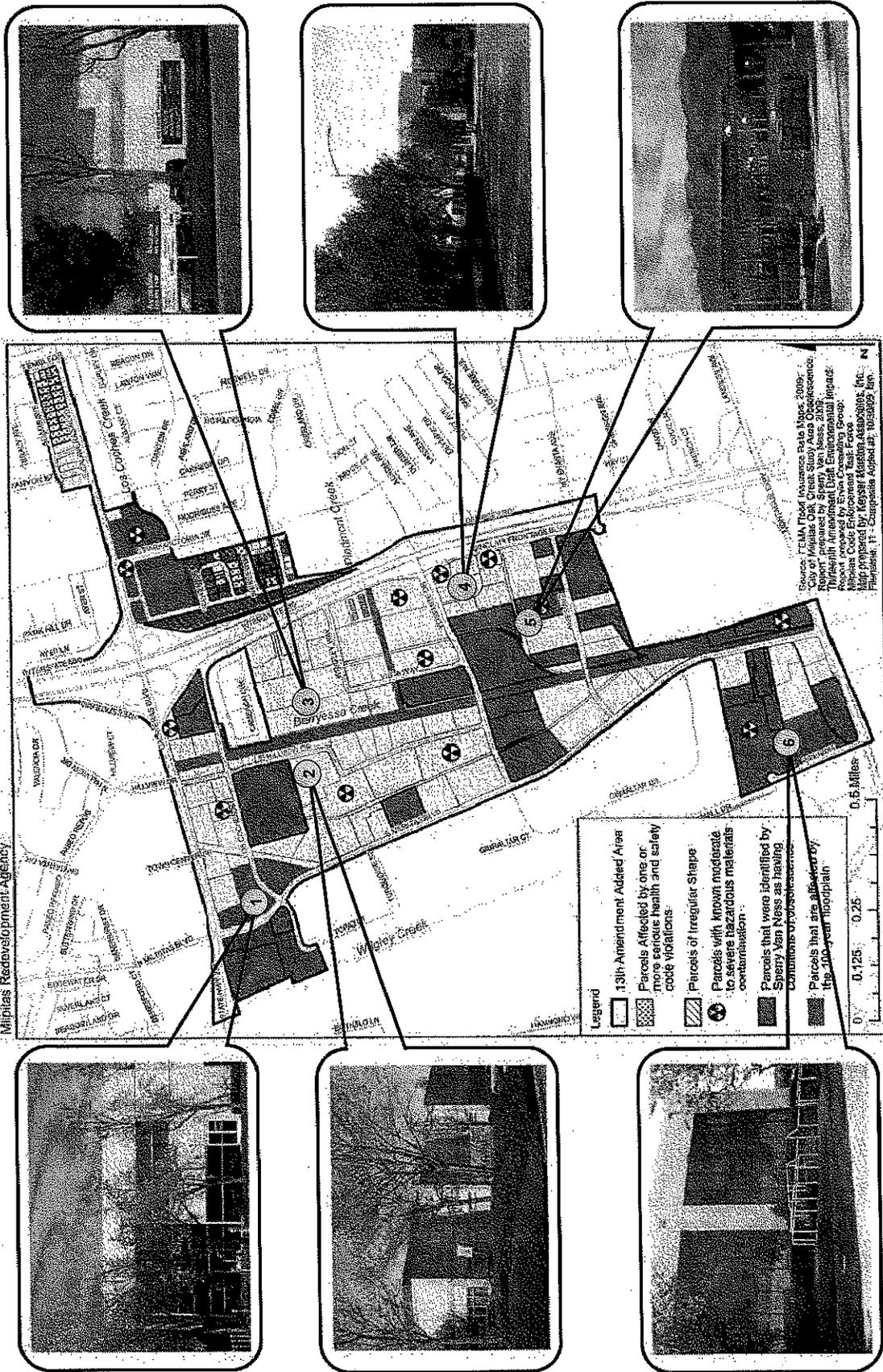
13th Amendment Proposed Added Area

Potentially Blighted Parcels

Note: Potentially blighted parcels identified based on March 2010 windshield survey by Seifel Consulting. Proposed Added Area boundaries indicate the general location, not the precise legal boundary.

Figure 2
Photographs of Typical Conditions Observed in Proposed Added Area

Map 11: Composite of Blighting Conditions in the Added Area
 13th Amendment to Milpitas Redevelopment Project Area No. 1
 Milpitas Redevelopment Agency



Note: photo locations superimposed on map 11 from Report to Council.

(1) Unsafe or Unhealthy Buildings

Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities. CRL 33031(a)(1)

Analysis of Report to Council Findings

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 when it comes to demonstrating the presence of this blighting condition to support adding a new area into redevelopment. The documentation of blight included in the Report to Council, in contrast, relied on the results of a survey conducted by the City in 2002–2003 and information on building code citations issued between 2004 and May 2009. Additionally, the specific conditions documented in the 2002–2003 survey do not meet CRL criteria for this blighting condition.

Specifically:

- The Report to Council's documentation of "Serious Health and Safety Code Violations" includes violations, such as "missing lighting," "deterioration of exterior building finishes" and "fencing," which do not meet the threshold of *serious building code* violations that would make a building unsafe or unhealthy for persons to live or work in.³ Based on the limited information presented in the Report to Council, it is impossible to determine how many buildings exhibit conditions that are actually unsafe or unhealthy or whether these conditions are caused by long-term neglect.
- Similarly, the "accumulation of trash and junk" documented under "Waste and Debris Violations" is not necessarily an indication that the *buildings* are "unsafe or unhealthy." The Report does not provide any evidence to support the statement that such accumulation is "not only unsightly but [poses] a threat for harboring vectors and potential fire hazards."⁴ Moreover, it is not clear that redevelopment would be an appropriate legal and fiscal instrument to clean "trash and junk" from these properties.
- The Report to Council's documentation of "Health and Safety Hazards" is vague and includes only three cases between 2002–2003 and 2008–2009.⁵ The Report does not demonstrate how cited conditions, such as "tenant complaints regarding substandard conditions, lack of fire extinguisher citations, evidence of overcrowding (overflowing and numerous trash cans, vehicles in excess of permitted parking), and other miscellaneous health and safety hazards" meet the CRL threshold for "unsafe or unhealthy" buildings.⁶
- The Report to Council's documentation of building code violations applies only to the Adams and Selwyn/Shirley Areas, which make up ten percent of the acreage of the

³ Redevelopment Agency of the City of Milpitas. Report to the 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. February 2010: pp. 37-41.

⁴ Ibid, p. 40.

⁵ Ibid, p. 39.

⁶ Ibid, p. 39

proposed Added Area. No buildings in the Town Center area are shown to be unsafe or unhealthy due to building code violations.

- The Report to Council's 100-Year Floodplain map (Map 7, p. 42) shows that most of the Selwyn/Shirley and small portions of the Town Center area could be affected by a 100-year flood. However, the Report does not describe or provide evidence of specific building conditions that would make the buildings unsafe or unhealthy in the event of a flood. It is quite possible that individual buildings within the 100-year floodplain have been built or retrofitted to minimize or mitigate the effects of flooding, yet the Report's analysis does not discuss the conditions relating to buildings vulnerability to flooding.⁷
- The documentation of flooding hazards from Los Coches Creek does shows an effect on none of the parcels within the Adams area, and on only a small portion of parcels in the Town Center.

Conclusion

The Report to Council does not adequately document unsafe or unhealthy buildings under the CRL definition for this blighting condition.

(2) Conditions Hindering Viable Use or Capacity of Buildings or Lots

Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards. CRL 33031(a)(2)

Analysis of Report to Council Findings

The Report bases its analysis of this blighting condition on an inventory of 175 industrial and R&D properties within the Town Center area prepared by Sperry Van Ness, which analyzes the "functionality and competitiveness" of these properties based on a number of factors, including:

- Construction materials
- Building age
- Electrical power
- Ceiling height
- Sprinklers
- Building size
- Parking availability
- Truck loading
- Parcel size
- Column spacing

⁷ The Report to Council states that the Agency may assist property owners in flood abatement by raising ground levels for new developments above the 100 year levels, however the Redevelopment Program does not specifically include this activity or include a funding allocation for it. (Report to Council, p. 120 and pp. 95-107).

Of the 175 properties surveyed, only 26 “were characterized or impacted by physical conditions that limited [their] viability.”⁸ Thus, Seifel assumes that the survey found that 149 of the 175 properties surveyed did not exhibit conditions hindering their viable use or capacity. Moreover, of the 26 properties with “limited viability,” only 9 were found to have a “significant” level of “obsolescence,” with the other 17 properties exhibiting only “moderate” obsolescence. Given that the CRL requires the viable use or capacity of buildings or lots to be *prevented* or *substantially hindered*, buildings classified as being only moderately obsolescent would not meet the CRL threshold for this blighting condition. Given that only 9 buildings, or five percent of all buildings in the Town Center area, would potentially meet the CRL threshold for a building whose viable use has been substantially hindered, the Report has not demonstrated that this blighting condition is “prevalent and substantial” in the proposed Added Area.

Sperry Van Ness’ “Obsolescence Summary Report” shows all of the properties in the Town Center area that it has rated as moderately or significantly obsolescent.⁹ However, the Report does not show that the “Key Obsolescence Factors” outlined by Sperry Van Ness, even when they amount to “significant” obsolescence, actually “prevent or substantially hinder [their] viable use or capacity.” In fact, some factors of significant obsolescence listed by Sperry Van Ness have been specifically removed from the CRL’s blight definitions, such as “inadequate parking.” Other conditions, such as “highly visible weeds,” “below average ceiling clearance” and “antiquated design” are not demonstrated to *prevent* or *substantially hinder* those buildings’ *viable use or capacity*. It is unclear why redevelopment is an appropriate tool to perform maintenance, upgrading or landscaping of a small number of buildings in the Town Center area, rather than allowing property owners to do so.

Conclusion

The Report to Council does not adequately document conditions hindering the viable use or capacity of buildings or lots under the CRL definition for this blighting condition.

(3) Adjacent or Nearby Incompatible Uses

Adjacent or nearby incompatible land uses that prevent the development of those parcels or other portions of the project area. CRL 33031(a)(3)

The Report to Council does not state that this condition is present in the proposed Added Area.

Conclusion

The Report to Council does not document this blighting condition.

(4) Small or Irregular Lots in Multiple Ownership

The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions. CRL 33031(a)(4)

⁸ Ibid, p. 43.

⁹ Ibid, Appendix C.

Analysis of Report to Council Findings

The Report to Council documents only a small sliver of the Selwyn/Shirley area, adjacent to Interstate 680, as containing small or irregularly shaped parcels in multiple ownership. The Report notes that their size, shape and multiple ownership has “impaired [their] use,” but does not demonstrate that their *physical development* has been impaired, which is what the CRL requires. Several of these parcels are occupied and built out with institutional uses including churches and a school. Thus, it does not appear that their physical development has been impaired.

Conclusion

The Report to Council does not adequately document small or irregular lots in multiple ownership under the CRL definition for this blighting condition.

b. Insufficient Documentation of Economic Conditions of Blight

The Report to Council does not present specific, quantifiable evidence that economic blight is substantial and prevalent in the proposed Added Area. Following are definitions of the CRL factors of economic blight, along with an assessment of the documentation of each condition as contained in the Preliminary Report and Report to Council.

(1) Depreciated or Stagnant Property Values

Depreciated or stagnant property values. CRL 33031(b)(1)

Analysis of Report to Council Findings

The Report to Council concludes that the “property sales analysis indicates that overall values in the Added Area both in total (assessed value) and current value as reflected in property sales, trail the balance of the City,” which the Report states is an indication of the presence of depreciated or stagnant property values.¹⁰ The Report’s documentation of this blighting condition is inadequate at two levels.

First, the Report includes no time-series analysis of property values within the proposed Added Area. Such an analysis would be necessary to demonstrate that property values have *depreciated* or *stagnated* as both of those terms indicate negative or flat property value trends *over time*. It is possible for the property values in a project area to increase over a given period of time, but still remain slightly lower than the rest of a city. Under this scenario, property values are not depreciated or stagnant. However, the Report to Council does not analyze property value trends in the proposed Added Area, therefore it is impossible to determine whether values have declined or remained flat.

In contrast, the Report’s analysis compares assessed values and sales prices of properties containing similar land uses inside and outside of the proposed Added Area. The Report’s analysis shifts back and forth between sales prices and assessed valuation without a clear explanation. For example, the Report states that industrial property values in the Town Center area are stagnant is as follows:¹¹

¹⁰ Ibid, p. 47.

¹¹ Ibid, p. 49.

Industrial uses in the Town Center area have a total assessed value that trail the City by 38% while having comparable sales prices. The sales value per square foot is less an indicator of a comparable value between properties in the area and the City and is more reflective of notably smaller building and parcel sizes (approximately 8% smaller for both parcel and building size). It is likely other factors such as building quality are affecting assessed value.

It is impossible to determine whether or not the Report's documentation indicates stagnant property values. The Report states that "total assessed value" in the Town Center area is 38 percent lower than the rest of the City. However, there is no way to know how that amount is determined or whether it uses an "apples-to-apples" basis for comparison such as price per square foot, price per unit, etc. In fact, in Table 5 (p. 50), the Report's data shows that "Average Total Assessed Value per Lot Sq. Ft." is 3 percent *higher* in the Town Center than in the rest of the City.

The Report's claim that "other factors such as building quality" would be more closely reflected in assessed values than in sales prices is not accurate. In fact, due to Proposition 13 limitations on increasing the assessed value of a property, a lower assessed value can simply be the result of a lack of turnover, while the sales prices are much more closely associated with the market value of that property and its improvements. A review of the Report's list of sales comparables for warehouse and manufacturing properties in the Town Center area and the rest of the city between 2004 and 2008 (Table 14, p. 65) shows that sales prices per square foot are largely comparable, falling within a range of \$90 to \$180 per square foot, excluding a few outliers. Similarly, the price per square foot of office space in the Town Center area is, in fact, higher than the rest of the city. Not only does the Report not demonstrate that property values are either depreciated or stagnant, they may actually be higher.

Further, the office, flex, R&D, and warehouse and manufacturing sales comparisons are weakened by the methodology used for the analysis. In most of the analyses, sales of properties outside the Added Area are included as representative sales for the Added Area. For example, the comparison of office sales includes 15 office sales for the Added Area. However, only 1 of these offices is actually located in the Added Area. The R&D sales comparison analyzes 7 Added Area sales, however, 4 of these are properties located outside the Added Area.

In summary, the Report to Council has failed to demonstrate that property values in the proposed Added Area have depreciated or stagnated over time and that they are significantly lower than those in the rest of the city.

Conclusion

The Report to Council does not adequately document depreciated and stagnant property values under the CRL definition for this blighting condition. The analysis states that the overall property values in the Added Area trail the balance of the City. However, no data is presented on overall property values in the Added Area. Further, the data that is presented on selected properties within the Added Area does not demonstrate the presence of substantial or prevalent depreciated or stagnant values in the area.

(2) Impaired Property Values Due to Hazardous Wastes

Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459). CRL 33031(b)(2)

Analysis of Report to Council Findings

The CRL definition of this blighting condition requires the presence of two interrelated factors: hazardous wastes and impaired property values due *in significant part* to those hazardous wastes. This is clear from the fact that the CRL identifies this condition as an element of *economic*, not *physical*, blight. Thus, the Report needs to not only demonstrate that hazardous wastes are present in the proposed Added Area, but also that they are specifically linked to the impairment of property values. The Report to Council's documentation of this blighting condition consists of a list of hazardous waste materials in some properties within the Added Area, with vague statements that these materials would need to be remediated, without any supporting evidence as to the level of remediation that would be required or how the presence of hazardous materials impairs local property values. The only connection made to property values is a reference to a 1998 article making a theoretical connection between "contaminated properties" and "market-value loss."¹² The Report does not present specific, quantifiable evidence to show that hazardous wastes have in fact impaired property values in the Added Area.

Conclusion

The Report to Council does not adequately document impaired property values due to hazardous wastes under the CRL definition for this blighting condition. While the Report to Council states that 13 sites in the Added Area have moderate to severe contamination, it does not demonstrate that their property values are impaired by the presence of hazardous waste. In fact, the analysis does not include any information on property values for those sites or surrounding sites—such as assessed values, sales data, property turnover, or assessment appeals information—that would indicate impaired values.

(3) Indicators of Economically Distressed Buildings

Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings. CRL 33031(b)(3)

Analysis of Report to Council Findings

The Report to Council includes a short and cursory analysis of this blighting condition that does not demonstrate the presence of *abnormally* high business vacancies, *abnormally* low lease rates or an *abnormally* high number of abandoned buildings. The Report compares vacancy rates, lease rates and average times properties sit on the market in the Town Center area with the North San Jose and Santa Clara County submarkets. The Report gives no explanation as to why these submarkets are good bases for comparison, or why failure to compete with those highly valuable submarkets would constitute economic blight in the Town Center area. Moreover, the Report's analysis shows that properties in the Town Center area actually compete quite adequately with those other submarkets, having a vacancy rate of 9 percent, which is only 2 percentage points higher than Santa Clara County (7 percent) and 3 percentage points higher than North San Jose (6 percent); a "time on the market" indicator (12.2 months) that is lower than the County's

¹² Ibid, p. 70.

(13.3 months); and “comparable” lease rates to North San Jose (Report does not provide specific rates).¹³ The Report to Council shows only that, in some instances, the Town Center area lags behind either the North San Jose or the Santa Clara County submarkets in one of the three indicators provided. The Report does not adequately demonstrate that business vacancies are *abnormally* high or that lease rates are *abnormally* low. The Report does not document the presence of abandoned buildings.

Conclusion

The Report to Council does not adequately document indicators of economically distressed buildings under the CRL definition for this blighting condition.

(4) Lack of Neighborhood Commercial Facilities

A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions. CRL 33031(b)(4)

The Report does not state that this condition is present in the proposed Added Area.

Conclusion

The Report to Council does not document this blighting condition.

(5) Residential Overcrowding

Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, “overcrowding” means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations. CRL 33031(b)(5)

Analysis of Report to Council Findings

Recent changes to the CRL (enacted by SB 1206) have modified the definition of residential overcrowding to include the above reference to the California Code of Regulations relating to size of rooms in residential units. However, the Report to Council’s analysis of residential overcrowding uses US Census figures as a proxy for showing residential overcrowding. No explanation is given as to why this is an adequate proxy for the definition of overcrowding cited in the law.

The Report also includes a short description of the average size of households in the Selwyn/Shirley (4.30 persons per household) and Adams (3.99 persons per household) areas and compares those to average household size Citywide (3.52 persons per household) and in Santa Clara County (3.52 persons per household). Other than stating that averages for the Selwyn/Shirley and Adams areas are “based on City inspections,” the Report does not cite how these numbers were derived, does not cite any reports where they might have been published, and does not explain why they constitute *serious residential overcrowding*.¹⁴ The Report also gives an average size of residential units sold in those portions of the Added Area, but does not offer a similar statistic for the city and the County on which to base a comparison.

¹³ Ibid, p. 70.

¹⁴ Ibid, p. 72.

Conclusion

The Report to Council does not adequately document serious residential overcrowding under the current CRL definition for this blighting condition.

(6) Problem Businesses

An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems. CRL 33031(b)(6)

The Report does not state that problem businesses constitute a blighting condition in the proposed Added Area.

Conclusion

The Report to Council does not document this blighting condition.

(7) A High Crime Rate

A high crime rate that constitutes a serious threat to the public safety and welfare. CRL 33031(b)(7)

Analysis of Report to Council

The Report to Council compares crime rates in the Added Area to those of the rest of the City. However, the Report's statement that crime is substantially higher in the proposed Added Area is not persuasive. First, the Report only states that crime rates are higher in the Selwyn/Shirley and Adams areas, which together only make up about 10 percent of the total acreage of the Added Area. The Report does not explain why it excludes the Town Center area from its analysis. Furthermore, it states that "the total number of crimes in the Adams area is proportional to its population. While in the Selwyn/Shirley area the number of crimes are proportionally higher." Table 16 (p. 75) actually shows that, on a population (per 1,000 residents) basis, some types of crimes (such as rape and assault) are higher in those two subareas than in the rest of the City while others (robbery and theft) are lower. Overall, according to Table 16 in the Report, the rate of total part I crimes per 1,000 residents is 17 percent higher in the Selwyn/Shirley area than in the City, while the rate is 40 percent *lower* in the Adams area than in the City overall.

The Report also presents a rate of "crimes per property" as a "more telling" statistic.¹⁵ Nowhere in The Report's analysis is there a description of why this approach is "more telling" than that of crimes per 1,000 residents, which is a much more widely used crime statistic, and one that shows that the crime rate in those two sub-areas of the proposed Added Area is not significantly higher than the rest of the City, as described above. A rate of "crimes per property" is not a valid basis for comparison, as the square footage (or acreage) of properties varies greatly. For this reason, crime statistics for blight documentation are typically presented on a per capita or per acreage basis.

Conclusion

The Report's does not adequately document the economic blighting condition of a high crime rate.

¹⁵ Ibid, p. 74.

B. Insufficient Documentation of Blight in the Amendment Areas

The CRL requires that an area proposed to be added to a redevelopment plan meet the same legal eligibility requirements as a new project area. CRL Section 33354.6(a) is as follows:

(a) When an agency proposes to amend a redevelopment plan which utilizes tax increment financing to add new territory to the project area, to increase either the limitation on the number of dollars to be allocated to the redevelopment agency or the time limit on the establishing of loans, advances, and indebtedness established pursuant to paragraphs (1) and (2) of subdivision (a) of Section 33333.2 or pursuant to paragraphs (1) and (2) of subdivision (a) of Section 33333.4, to lengthen the period during which the redevelopment plan is effective, to merge project areas, or to add significant additional capital improvement projects, as determined by the agency, the agency shall follow the same procedure, and the legislative body is subject to the same restrictions as provided for in this article for the adoption of a plan.

The CRL specifies additional blight documentation requirements for Plan Amendments that would increase fiscal limits and those that would extend the time limits on plan effectiveness and tax increment collection (SB 211 Amendments). These additional requirements are presented in the following sections.

1. CRL Requirements

The Report to Council must comply with the CRL. Pursuant to Sections 33352, the report to the legislative body (Report to Council) must demonstrate to the extent warranted how the proposed Plan Amendment meets several requirements.

A description of the physical and economic conditions specified in Section 33031 that exist in the area that cause the project area to be blighted. The description shall include a list of the physical and economic conditions described in Section 33031 that exist within the project area and a map showing where in the project the conditions exist. The description shall contain specific, quantifiable evidence that documents both of the following: (1) The physical and economic conditions specified in Section 33031, and (2) That the described physical and economic conditions are so prevalent and substantial that, collectively, they seriously harm the entire project area. [Section 33352(b)]

Pursuant to Section 33352, the Report to Council is required to contain specific quantifiable evidence of physical and economic blight in addition to a map showing where the conditions exist. Given the CRL requirement for a combination of blighting factors with at least one physical condition and at least one economic condition, if the documentation for either category of blighting conditions is not adequate, the Amendment Area would not qualify for redevelopment. As described above, the Report to Council does not substantiate that these blighting conditions exist within the Added Area, and Seifel's analysis has concluded that at most approximately ten percent of the Added Area may meet the criteria of the CRL.

2. Summary of Seifel Field Survey of Amendment Areas

On March 9, 2010, Seifel conducted a windshield survey of the Amendment Areas to determine whether they likely contain remaining physical blighting conditions and observable economic blighting conditions that meet CRL requirements for major plan amendments. Seifel found no indication that the Amendment Areas exhibit substantial remaining blight. Only one small tract

off Milpitas Boulevard in the northwest corner of the Original Project Area may exhibit blight. Figure 3 shows the location of parcels that Seifel found to be potentially blighted based on the field survey.¹⁶ Figure 4 includes the map in the Report to Council showing areas in which the Report has identified remaining physical or economic blighting conditions along with photographs taken by Seifel demonstrating visibly unblighted buildings in these areas. Appendix A includes larger versions and descriptions of the photographs included on Figure 4.

Seifel did not observe any indication that the vast majority of parcels classified as “blighted” exhibited physical blight. The Report to Council indicates that the majority of what the Agency considers to be remaining blight is located in the Original Project Area and in Amendment Area No. 1, with only very small tracts of “blight” included in Amendment Area No. 2.

The parcels that the Report to Council shows as “blighted” in the Original Project Area include a shopping center that Seifel observed to be in good physical condition and almost entirely occupied by national food and retail tenants, including McDonald’s, CVS, and Orchard Supply Hardware. Another shopping center classified as blighted exhibits very few business vacancies and includes as its anchor tenant the “boutique” grocery store Nob Hill Foods. During the survey Seifel observed that both shopping centers were bustling with activity, even in the middle of a Tuesday afternoon, which indicates that the malls are vital nodes of economic life in the community. Our survey also found that the Report classified as “blighted” recently constructed upscale single-family homes between Paseo Refugio and Angus Drive, as well as a tract of single-family homes east of North Milpitas Boulevard. The Report determines that these parcels are blighted because they are located on the 100-year floodplain map. However, Seifel observed no indication of water or flood damage to any of the structures, which were largely in good physical condition.

The parcels in Amendment Area No. 1 classified as “blighted” by the Report also did not exhibit any visible signs of physical blight. In the portion of the Amendment Area north of West Capitol Avenue, the Report classified as “blighted” two large parcels that make up the Elmwood Correctional Complex, a County facility, without any justification, or plans to utilize its additional tax increment revenues to upgrade or assist that facility. Across the street from the jail, the Report classified a new upscale multi-family housing development (Luna at Terra Serena) as blighted. Lastly, one large vacant lot and an apparently non-blighted single-family home subdivision were also classified as blighted.

Finally, the Report to Council only identifies two very small properties in Project Area No. 2 with remaining blight. One of these properties includes the corporate campus for Pliant Technologies, which did not exhibit observable blighting conditions. The rest of the Amendment Area, some of which is occupied by a corporate campus for the Fortune 500 company Cisco, is not classified as blighted in the Report.

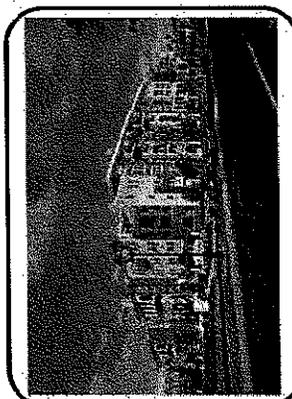
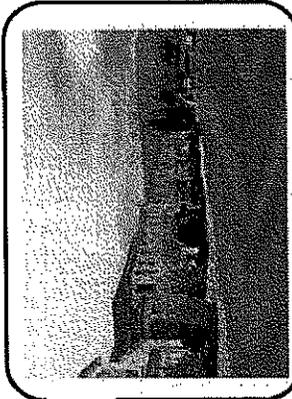
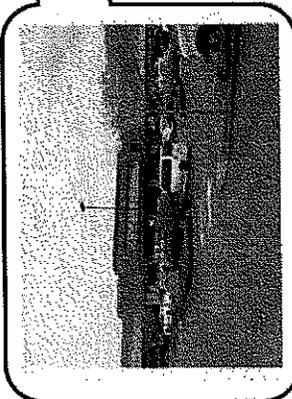
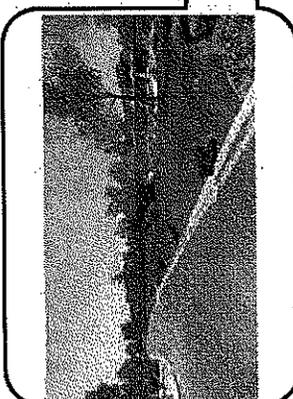
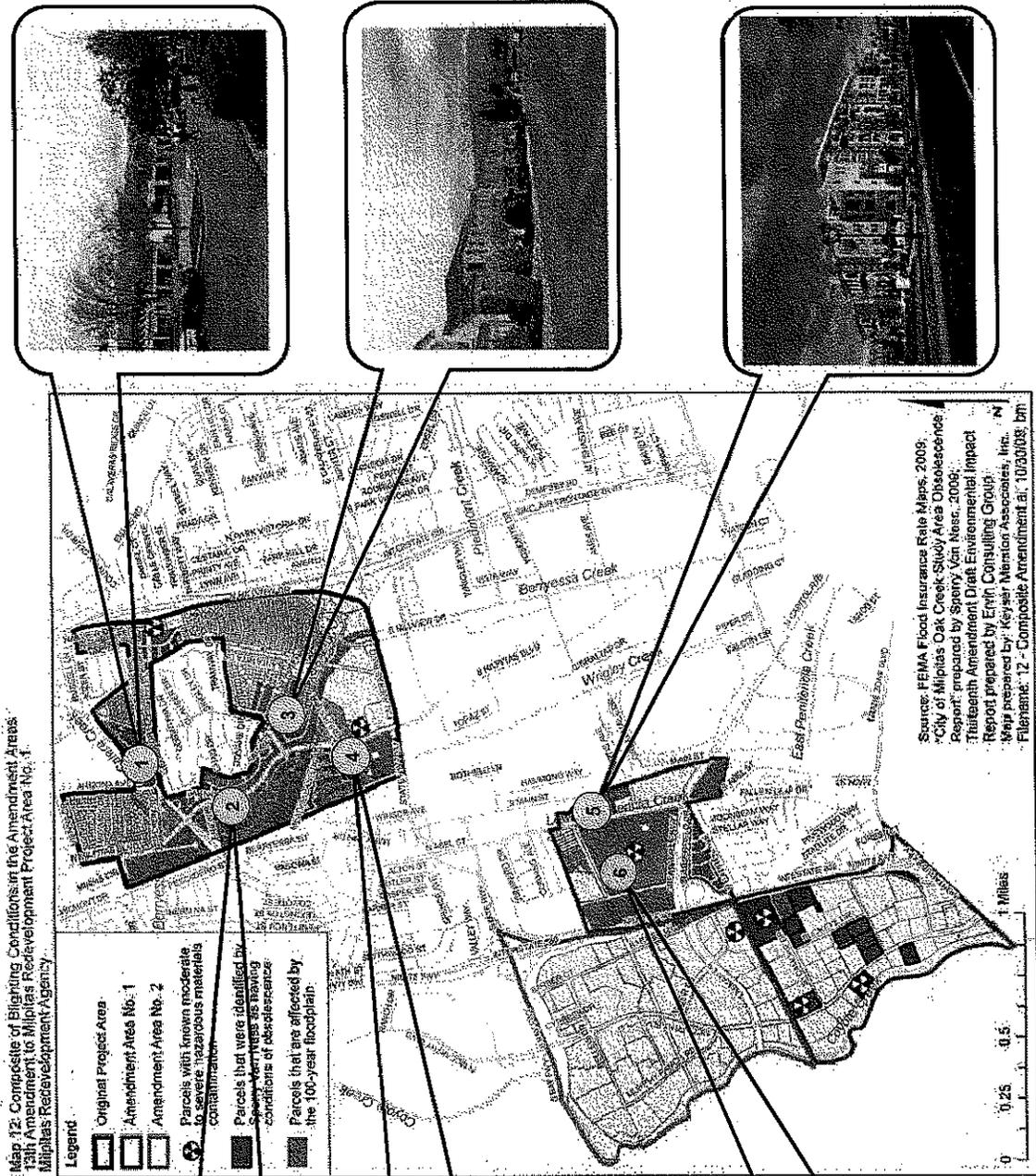
¹⁶ The Agency would need to conduct a more comprehensive survey to substantiate any determination that these parcels are in fact blighted.

Figure 3
Potentially Blighted Parcels - Original Project Area
Milpitas Plan Amendment Review 2010



	<p>Original Project Area</p> <p>Potentially Blighted Parcels</p>	<p>Note: Potentially blighted parcels identified based on March 2010 windshield survey by Seifel Consulting. Project Area boundaries indicate the general location, not the precise legal boundary.</p>
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Figure 4
Photographs of Typical Conditions Observed in Amendment Areas



Note: Photo locations superimposed on Map 12 from Report to Council. The Report to Council does not include Midtown (Amendment Area No. 3) in its analysis of blighting conditions.

3. Insufficient Documentation of Blight in the Amendment Areas

The proposed SB 211 Amendment, TI Cap Amendment and Bonded Indebtedness Cap Amendment (collectively, the Fiscal Plan Amendments) to the Amendment Areas are considered major amendments under the CRL, and would significantly increase the total amount of tax increment revenues that the Agency will be allowed to receive. Therefore, the Agency must follow the same process as for a new plan adoption, including providing a description in the Report to Council of the physical and economic conditions in the project area, per CRL Section 33344.5(b).

In addition, as described above, the CRL has specific requirements related to the amendments proposing to increase fiscal limits, increase tax increment collection limits, and extend plan effectiveness and tax increment collection time limits. The Report to Council fails to provide the necessary documentation of remaining significant physical and economic blight in the Amendment Areas to justify the Fiscal Plan Amendments.

a. Insufficient Documentation of Physical Conditions of Blight

The Report does not present specific, quantifiable evidence that physical blight remains in the Amendment Areas. Following are definitions of the CRL factors of physical blight, along with an assessment of the documentation of the condition as contained in the Reports.

(1) Unsafe or Unhealthy Buildings

Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities. CRL 33031(a)(1)

Analysis of Report to Council Findings

The Report to Council's documentation of unsafe or unhealthy buildings does not include a recent parcel-by-parcel survey of buildings in the Amendment Areas. Rather, the Report's documentation of blight relies solely on the fact that portions of the Amendment Areas are located in a 100-year floodplain. The map of areas that would potentially be affected by flooding from local creeks shows several parcels where Seifel observed new, upscale single-family home subdivisions; a large parcel in Amendment Area No. 1 where the Elmwood Correctional Facility is located; a vacant lot along the Great Mall Parkway; and the vibrant shopping malls in the Original Project Area described in Section II.B.2 above. The Report presents no specific evidence that these buildings are unsafe and/or unhealthy to occupy and no documentation that these are blighted buildings.

The fact that many of the parcels included in the 100-year floodplain include new residential and commercial structures as well as important County facilities suggests that flood conditions are not creating unsafe and unhealthy building conditions and that further redevelopment assistance may not be needed in these portions of the Amendment Area. The Report does not provide information as to whether these developments, which appear to be constructed after the redevelopment area was established, were built on raised pads above the 100-year levels or whether redevelopment assistance was necessary for these developments to be financially feasible.

Furthermore, the Report does not show that the floodplain affects Amendment Area No. 2 in any way.

Conclusion

The Report to Council does not adequately document remaining unsafe or unhealthy buildings in the Amendment Areas.

(2) Conditions Hindering Viable Use or Capacity of Buildings or Lots

Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards. CRL 33031(a)(2)

Analysis of Report to Council Findings

The Report to Council bases its entire analysis of this blighting condition on an inventory of 78 manufacturing and R&D properties within the Oak Creek area (Amendment Area No. 1) prepared by Sperry Van Ness, which analyzes the “functionality and competitiveness” of these properties based on a number of factors, including:

- Construction materials
- Building age
- Electrical power
- Ceiling height
- Sprinklers
- Building size
- Parking availability
- Truck loading
- Parcel size
- Column spacing

Of the 78 properties surveyed, the Report to Council states that 12, or 15 percent, “were classified as obsolete.” However, all of these 12 properties are classified by Sperry Van Ness as only having “moderate obsolescence.”¹⁷ None of the properties surveyed by Sperry Van Ness contained “significant obsolescence,” which was a rating applied to a few of the properties in the Added Area, as described above in Section II.A.2.a.(2). The most commonly given “key obsolescence factors” used to rate these properties were “single occupancy building design with limited divisibility” and “deficient windowline.” These are not characteristics that necessarily prevent or substantially hinder the viable use or capacity of buildings, and the Report does not provide evidence to show that they do in the Oak Creek area. The Report states that these conditions “hinders the ability to readapt the buildings” to new uses, without any evidence of how much it would cost to make these building improvements, or why the private sector alone could not make these adaptations without redevelopment assistance.

The Report to Council’s analysis of this blighting condition is also limited to the Oak Creek area in Amendment Area No. 1. The Report does not explain why the analysis does not extend to other portions of the Amendment Areas. A more thorough analysis would analyze business vacancies throughout the Amendment Area, or at least vacancies in the parcels that contain remaining blight to determine whether the building designs have substantially hindered their viable use or capacity, and thereby make a more direct connection between *significant* obsolescence factors and the

¹⁷ Ibid, Appendix E.

vacancy rates within a reasonable established boundary. The Report offers no justification as to why it only analyzed this minor portion of the Amendment Area.

The statement that 15 percent of properties in one small subsection of the Amendment Area are only *moderately* obsolescent does not adequately document this blighting condition, particularly when there is little evidence to support the assertion that even this small segment meets the statutory requirement for this blight condition.

Conclusion

The Report to Council does not adequately document conditions hindering the viable use or capacity of buildings or lots under the CRL definition for this blighting condition.

(3) Adjacent or Nearby Incompatible Uses

Adjacent or nearby incompatible land uses that prevent the development of those parcels or other portions of the project area. CRL 33031(a)(3).

The Report does not state that this condition is present in the Amendment Area.

Conclusion

The Report to Council does not document this blighting condition.

(4) Small or Irregular Lots in Multiple Ownership

The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions. CRL 33031(a)(4)

The Report does not state that small or irregular lots in multiple ownership constitute a blighting condition in the Amendment Area.

Conclusion

The Report to Council does not document this blighting condition.

b. Insufficient Documentation of Economic Conditions of Blight

The Report to Council does not present specific, quantifiable evidence that economic blight remains in the Amendment Area. Following are definitions of the CRL factors of economic blight, along with an assessment of the documentation of the condition as contained in the Report to Council.

(1) Depreciated or Stagnant Property Values

Depreciated or stagnant property values. CRL 33031(b)(1)

The Report does not state that depreciated or stagnant property values constitute a blighting condition in the Amendment Area.

Conclusion

The Report to Council does not document this blighting condition.

(2) Impaired Property Values Due to Hazardous Wastes

Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459). CRL 33031(b)(2)

Analysis of Report to Council Findings

The CRL definition of this blighting condition requires the presence of two interrelated factors in a project area: hazardous wastes and impaired property values due *in significant part* to those hazardous wastes. This is clear from the fact that this condition constitutes *economic*, not *physical*, blight. Thus, the onus is on the Report to demonstrate not only that hazardous materials are present in the Amendment Areas, but also that they are specifically linked to the impairment of property values. The Report's documentation of this blighting condition amounts to little more than a laundry list of hazardous materials present in Amendment Area properties, with vague statements such as "Agency assistance may be needed in coordinating the cleaning of contaminated sites, the cost of which can greatly reduce the value of the land."¹⁸ The Report does not offer any supporting evidence establishing the level of remediation that would be required, how that remediation would impair local property values, or that this issue could not be addressed by private enterprise or normal government action, making the use of redevelopment powers necessary to address this issue. No specific, quantifiable evidence is given for the impairment of property values in the Amendment Area by the presence of hazardous wastes.

Conclusion

The Report does not adequately document the economic blighting condition impaired property values due to hazardous wastes. While the Report states that seven sites in the Added Area have moderate to severe contamination, it does not demonstrate that the sites' property values are impaired by the presence of hazardous waste. In fact, the analysis does not include any information on property values—such as assessed values, sales data, property turnover, or assessment appeals information—that would indicate impaired values.

(3) Indicators of Economically Distressed Buildings

Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings. CRL 33031(b)(3)

Analysis of Report to Council Findings

The analysis in the Report to Council states that abnormally high business vacancies and abnormally low lease rates constitute blight in the Amendment Areas. However, the Report also acknowledges that factors such as distance from the Silicon Valley "prime areas" and the current economic downturn strongly influence lease and vacancy rates in the Amendment Areas.¹⁹ Clearly, the Agency would have no ability to change either of these factors through redevelopment assistance. The Report to Council does not demonstrate that physical blighting conditions are a primary cause for the lower lease rates or higher vacancy rates in the areas. According to the Agency's own consultant, only 15 percent of the buildings in the small subset of

¹⁸ Ibid, p. 81.

¹⁹ Ibid, p. 82.

the Amendment Area (Oak Creek area) exhibited *moderate* obsolescence, and none of the buildings in the area exhibited *significant* obsolescence.

The Report to Council's statement that hotel room vacancies and low room rates constitute blight is also not well supported. The Report's only example of a hotel that has a lower room rate than the average for the City of Milpitas is actually not located in the Amendment Areas, but in the proposed Added Area. The Report provides no evidence that the vacancy rates and room rates in Amendment Area hotels are any lower than citywide rates. The Report's statement that transit occupancy tax (TOT) and occupancy rates have decreased is based on City and industry-wide trends, not blighting conditions in the Amendment Area. In fact, Table 17 (p. 84) of the Report to Council shows that the City collects more in TOT from Amendment Area hotels than it does from hotels in the "Balance of the City" even though there are *fewer* hotels in the Amendment Area. The Report also states, without providing evidence, that the lack of a convention center and other activities to draw guests to the City negatively affects local hotels is part of the reason for the decline in hotel revenue. However, this fact is not relevant, as "lack of a convention center" is not a blighting condition under the CRL, and the Report does not document how or why it is preventing the economic viability of existing lodging facilities in the Amendment Area.

Conclusion

The Report does not adequately document the economic blighting condition of indicators of economically distressed buildings.

(4) Lack of Neighborhood Commercial Facilities

A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions. CRL 33031(b)(4)

The Report does not state that this condition is present in the Amendment Area.

Conclusion

The Report to Council does not document this blighting condition.

(5) Residential Overcrowding

Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, "overcrowding" means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations. CRL 33031(b)(5)

The Report does not state that this condition is present in the Amendment Area.

Conclusion

The Report to Council does not document this blighting condition.

(6) Problem Businesses

An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems. CRL 33031(b)(6)

The Report does not state that problem businesses constitute a blighting condition in the Amendment Area.

Conclusion

The Report to Council does not document this blighting condition.

(7) A High Crime Rate

A high crime rate that constitutes a serious threat to the public safety and welfare. CRL 33031(b)(7)

The Report does not state that problem businesses constitute a blighting condition in the Amendment Area.

Conclusion

The Report to Council does not document this blighting condition.

III. Lack of Compliance with SB 211 Amendment Requirements

CRL Section 33333.10 authorizes the extension of time limits for Redevelopment Plans adopted prior to 1994, if many conditions are met.

- (a) (1) Notwithstanding the time limits in subdivisions (a) and (b) of Section 33333.6, an agency that adopted a redevelopment plan on or before December 31, 1993, may, pursuant to this section, amend that plan to extend the time limit on effectiveness of the plan for up to 10 additional years beyond the limit allowed by subdivision (a) of Section 33333.6. (2) In addition, the agency may, pursuant to this section, amend that plan to extend the time limit on the payment of indebtedness and receipt of property taxes to be not more than 10 years from the termination of the effectiveness of the redevelopment plan as that time limit has been amended pursuant to paragraph (1).*
- (b) A redevelopment plan may be amended pursuant to subdivision (a) only after the agency finds, based on substantial evidence, that both of the following conditions exist: (1) Significant blight remains within the project area. (2) This blight cannot be eliminated without extending the effectiveness of the plan and the receipt of property taxes.*
- (c) As used in this section: (1) "Blight" has the same meaning as that term is given in Section 33030. (2) "Significant" means important and of a magnitude to warrant agency assistance. (3) "Necessary and essential parcels" means parcels that are not blighted but are so necessary and essential to the elimination of the blight that these parcels should be included within the portion of the project area in which tax increment funds may be spent. "Necessary and essential parcels" are (A) parcels that are adjacent to one or more blighted parcels that are to be assembled in order to create a parcel of adequate size given present standards and market conditions, and (B) parcels that are adjacent or near parcels that are blighted on which it is necessary to construct a public improvement to eliminate the blight.*
- (d) For purposes of this section, significant blight can exist in a project area even though blight is not prevalent in a project area. The report submitted to the legislative body pursuant to Section 33352 shall identify on a map the portion of the project area in which significant blight remains.*

(e) After the limit on the payment of indebtedness and receipt of property taxes that would have taken effect but for the amendment pursuant to this section, except for funds deposited in the Low and Moderate Income Housing Fund pursuant to Section 33334.2 or 33334.6, the agency shall spend tax increment funds only within the portion of the project area that has been identified in the report adopted pursuant to Section 33352 as the area containing blighted parcels and necessary and essential parcels.

A. Lack of Substantial Evidence of Significant Remaining Blight

As described in Section II.B above, the Agency's Report to Council does not provide substantial evidence of significant remaining blight in the Amendment Areas to justify the SB 211 ten-year extension. In fact, the Report to Council does not provide adequate evidence of any of the physical or economic conditions defined by the CRL.

B. Lack of Substantial Evidence that Blight Cannot Be Eliminated Without SB 211 Amendment

In addition to the inadequate documentation of the presence of significant remaining blight in the Amendment Area, the Report to Council does not provide substantial evidence that the described conditions could not be eliminated without the amendment to extend time limits by ten years. Section V.F. of the Report to Council on the "Need for Proposed Amendments" gives only vague reasons for extending the time limits on plan effectiveness and tax increment collection by ten years. The Report states specifically that:²⁰

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 Areas No. 1 and No 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.

Aside from simply stating the fact that the SB 211 would provide additional needed time, the Report's evidence for the need for the additional ten years is twofold: (1) the Plan effectiveness remaining in the Original Project Area and Amendment Areas No. 1 and 2 are 9, 12 and 15 years, respectively; and (2) projects cannot be completed under the current economic climate. The first reason provided by the Report is a circular argument: the Agency needs more time because the time limits are close to expiring. No evidence is provided as to why the Agency's Redevelopment

²⁰ Ibid, p. 118.

Program cannot be accomplished in 9 years in the Original Project Area, 12 years in Amendment Area No. 1 and 15 years in Amendment Area No. 2.

The second statement, that the Agency cannot complete its blight alleviation activities due to the current economic climate, is one which, without further justification, could apply to all redevelopment agencies in California. Surely the intent of SB 211 was not to provide a blanket permission to extend time limits on all pre-1994 redevelopment plans, even in case of a severe economic downturn. Otherwise the legislation would not have required such extensive documentation of remaining blight. If there are specific projects that the Agency will not be able to undertake due to the current financial crisis, and those projects are crucial to the elimination of blight, no such evidence has been documented. Other sections of the Report to Council that address the need for this amendment, such as Sections I.B. and V.H., similarly, do not give substantial evidence for why blight cannot be alleviated without the ten-year extensions.

C. Map of Blighted Parcels, Parcels No Longer Blighted and Necessary and Essential Parcels

The Report to Council fulfills this requirement by providing a map (Map 13, p. 92) that demonstrates blighted parcels, parcels no longer blighted and parcels that are necessary and essential for the elimination of blight in the Amendment Areas.

D. Expenditures on Parcels Other than Those Identified as Blighted or Necessary and Essential for Elimination of Blight

The CRL requires that agencies that propose to extend their time limits on plan effectiveness and tax increment collection by ten years pursuant to SB 211 must target their expenditures during that ten-year extension on parcels shown on a map in the Report to Council to be blighted or necessary and essential to the elimination of blight. The Redevelopment Program described in the Report, and analyzed in Section III, below, makes no such distinction. The Report does not indicate when certain expenditures would be made, or whether all expenditures of non-housing funds during the ten-year extension period would be made within the specified parcels.

IV. Lack of Nexus Between Blight and Agency's Redevelopment Program

As discussed in Section II, above, the Report to Council does not present sufficient or convincing evidence of substantial and prevalent blight in the proposed Added Area or of remaining blight in the Amendment Areas, as "blight" is currently defined under the CRL. The Agency's Redevelopment Program for the Amendment Areas and the proposed Added Area, described in Chapter IV of the Report to Council, is also not in compliance with the CRL requirement that it be primarily directed at alleviating the blighting conditions documented by the Agency. Specifically, Section 33352(a) states that the Report to Council should describe:

The reasons for the selection of the project area, a description of the specific projects then proposed by the agency, a description of how these projects will improve or alleviate the conditions described in subdivision (b).

The Agency divides its programs into four program categories: Transportation and Public Infrastructure Improvement Program, Community Infrastructure Improvements Program, Economic Stimulation Program, and Housing Program. Tables 1 and 2 below analyze the Agency's Transportation and Public Infrastructure Program and Community Infrastructure Program, which are the portions of the Redevelopment Program for which the Agency presents specific projects and activities. The tables show how the Agency relates, or fails to relate, these proposed projects and activities to what is reported as blight in the proposed Added Area and Amendment Areas.²¹ Although the Report to Council also includes a Redevelopment Program for the Midtown Area, no analysis of blighting conditions (or of areas no longer blighted) for that area is included in the Report, even though such an analysis is required under the CRL.

A. Lack of Documentation on Infrastructure Inadequacies

The Report does not present specific documentation as to why infrastructure is deficient, nor does it demonstrate how existing infrastructure or water or sewer utilities impede the Amendment Areas or the Added Area. Inadequate public improvements or inadequate water or sewer utilities are not discussed in Chapter III, A. Blighting Conditions in the Proposed Added Area, Chapter B, Blighting Conditions in the Amendment Areas, or Chapter C, Summary of Blighting Conditions.

However, over 80% of the Non-Housing Redevelopment Program costs are comprised of transportation, community and public infrastructure improvements, as shown in Table 3. The description of the Redevelopment Program cites redevelopment activities such as major street rehabilitation, water and sewer system pipe and pump station replacements, seismic back bone installation for water systems, community facilities improvements, upgrades to public buildings and facilities to meet current codes. However, the blight analysis has no discussion of the existence of inadequate public improvements or inadequate water or sewer utilities.

The only category of infrastructure expenditures that can be linked with what the Report identifies as blight, are the expenditures on storm drainage and flood control. This condition, which makes up much of the Report's demonstration of the presence of physical blight in the Amendment Areas and the proposed Added Area, makes up only about 11 percent of the total cost for the Redevelopment Program (p. 112). The Report's stated goal that "the intent of the flood control improvements is to remove all properties from the 100-year floodplain" is confusing, as it is unclear how the Agency would "remove" these properties.²² The Report does not make clear how specific activities, such as making improvements to various pump stations throughout the City, are directly related to improving those areas identified as blighted. Specifically, the Report provides no evidence of how these improvements will decrease susceptibility to flooding in these areas, or whether the location of certain buildings within the floodplain makes them unsafe or unhealthy to occupy, particularly as single family homes and thriving shopping malls are prevalent throughout much of the areas shown in the Report's map as being inside the floodplain.

²¹ As discussed above, the Report to Council does not adequately document blighting conditions sufficient to meet the CRL definitions for "blight" required to add new territory into redevelopment or increase time and/or fiscal limits on the collection of tax increment.

²² Report to Council, p. 95.

Table 1
Review of Milpitas Transportation and Public Infrastructure Redevelopment Program
Thirteenth Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1

Added Area	Planned Expenditure	Estimated Cost	Category	Review of Analysis of Nexus Between Blight and Redevelopment Program
Montague/1-680 interchange, widening, sidewalks, pedestrian ramps, signs, signals, landscaping, lighting		\$ 100,000,000	Street Improvements	RTC does not document inadequate transportation improvements.
Major street rehabilitation including roads, sidewalks, pedestrian ramps, signs, signals, lighting		\$ 82,000,000	Street Improvements	RTC does not document adequate transportation improvements.
SCVWD Service Area Water Tank and Pump Station (2012-15)		\$ 40,000,000	Water System	RTC does not document adequate water or sewer utilities. Location not indicated.
Berrycosa Creek 100-year flood protections, new bridges		\$ 40,000,000	Flood Control	Creeks affect large areas outside of Project Area. RTC does not demonstrate \$40M for flood control is amount allocable for flood control within Added Area.
Town Center Business Park water pipeline replacement		\$ 15,500,000	Water System	RTC does not document inadequate water or sewer utilities.
Town Center Business Park sewer pipeline replacement		\$ 12,500,000	Sewer Improvements	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Gibraltar Tank and Pump Station equipment replacement/seismic improvement		\$ 6,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Ames/Sinclair/Wrightley recycled water line extension		\$ 5,000,000	Recycled Water	RTC does not document inadequate water or sewer utilities. This activity appears to be have been allocated funding twice (see above for \$2M allocation).
Curtis Well and backbone pipeline to Gibraltar Pump Station		\$ 3,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Yosemite Drive/Vista Way water pipeline replacement		\$ 2,500,000	Water System	RTC does not document inadequate water or sewer utilities.
SCVWD Service Area Water Tank and Pump Station (2053)		\$ 2,500,000	Water System	RTC does not document inadequate water or sewer utilities.
SCVWD Service Area Water Tank and Pump Station (2053)		\$ 2,500,000	Water System	RTC does not document inadequate water or sewer utilities.
Milpitas Blvd water pipeline replacement/seismic retrofit		\$ 2,500,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Calaveras Blvd water pipeline replacement/seismic retrofit		\$ 2,500,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Wrightley Pump Station pump, motor, electrical infrastructure and standby generator replacements		\$ 2,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Dempsey Area Water System water pipeline replacement		\$ 2,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Dempsey Area sewer pipeline replacement		\$ 2,000,000	Sewer Improvements	RTC does not document inadequate water or sewer utilities.
Milpitas Blvd recycled water line extension		\$ 2,000,000	Recycled Water	RTC does not document the inadequacies of infrastructure that CIP will improve.
Capital Improvement Program (2009-2014) costs allocable to the Added Areas		\$ 1,000,000	CIP	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Gibraltar area water pipeline replacement/seismic retrofit		\$ 1,000,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Los Coches Avenue water pipeline replacement/seismic retrofit		\$ 1,000,000	Water System	Creeks also located in areas outside of Added Area. RTC does not demonstrate \$1M for flood control is amount allocable for flood control within Added Area.
Road and Wrightley Creek channel enlargement, alignment improvement, bridges/culvert replacement		\$ 1,000,000	Flood Control	RTC does not document inadequate water or sewer utilities.
Adams Water System water pipeline replacement		\$ 500,000	Water System	RTC does not document inadequate water or sewer utilities.
SCVWD transmission pipeline turnout installation		\$ 500,000	Water System	RTC does not document inadequate water or sewer utilities.
Adams Lift Zone sewer pipeline replacement		\$ 500,000	Sewer Improvements	RTC does not document inadequate water or sewer utilities.
Los Coches Creek storm pipe replacement and flood prevention		\$ 500,000	Flood Control	RTC does not document inadequate water or sewer utilities.
Los Coches Avenue/Milpitas Blvd storm pipe and inlet improvements		\$ 500,000	Flood Control	RTC does not document inadequate water or sewer utilities.
Total Projected Costs		\$ 332,000,000		
Ampliment Areas				
	Planned Expenditure	Estimated Cost	Category	Review of Analysis of Nexus Between Blight and Redevelopment Program
Calaveras Blvd widening, bridge replacement, including sidewalks, streetscape, signals, bike lanes		\$ 78,000,000	Street Improvements	RTC does not document inadequate transportation infrastructure or describe what blight will be alleviated by improvements.
Major street rehabilitation including roads, sidewalks, pedestrian ramps, signs, signals, lighting		\$ 50,000,000	Street Improvements	RTC does not document inadequate transportation infrastructure or describe what blight will be alleviated by improvements.
Berrycosa, Calera, and Tubaritos Creeks 100-year flood protections		\$ 50,000,000	Flood Control	Creeks affect large areas outside of Project Area. RTC does not demonstrate \$50M is amount allocable for flood control within Amendment Areas.
Town Center Water System pipe, valve, hydrant and other replacements		\$ 25,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Town Center sewer system pipe replacement		\$ 17,000,000	Sewer Improvements	RTC does not document inadequate water or sewer utilities.
Water System seismic backbone installation		\$ 15,000,000	Water System	RTC does not document the inadequacies of infrastructure that CIP will improve.
Capital Improvement Program (2009-2014) costs allocable to the Amendment Areas		\$ 10,000,000	CIP	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Sewer system seismic backbone installation		\$ 8,000,000	Sewer Improvements	RTC does not document inadequate water or sewer utilities.
Oak Creek Business Park water system pipeline replacement		\$ 7,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Oak Creek Business Park sewer system pipe replacement		\$ 6,500,000	Sewer Improvements	RTC does not document inadequate water or sewer utilities.
North Main Street utility relocation & improvement		\$ 6,024,910	Street Improvements	Definition of CRL narrowed by BS 1206 to inadequate sewer or water utilities. Other utilities ineligibile.

Amendment Areas continued		Review of Analysis of Nexus Between Blight and Redevelopment Program	
Planned Expenditure	Estimated Cost	Category	
SCVWD Service Area Water Tank and Pump Station equipment replacement and seismic improvement (phase 2)	\$ 6,000,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
North Main Streetscape	\$ 5,150,000	Street Improvements	RTC does not establish nexus to blight alleviation.
New Santa Clara Valley Water District (SCVWD) Service Area Water Tank and Pump Station	\$ 5,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Main Sewer Pump Station (2030) equipment replacement and other improvements	\$ 5,000,000	Sewer Improvements	RTC does not document inadequate water or sewer utilities.
Oak Creek Business Park (Amended Area No. J) recycled water main replacement	\$ 5,000,000	Recycled Water	RTC does not document inadequate water main. Unclear as to whether \$5M is amount allocable for flood control within Amendment Areas.
Gibraltar Tank and Pump Station (2030) equipment replacement and seismic improvement	\$ 3,000,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Gibraltar Tank and Pump Station (2030) equipment replacement and seismic improvement	\$ 3,000,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Town Center recycled water main replacement	\$ 3,000,000	Recycled Water	RTC does not document inadequate water main. Unclear as to whether \$3M is amount allocable for flood control within Amendment Areas.
Berrysa Pump Station and Hidden Lake pump replacements, flood protections and other improvements	\$ 3,000,000	Flood Control	Unclear whether \$3M is amount allocable for flood control within Amendment Areas.
SCVWD Service Area Water Tank and Pump Station (2033) equipment replacement and seismic improvement	\$ 2,500,000	Water System	RTC does not document inadequate water or sewer utilities.
Great Mall 2001 Amendment Area sewer system pipe replacement	\$ 2,500,000	Sewer Improvements	RTC is unclear as to whether this is an improvement in Project Area 1 area of remaining blight or whether it is located in Great Mall.
Oak Creek pump station replacement	\$ 2,200,000	Flood Control	RTC does not document inadequate water or sewer utilities.
Curtis Well and backbone pipeline to Gibraltar Pump Station	\$ 2,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Berrysa pump station improvements	\$ 1,800,000	Flood Control	RTC does not document inadequate water or sewer utilities.
Murphy Pump Station pump replacements, flood protections and other improvements	\$ 1,500,000	Flood Control	Unclear as to whether \$1.5M is amount allocable for flood control within Amendment Areas.
Light rail median landscaping	\$ 1,416,000	Street Improvements	RTC does not demonstrate how activity will alleviate blight.
Bellew Pump Station pump replacements and other improvements	\$ 1,000,000	Water System	RTC does not document inadequate water or sewer utilities.
Great Mall 2001 Amendment Area water system replacement	\$ 1,000,000	Water System	RTC is unclear as to whether this is an improvement in Project Area 1 area of remaining blight or whether it is located in Great Mall.
Main Sewer Pump Station site relocation	\$ 1,000,000	Water System	RTC does not document inadequate water or sewer utilities. Location not indicated.
Calaveras Blvd Water Line Seismic Retrofit	\$ 1,000,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Venus Sewer Pump Station (2030) equipment replacement and seismic improvements	\$ 1,000,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Town Center recycled water main replacement	\$ 1,000,000	Recycled Water	RTC does not document inadequate water main. Unclear as to whether \$1M is amount allocable for flood control within Amendment Areas. This activity appears to be have been allocated funding twice (see above for \$3M allocation).
Oak Creek Pump Station pump replacements, flood protections and other improvements	\$ 1,000,000	Flood Control	Unclear as to whether \$1M is amount allocable for flood control within Amendment Areas. This activity appears to be have been allocated funding twice (see above for \$2M allocation).
SCVWD transmission pipeline turnout installation	\$ 800,000	Water System	RTC does not document inadequate/seismically susceptible water or sewer utilities.
Calaveras Blvd pedestrian overcrossing	\$ 600,000	Street Improvements	RTC does not document inadequate transportation infrastructure/circulation deficiencies.
BART extension planning and coordination	\$ 290,000	Street Improvements	Report to Council does not document inadequate transportation improvements.
PRV replacement for Curtis Well / backbone pipeline to Gibraltar Pump Station	\$ 200,000	Water System	RTC does not document inadequate water or sewer utilities.
North Milpitas Blvd soundwall renovation	\$ 200,000	Street Improvements	RTC does not document link to remaining blight.
In-ground water clarifiers at fire stations	\$ 150,000	Water System	RTC does not document inadequate water or sewer utilities.
Dixon Landing/1-880 and I-237/I-880 interchanges	\$ 126,000	Street Improvements	RTC does not document inadequate transportation improvements/circulation deficiencies.
Minor gateway signs	\$ 30,000	Street Improvements	
Total Projected Costs			\$ 333,986,910

Midtown	Planned Expenditure	Estimated Cost	Category	Review of Analysis of Nexus Between Blight and Redevelopment Program
	Oak Creek Business Park sewer pipeline replacement	\$ 8,000,000	Sewer System	RTC does not document inadequate water or sewer utilities.
	Oak Creek Business Park water pipeline replacement	\$ 5,000,000	Water System	RTC does not document inadequate water or sewer utilities.
	Capital Improvement Program (2009-2014) costs allocable to Midtown	\$ 3,000,000	CIP	RTC does not document the inadequacies of infrastructure that CIP will improve.
	Oak Creek Business Park recycled water main replacement	\$ 2,000,000	Recycled Water	RTC does not document inadequate water or sewer utilities.
	Total Projected Costs	\$ 18,000,000		
	Total Projected Costs for All Areas	\$ 683,986,910		

Note: Costs are in current dollars.

Source: Report to the City Council on 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, Seifal Consulting Inc.

Table 2
Review of Milpitas Community Infrastructure Redevelopment Program
Thirteenth Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 (Added Area, Amendment Areas and Midtown)

Planned Expenditure	Estimated Cost	Review of Analysis of Nexus Between Blight and Redevelopment Program
Various community facilities improvements	\$ 49,000,000	RTC does not document community facility inadequacies.
Conference center renovation	\$ 5,000,000	RTC does not document conference center as blighted or requiring redevelopment assistance.
Milpitas Sports Center FEMA requirement upgrades / parking lot and traffic flow reconfiguration	\$ 1,827,000	RTC does not document inadequacies or FEMA requirements.
Public building and facility improvements to meet current code requirements	\$ 924,000	RTC does not document lack of code compliance. Public buildings are not cited as unsafe or unhealthy.
Public Works yard parking, security, stormwater system improvements	\$ 510,000	Public Works Yard is located at 1265 North Milpitas Boulevard, outside the Project Area.
Community Center improvements to meet current code requirements	\$ 500,000	RTC does not document lack of code compliance. RTC does not document Community Center as not meeting current code requirements or as an unsafe or unhealthy.
Total Community Infrastructure Costs for All Areas	\$ 57,761,000	

Note: Costs are in current dollars.

Source: Report to the City Council on 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, Setiel Consulting Inc.

**Table 3
Non-Housing Redevelopment Project Costs by Area
Thirteenth Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1**

	Amendment Areas ^a	Midtown	Proposed Added Area	Total
Transportation & Public Infrastructure^b				
Approved CIP (2009-2014)	\$ 10,000,000	\$ 3,000,000	\$ 3,000,000	\$ 16,000,000
Storm Drainage & Flood Control	\$ 105,000,000	-	\$ 57,000,000	\$ 162,000,000
Water System Improvements	\$ 141,000,000	\$ 9,000,000	\$ 105,000,000	\$ 255,000,000
Sewer Improvements	\$ 87,000,000	\$ 15,000,000	\$ 20,000,000	\$ 122,000,000
Street Reconstruction & Rehabilitation	\$ 251,000,000	-	\$ 234,000,000	\$ 485,000,000
Recycled Water	\$ 17,000,000	\$ 4,000,000	\$ 9,000,000	\$ 30,000,000
Subtotal	\$ 611,000,000	\$ 31,000,000	\$ 428,000,000	\$ 1,070,000,000
Community Infrastructure^c	\$ 64,000,000	\$ 22,000,000	\$ 21,000,000	\$ 107,000,000
Economic Stimulation^d	\$ 140,000,000	\$ 49,000,000	\$ 46,000,000	\$ 235,000,000
Total Projected Costs for All Areas	\$ 815,000,000	\$ 102,000,000	\$ 495,000,000	\$ 1,412,000,000

- a. Amendment Areas defined as the Original Project Area, Amendments No. 1 and No. 2.
b. Costs provided by City Public Works Department. Estimates have been adjusted by KMA to account for inflation. It was necessary to make to make a downward adjustment to the program identified within the Added Area due to constraints on available revenues.
c. Estimated cost by City adjusted by KMA to account for inflation. Community infrastructure improvements assumed to be of benefit to all areas and costs have been allocated based on available revenue.
d. The Agency is assumed to allocate remaining funds after Transportation and Public Infrastructure costs and Community Infrastructure to Economic Stimulation programs. Allocation by area based on available revenue.

Source: Report to the City Council on 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, Seifel Consulting Inc.

B. Conclusion

The Agency's Redevelopment Program is comprised largely of capital improvement projects costing an estimated \$1.4 billion (not including the costs of servicing bonds required to fund many of these projects). The only analysis presented of the connection between the Redevelopment Program and what the Report to Council identifies as blight is Table 20 of the Report (p. 94), which cursorily links the various components of the Redevelopment Program with each blighting condition without further explanation. In addition, although the vast majority of the Redevelopment Program is aimed at upgrading or installing public improvements, the Report to Council presents no documentation on inadequacies of public improvements or water or sewer utilities other than flooding conditions. Given the lack of a clear nexus between what the Report to Council identifies as blight in the proposed Added Area and the Amendment Areas, and the Redevelopment Program described to alleviate those identified conditions, the Report to Council does not adequately meet the requirements of the CRL.

The Report provides no evidence as to why redevelopment generally, and tax increment financing specifically, would be an appropriate or necessary tool to make public improvements that are generally provided by a city's general fund, a flood control district or other sources of revenue.

V. Required Maps and Description of Midtown Area not Included

For certain types of plan amendments, the CRL requires the preparation of maps containing specific information.

A. CRL §33451.5(c) Map

Section 33451.5. (a) This section shall apply only to proposed plan amendments that would do any of the following: (1) Change the limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency. (2) Change the limit on the amount of bonded indebtedness that can be outstanding at one time. (3) Change the time limit on the establishing of loans, advances and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670. (4) Change the time limit on the effectiveness of the redevelopment plan. (5) Change the boundaries of the project area. (6) Merge existing project areas.

Section 33451.5(c) No later than 45 days prior to the public hearing on a proposed plan amendment by the agency or the joint public hearing by the agency and the legislative body, the agency shall prepare a report that contains all of the following: (1) A map of the project area that identifies the portion, if any, of the project area that is no longer blighted, the portion of the project area that is blighted, and the portion of the project area that contains necessary and essential parcels for the elimination of the remaining blight. (2) A description of the remaining blight...

Given that the proposed Plan Amendments would change the tax increment and bonded indebtedness limits, the limit on plan effectiveness and the project area boundaries, the map

required by Section 33451(c) must be prepared. And, as the Report to Council serves as the CRL Section 33451.5(c) report, the Report to Council must include the map.

Report to Council Map 13, (p. 92) identifies blighted areas, areas no longer blighted, and areas containing necessary and essential parcels for blight elimination in the Amendment Areas. However, the map does not identify any of these areas in the Midtown, which is a 691-acre area within the Project Area No. 1. The Report to Council states that the Midtown Area "is not required to have a tax increment cap" under the CRL.²³ However, when the agency adopted the 2003 Plan Amendment that included the Midtown Area in Project Area No. 1, it applied the \$2.4 billion tax increment limit to tax increment generated in the Midtown area. Thus, the Plan Amendments would remove the Midtown Area from the limit on tax increment, effectively increasing the limitation on the number of dollars of taxes that may be divided and allocated to the Agency. The Report's assumption that the Midtown Area is exempt from this requirement because it was adopted after December 31, 1993 does not appear to be valid, as CRL Section 33451.5(c) does not make this distinction. Additionally, the Plan Amendments would increase the bonded indebtedness limit for the entire Project Area No.1, which includes the Midtown Area. Therefore, the Report should address this CRL requirement by including a map identifying the entire Project Area.

B. CRL §33354.6(b) Map

For Plan Amendments that propose to increase the cap on tax increment collection, CRL Section 33354.6(b) requires a description of remaining blight and the identification of areas no longer blighted, in addition to other information.

(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 agency.

Map 13 in the Report to Council (p. 92) identifies blighted areas, areas no longer blighted, and areas containing necessary and essential parcels for blight elimination in the Amendment Areas. However, the map does not identify any of these areas in the Midtown Area. The proposed Plan Amendments would remove the Midtown Area from the limit on tax increment, effectively increasing the limitation on the tax increment that may be allocated to the Agency. Thus, the Report to Council should identify and describe areas within the Midtown that have remaining blight and those that are not longer blighted.

²³ Ibid, p. 118.

VI. Conclusion

As described in the sections above, the Report to Council on the proposed Plan Amendments does not adequately address several CRL requirements. Broadly speaking, the Report to Council:

- Does not adequately document physical blighting conditions in the proposed Added Area and in the Amendment Areas (Refer to Table 4);
- Does not adequately document economic blighting conditions in the proposed Added Area and in the Amendment Areas (Refer to Table 4);
- Does not provide the CRL-required maps for blighted areas, areas no longer blighted and necessary and essential parcels (specifically excluding Midtown Area without justification);
- Does not adequately comply with CRL requirements for ten-year plan extensions pursuant to SB 211; and
- Does not demonstrate a nexus between the conditions identified as blight and the Redevelopment Program that is required to address the conditions.

Furthermore, the Report does not demonstrate the necessity for redevelopment as a tool to revitalize the proposed Added Area and the Amendment Areas because the Report does not clearly tie the Agency's proposed redevelopment activities to alleviation of the adverse physical and economic conditions. For example, the Report's discussion of high business vacancies and low lease rates is not related to a specific program designed to alleviate specific physical or economic conditions of the proposed Added Area or Amendment Areas. The Report does not provide an adequate explanation as to why the private sector alone would not be able to make the changes in the building stock that the Report describes as necessary to meet current business needs. In addition, the Report's description of buildings constructed in 100-year floodplains is lacking as it does not show evidence of unsafe or unhealthy conditions, nor does it clarify how redevelopment assistance would be necessary.

In addition, the Report to Council fails to comply with CRL requirements related to the proposed SB 211 Amendment, which would extend time limits on plan effectiveness and tax increment collection in the Amendment Areas. The Report to Council also omits any analysis of existing conditions in the Midtown Area, even though it proposes to increase the Agency's ability to collect tax increment in that area as well as increase the bonded indebtedness limit for the entire Project Area No. 1, which includes the Midtown Area.

In summary, Seifel analysis concludes that the Report to Council does not adequately document existing physical and economic conditions in the existing components of Project Area No.1 or in the proposed Added Area sufficient to make findings of blight.

Table 4
Summary of Seifel's Review of Blight Documentation Presented in Report to Council
Thirteenth Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1

Physical Blighting Conditions	Proposed Added Area		Amendment Areas	
	Included in Report to Council	Review of Report	Included in Report to Council	Review of Report
Unsafe or Unhealthy Buildings §33031(a)(1) <i>Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities</i>	Yes	Report to Council does not adequately document condition.	Yes	Report to Council does not adequately document condition.
Conditions that Inhibit Proper Use of Buildings or Lots §33031(a)(2) <i>Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards.</i>	Yes	Report to Council does not adequately document condition.	Yes	Report to Council does not adequately document condition.
Adjacent or Nearby Incompatible Uses §33031(a)(3) <i>Adjacent or nearby incompatible land uses that prevent the development of those parcels or other portions of the project area.</i>	No	N/A	No	N/A
Substandard Lots in Multiple Ownership §33031(a)(4) <i>The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions.</i>	Yes	Report to Council does not adequately document condition.	No	N/A
Inadequate Public Improvements §33030(c) <i>A blighted area is one that contains the conditions described in subdivision (b) may also be characterized by the existence of inadequate public improvements or inadequate water or sewer utilities.</i>	Not fully described	Report to Council does not adequately document condition.	Not fully described	Report to Council does not adequately document condition.

Economic Blighting Conditions	Proposed Added Area		Amendment Areas	
	Included in Report to Council	Review	Included in Report to Council	Review
Depreciated or Stagnant Property Values §33031(b)(1) <i>Depreciated or stagnant property values.</i>	Yes	Report to Council does not adequately document condition.	No	N/A
Impaired Property Values §33031(b)(2) <i>Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459).</i>	Yes	Report to Council does not adequately document condition.	Yes	Report to Council does not adequately document condition.
Economic Indicators of Distressed Buildings §33031(b)(3) <i>Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings.</i>	Yes	Report to Council does not adequately document condition.	Yes	Report to Council does not adequately document condition.
Serious Lack of Necessary Commercial Facilities §33031(b)(4) <i>A serious lack of necessary commercial facilities normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.</i>	No	N/A	No	N/A
Serious Residential Overcrowding §33031(b)(5) <i>Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, "overcrowding" means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations.</i>	Yes	Report to Council does not adequately document condition.	No	N/A
Problem Businesses §33031(b)(6) <i>An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant in public health, safety, or welfare problems.</i>	No	N/A	No	N/A
High Crime Rate §33031(b)(7) <i>A high crime rate that constitutes a serious threat to the public safety and welfare.</i>	Yes	Report to Council does not adequately document condition.	No	N/A

Appendices

Santa Clara County Milpitas Plan Amendment Review 2010

Appendix A. Photographic Documentation of Existing Conditions

Appendix B. Seifel Consulting Inc. Qualifications

Appendix A:

Photographic Documentation of Existing Conditions

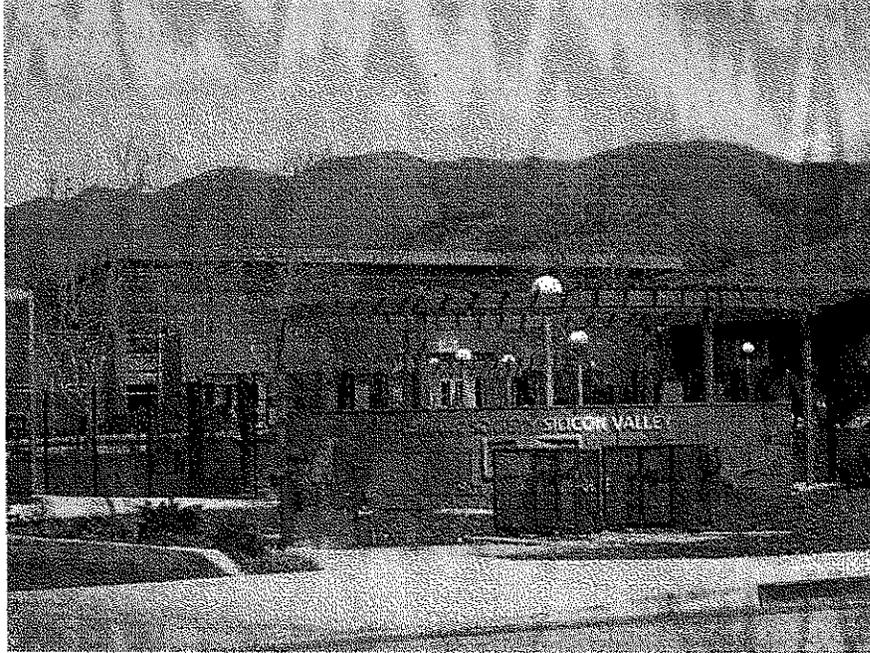
13th Amendment Proposed Added Area



1. South Milpitas Boulevard: SAE Magnetics office building. Recent construction, well maintained, with landscaping.



2. South Hillview Drive: Kovio office building. Of recent construction, with well-maintained landscaping, cars in parking lot indicating employees and economic activity.



5. Ames Avenue: Humane Society Silicon Valley. Modern complex of recent construction with full landscaping.



6. Piper Drive: modern office building with full landscaping.

Amendment Areas



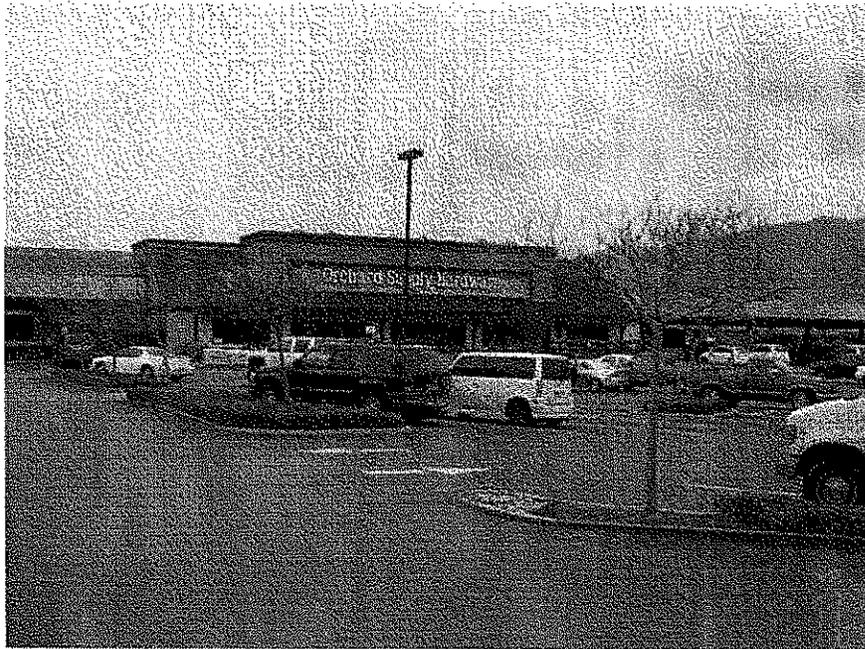
1. Jacklin Road: Nob Hill Foods and other mall businesses. Parked cars, people walking and driving into center indicating economic activity.



2. Erie Circle: well-maintained park and swimming pool; large, recently constructed and well-maintained homes. Source: Google Street View.



3. Near Escuela Parkway: modern, upscale residential neighborhood.



4. Beresford Court: Orchard Supply Hardware and other businesses. Parked cars indicate business activity.



5. South Abel Street: Luna at Terra Serena, recently constructed upscale condominium complex.
Source: resources.newhomesource.com.



6. Near South Abel Street: Elmwood Correctional Complex. Modern, well-maintained buildings.
Source: dnjournal.com.

Appendix B:
Seifel Consulting Inc. Qualifications

Seifel Consulting Inc. Qualifications

Seifel Consulting Inc. (Seifel) is an economic consulting firm providing strategic redevelopment, real estate and urban economic advisory services. We help clients resolve complex urban growth issues, maximize the value of real estate assets, and achieve fiscal goals. Our targeted strategies have helped enhance economic growth and fiscal health in local communities—revitalizing downtowns, former military bases, brownfield sites and urban waterfronts. We have fostered the creation of thriving communities, transit oriented developments and over 100 successful redevelopment projects. Since our founding in 1990, we have completed over 500 consulting assignments.

Seifel provides research, analysis, financial projections, written documentation, project management and consultation in four integrated practice areas:

- **Redevelopment**—Guide the successful creation and implementation of redevelopment plans and projects.
- **Economics**—Evaluate local economies and recommend strategies to enhance economic development and fiscal health.
- **Real Estate**—Lead clients through the analysis, funding and development of sustainable real estate.
- **Housing**—Facilitate housing programs and development that realize a thriving and diverse community.

Seifel has guided redevelopment plan adoptions, amendments and fiscal mergers for over two decades, from feasibility studies to plan adoptions and major amendments (refer to table on following pages for examples of our work). Firm president Libby Seifel is the editor of and a contributing author to California Redevelopment Association (CRA) publications *Community Guide to Redevelopment* and *California Affordable Housing Handbook*. Ms. Seifel and senior managing consultant Marie Munson often lead the Plan Adoption, Amendment and Fiscal Merger session and the Redevelopment Plan Implementation session at the annual CRA Introduction to Redevelopment seminar. They also speak and lead panels at CRA annual conferences; in 2007 Ms. Munson spoke on compliance with community redevelopment law affordable housing requirements, and in 2009 Ms. Seifel spoke on new reporting and pass-through payment requirements under AB 1389.

Seifel rigorously analyzes and documents urbanization and blight in order to ensure that all legal requirements are met. Seifel's documentation of existing conditions has twice been challenged in court and in both cases was upheld by the courts.

On behalf of Fresno, Napa and Los Angeles Counties, **Seifel has performed due diligence** on other jurisdictions' documentation of existing conditions and compliance with CRL requirements in the redevelopment plan adoption/amendment process.

Seifel Consulting Inc. is a California Corporation owned and operated by Elizabeth (Libby) Seifel. The firm is a woman-owned certified small business with the State of California. (For additional information on our experience and qualifications, please refer to the firm website at www.seifel.com.)

Appendix B

Representative Plan Adoption, Amendment and Merger Advisory Services Seifel Consulting

Jurisdiction	Project	Status
Alameda	Alameda Point Improvement Project (Military Base Reuse)	Adopted 1998
Alameda	Alameda BWIP and WCIP Plan Amendment/Fiscal Merger	Amended 2003
Arvin	Arvin Redevelopment Project	Adopted 1996
Brisbane	Project Area Number Two Redevelopment Plan Amendment	Amended 2002
Chico	Chico Redevelopment Project Merger	Amended 1992
Chico	Greater Chico Urban Area Redevelopment Project	Adopted 1993
Chico	Chico Redevelopment Projects Amendment/Fiscal Merger	Amended 2004
Concord	Central Concord Plan Amendment	Amended 2006
Concord	Concord Naval Weapons Station Military Base Reuse	In process
Daly City	Bayshore Redevelopment Project	Adopted 1999
East Palo Alto	Gateway/101 Corridor Redevelopment Project	Adopted 1993
East Palo Alto	Redevelopment Project Amendment/Fiscal Merger	Amended 1999
Fremont	Fremont Industrial Fiscal Amendment	Amended 1993
Fremont	Fremont Redevelopment Project Amendments/Fiscal Mergers	Amended 1998
Fremont	Fremont Redevelopment Project Amendments	In process
Folsom	Central Folsom Redevelopment Plan Amendment	Amended 2003
Hayward	Downtown Hayward Redevelopment Project Amendment	Amended 1998
Henderson (Nevada)	Tuscany Hills Redevelopment Project	Adopted 2001
Livermore	Downtown Redevelopment Project Amendment	Amended 1993
Los Gatos	Central Los Gatos Redevelopment Project	Adopted 1993
Mendocino County	Mendocino Project Area Project	Adopted 2003
Milpitas	Great Mall and Project Area No. 1 Plan Amendments	Amended 2001
Placer County	North Lake Tahoe Redevelopment Project	Adopted 1996
Placer County	North Auburn Redevelopment Project	Adopted 1997
Placer County	Sunset Redevelopment Project	Adopted 1997
Petaluma	Petaluma Central Business District Plan Amendment	Amended 2001
Petaluma	Petaluma PCD Amendment	Amended 2000
Petaluma	Petaluma Plan Amendment/Fiscal Merger	Amended 2006
Pleasant Hill	Pleasant Hill Redevelopment Amendment	In process
Rancho Cordova	Rancho Cordova Redevelopment Project	Adopted 2006
Richmond	Harbor Gate Redevelopment Amendment	Amended 1995
Richmond	Richmond Plan Amendment/Fiscal Merger	Amended 2005
Richmond	Richmond Plan Amendment/	In process

Appendix B

San Bruno	San Bruno Redevelopment Project	Adopted 1999
San Francisco	Federal Office Building Redevelopment Project	Adopted 1997
San Francisco	Mission Bay North Redevelopment Project	Adopted 1998
San Francisco	Mission Bay South Redevelopment Project	Adopted 1998
San Francisco	Yerba Buena Center Redevelopment Plan Amendment	Amended 2000
San Francisco	Transbay Terminal Redevelopment Project	Adopted 2005
San Francisco	Bayview Hunters Point Redevelopment Plan Amendment	Amended 2006
San Francisco	Treasure Island/YBI Redevelopment (Military Base Reuse)	In process
San Francisco	Visitacion Valley Redevelopment Project	Adopted 2007
San Francisco	Bayview/Hunters Point Shipyard Plan Amendments	In process
San Jose	West San Carlos Redevelopment Plan Amendment/Fiscal Merger	Amended 1996
San Jose	Story Road Redevelopment Project Amendment/Fiscal Merger	Amended 1996
San Jose	Park Center Redevelopment Project Amendment/Merger	Amended 1996
San Jose	Almaden Gateway Redevelopment Project Amendment/Merger	Amended 1996
San Mateo	San Mateo Shoreline Redevelopment Amendment	Amended 1996
San Mateo	San Mateo Downtown Redevelopment Amendment	Amended 1996
Sonoma County	Russian River Redevelopment Project	Adopted 2000
South San Francisco	South San Francisco Plan Amendments/Fiscal Merger	Amended 2005
Sunnyvale	Sunnyvale Downtown Redevelopment Amendment	Amended 2005
Union City	Union City Community Redevelopment Amendment	Amended 2002

EXHIBIT C

WRITTEN FINDINGS IN RESPONSE TO WRITTEN OBJECTIONS RECEIVED BEFORE THE CLOSE OF THE JOINT PUBLIC HEARING CONCERNING 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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS BASED UPON CONSIDERATION OF 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 AMENDMENT 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 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 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, the City Council, acting as a Responsible Agency, in accordance with CEQA, has reviewed and considered the Final Program EIR with respect to the adoption of the proposed Amendments; and

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

NOW, THEREFORE, the City Council of the City of Milpitas 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 City Council has duly reviewed and considered the Final Program EIR prepared and certified by the Agency prior to adopting this Resolution and acting on the proposed Amendments.

Section 3. The City Council 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 City Council 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 City Council 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 4. The City Council hereby adopts the Mitigation Monitoring Plan set forth in the Final Program EIR.

Section 5. The Final Program EIR and other materials for the proposed Amendments that constitute the record of proceedings of the City Council 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 6. The City Clerk, on behalf of the City Council, 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, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

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 CITY COUNCIL OF THE CITY OF MILPITAS 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 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 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 City Council 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 City Council of the City of Milpitas 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 City Council 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 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, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ELECTING TO RECEIVE A PORTION OF THE TAX INCREMENTS ALLOCATED FROM THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1 PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 33607.5 AND 33607.7

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 Milpitas Redevelopment 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, CRL Sections 33607.5 and 33607.7 provide that the Agency must make certain payments to affected taxing entities in connection with the adoption of the Added Area and certain amendments to the Redevelopment Plan; and

WHEREAS, CRL Section 33607.5(b) provides that the City may elect to receive, and the Agency shall pay to it, an amount equal to the City’s proportionate share (among all other affected taxing entities) (the “City Share”) of the payments made pursuant to Section 33607.5(b), referred to as “Tier 1 Payments”; and

WHEREAS, the City Council desires to receive the City Share of the Tier 1 Payments made by the Agency from Milpitas Redevelopment Project Area No. 1, as amended by the Thirteenth Amendment, for each remaining fiscal year of the Project Area, as amended by the Thirteenth Amendment.

NOW, THEREFORE, the City Council of the City of Milpitas 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 City Council hereby elects to receive the City Share of the Tier 1 Payments made by the Agency from Milpitas Redevelopment Project Area No. 1, as amended by the Thirteenth Amendment.

Section 3. The City Clerk is hereby directed and authorized to transmit a copy of this Resolution to the Executive Director of the Agency.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ELECTING TO RECEIVE THAT PORTION OF THE TAX INCREMENTS FROM THE PROPOSED THIRTEENTH AMENDMENT ADDED AREA ATTRIBUTABLE TO TAX RATE INCREASES IMPOSED FOR THE BENEFIT OF THE CITY OF MILPITAS AFTER THE ADOPTION OF THE PROPOSED THIRTEENTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1 PURSUANT TO HEALTH AND SAFETY CODE SECTION 33676

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 Milpitas Redevelopment 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, CRL Section 33676(a)(1) provides that, prior to the adoption of the Thirteenth Amendment, any affected taxing agency may elect to receive, in addition to the portion of taxes allocated to the affected taxing agency pursuant to Section 33670(a) of the CRL, all or any portion of the tax revenues allocated to the Agency from the Added Area pursuant to Section 33670(b) of the CRL which are attributable to the tax rate increases imposed for the benefit of the taxing agency after the tax year in which the ordinance adopting the Thirteenth Amendment becomes effective (the “Future Tax Rate Increase Revenues”); and

WHEREAS, as an affected taxing agency, the City Council of the City of Milpitas (the “City Council”) desires to receive its Future Tax Rate Increase Revenues, if any, from the Added Area.

NOW, THEREFORE, the City Council of the City of Milpitas 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 City Council hereby elects to receive its Future Tax Rate Increase Revenues, as defined in the above recitals, resulting from taxes levied on property within the Added Area.

Section 3. The City Clerk is hereby directed and authorized to transmit a copy of this Resolution to the Executive Director of the Agency.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney