

C/CAG

CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

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Millbrae • Pacifica • Portola Valley • Redwood City • San Bruno • San Carlos • San Mateo • San Mateo County • South San Francisco • Woodside*

AIRPORT LAND USE COMMITTEE (ALUC) AGENDA

Date: October 22, 2020
Time: 4:00 p.m.

On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings telephonically or by other electronic means. Pursuant to the Shelter-in-Place Orders issued by the San Mateo County Health Officer and the Governor, and the CDC's social distancing guidelines, which discourage large public gatherings, C/CAG meetings will be conducted via remote conferencing. Members of the public may observe or participate in the meeting remotely via one of the options below.

Join Zoom Meeting:

<https://us02web.zoom.us/j/82757612939?pwd=dGthTS96anpKZjc2d05FNitxcXUzZz09>

Meeting ID: 827 5761 2939
Passcode: 697294

Join by Phone:

(669) 900-6833

Meeting ID: 827 5761 2939

Persons who wish to address the ALUC Committee on an item to be considered at this meeting, or on items not on this agenda, are asked to submit written comments to kkalkin@smcgov.org. Oral comments will also be accepted during the meeting through Zoom. Please see instructions for written and oral public comments at the end of this agenda.

- | | |
|--------------------------------------------------------|----------------------------------------|
| 1. Call to Order/Roll Call | Action
(Ortiz) |
| 2. Brief Overview of Teleconference Meeting Procedures | Information
(Kalkin) |
| 3. Public Comment on Items not on the Agenda | Limited to 2
minutes per
speaker |

- | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------|
| 4. Approval of Minutes – September 24, 2020 | Action
(Ortiz) | Page 1 |
| 5. San Francisco International Airport Comprehensive Airport Land Use Compatibility Plan Consistency Review – Amendments to the Millbrae Station Area Specific Plan to allow for uses classified as “Biotechnology Level 2” within portions of the Transit Oriented Development and Employment Center/Light Industrial Zones, south of Millbrae Avenue, which are located within Safety Compatibility Zone 2. | Action
(Kalkin) | Page 4 |
| 6. Public Hearing to review and recommend action on proposed amendments to the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Carlos Airport intended to enhance the clarity and effectiveness of the overflight notification and aviation easement policies. | Action
(Kalkin) | Page 33 |
| 7. Member Comments/Announcements | | |
| 8. Items from Staff | | |
| 9. Adjournment – <i>Next regular meeting – Jan.28, 2021</i> | | |

NOTE: All items appearing on the agenda are subject to action by the Committee. Actions recommended by staff are subject to change by the Committee.

If you have any questions regarding the C/CAG Airport Land Use Committee Meeting Agenda, please contact Susy Kalkin at kkalkin@smcgov.org .

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PUBLIC NOTICING: All notices of C/CAG regular Board meetings, standing committee meetings, and special meetings will be posted at the San Mateo County Transit District Office, 1250 San Carlos Ave., San Carlos, CA, and on C/CAG’s website at: <http://www.ccag.ca.gov>.

PUBLIC RECORDS: Public records that relate to any item on the open session agenda for a regular Board meeting, standing committee meeting, or special meeting are available for public inspection. Those public records that are distributed less than 72 hours prior to a regular Board meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members, of the Board. The Board has designated the City/County Association of Governments of San Mateo County (C/CAG), located at 555 County Center, 5th Floor, Redwood City, CA 94063, for the purpose of making public records available for inspection. Such public records are also available on C/CAG’s website at: <http://www.ccag.ca.gov>. Please note that C/CAG’s office is temporarily closed to the public; please contact Mima Guilles at (650) 599-1406 to arrange for inspection of public records.

PUBLIC PARTICIPATION DURING VIDEOCONFERENCE MEETINGS: Persons with disabilities who require auxiliary aids or services to participate in this meeting should contact Mima Guilles at (650) 599-1406, five working days prior to the meeting date.

Written comments should be emailed in advance of the meeting. Please read the following instructions carefully:

1. Written comments should be emailed to kkalkin@smcgov.org
2. The email should include the specific agenda item on which you are commenting or note that your comment concerns an item that is not on the agenda.
3. Members of the public are limited to one comment per agenda item.
4. The length of the emailed comments should be commensurate with the two minutes customarily allowed for verbal comments, which is approximately 250-300 words.
5. If your emailed comments are received at least 2 hours prior to the meeting, they will be provided to the ALUC Committee members, made publicly available on the C/CAG website along with the agenda, and may be read aloud by C/CAG staff during the meeting. We cannot guarantee that comments received less than 2 hours before the meeting will be distributed to the Committee members, but they will be included in the administrative record of the meeting.

Oral comments will be accepted during the meeting through Zoom. Please read the following instructions carefully:

1. The ALUC Committee meeting may be accessed through Zoom at the online location indicated at the top of this agenda.
2. You may download the Zoom client or connect to the meeting using an internet browser. If using your browser, make sure you are using a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer.
3. You will be asked to enter an email address and name. We request that you identify yourself by your name as this will be visible online and will be used to notify you that it is your turn to speak.
4. When the C/CAG staff member or ALUC Committee Chair call for the item on which you wish to speak, click on "raise hand." The C/CAG staff member will activate and unmute speakers in turn. Speakers will be notified shortly before they are called on to speak.
5. When called, please limit your remarks to the two minute time limit.

Airport Land Use Committee (ALUC)
Meeting Minutes
September 24, 2020

1. Call to Order/Roll Call

Vice-Chair Davis called the meeting to order at 4:04 pm. via the Zoom platform.¹ The attendance sheet is attached.

2. Brief Overview of Teleconference Meeting Procedures

Susy Kalkin, C/CAG staff, gave an overview of the meeting protocols being implemented due to COVID-19, noting the meeting is being conducted as a Zoom online meeting pursuant to the provisions of the Governor’s Executive Order N-29-20, which suspends certain requirements of the Brown Act.

3. Public Comment on items not on the Agenda

None

4. Minutes of the June 25, 2020 Meeting

Motion: Committee Member O’Connell moved, and Member Oliva seconded, approval of the June 25, 2020 minutes. Motion carried (7-0-0) by the following roll call vote: AYE - Members O’Connell, DiGiovanni, Awasthi, Oliva, Davis, Rak and Nagales (7-0). NO – none. ABSTAIN – none.

5. San Francisco International Airport Comprehensive Airport Land Use Compatibility Plan Consistency Review – Jefferson Elementary School District Faculty and Staff Housing Project, including a General Plan Amendment, Rezoning and related entitlements to allow construction of 56 apartments on a 2.4-acre site at 304 Eastmoor Avenue, Daly City.

Susy Kalkin, C/CAG staff, presented the staff report.

Motion: Member O’Connell moved, and Member Nagales seconded, approval of the staff recommendation. On the question, Committee member DiGiovanni questioned whether she could vote on the matter since it will be coming before the Daly City Council in the future. Ms. Kalkin noted this was a distinct item, limited only to the issue of consistency with the Airport Land Use Compatibility Plan.

Motion carried (7-0-0) by the following roll call vote: AYE – Members O’Connell,

¹ Chair Ortiz arrived at 4:12 and assumed the Chair role after approval of item 4.

DiGiovanni, Awasthi, Oliva, Davis, Nagales and Chair Ortiz. NO – none. ABSTAIN – none.

6. San Francisco International Airport Comprehensive Airport Land Use Compatibility Plan Consistency Review – 1766 El Camino Real, Burlingame, a seven-story mixed use building.

Susy Kalkin, C/CAG staff, presented the staff report.

Motion: Member Oliva moved, and Member O’Connell seconded, approval of the staff recommendation.

Motion carried (7-0-0) by the following roll call vote: AYE – Members O’Connell, DiGiovanni, Awasthi, Oliva, Davis, Nagales and Chair Ortiz. NO – none. ABSTAIN – none.

7. San Francisco International Airport Comprehensive Airport Land Use Compatibility Plan Consistency Review – North Rollins Road Mixed Use District and North Burlingame Mixed Use District Zoning Amendments

Susy Kalkin, C/CAG staff, presented the staff report.

Motion: Vice-Chair Davis moved, and Member O’Connell seconded, approval of the staff recommendation. Member O’Connell noted the motion should include all recommended language changes noted by staff. Staff clarified that all of staff’s comments had been addressed by Burlingame and were incorporated into the final draft included in the staff report.

Motion carried (8-0-0) by the following roll call vote: AYE – Members O’Connell, DiGiovanni, Awasthi, Oliva, Davis, Rak, Nagales and Chair Ortiz. NO – none. ABSTAIN – none.

8. Member Comments/Announcements

None

9. Items from Staff

None

10. Adjournment

The meeting was adjourned at 4:30 pm.

2020 C/CAG Airport Land Use Committee Attendance Report

Name	Agency	Jan	May	June	Sept	
Terry O'Connell	City of Brisbane	X	X	X	X	
Ricardo Ortiz	City of Burlingame	X	X	X	X ^{arrived} at 4:12	
Pamela DiGiovanni	City of Daly City			X	X	
Richa Awasthi	City of Foster City			X	X	
Adam Eisen	City of Half Moon Bay					
Anne Oliva	City of Millbrae	X	X	X	X	
Shelly Masur/Janet Borgens beginning Feb.	City of Redwood City			X		
Laura Davis	City of San Bruno	X	X	Y	X	
Adam Rak	City of San Carlos	X	X		X	
Warren Slocum	County of San Mateo & Aviation Rep.					
Mark Nagales	City of South San Francisco	Y	X ^{arrived at 4:07}	X	X	
Carol Ford	Aviation Representative		X	X		
Dave Williams	Half Moon Bay Airport Pilots Assn	X	X	X		

X – Committee Member Attended
Y – Designated Alternate Attended

Staff and guests in attendance for the September 24, 2020 meeting: Susy Kalkin and Sandy Wong, C/CAG; Nile Ledbetter, SFO Planning; Carmelisa Morales, Daly City staff; Catherine Keylon and Kevin Gardner, Burlingame staff; William Higgins, Smith Group; Elaine Breeze; Richard Norris

C/CAG AGENDA REPORT

Date: October 22, 2020

To: Airport Land Use Committee

From: Susy Kalkin

Subject: San Francisco International Airport Comprehensive Airport Land Use Compatibility Plan Consistency Review – Amendments to the Millbrae Station Area Specific Plan to allow for uses classified as “Biotechnology Level 2” within portions of the Transit Oriented Development and Employment Center/Light Industrial Zones, south of Millbrae Avenue, which are located within Safety Compatibility Zone 2.

(For further information or response to questions, contact Susy Kalkin - kkalkin@smcgov.org)

RECOMMENDATION

That the C/CAG Airport Land Use Committee (ALUC) recommend to the C/CAG Board of Directors, that the C/CAG Board, acting as the Airport Land Use Commission, determine that the proposed amendments to the Millbrae Station Area Specific Plan to allow for uses classified as “Biotechnology Level 2” within portions of the Transit Oriented Development (TOD) and Employment Center/Light Industrial Zones, south of Millbrae Avenue, which are located within Safety Compatibility Zone 2, are not consistent with the Safety Compatibility Criteria contained in the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport (SFO ALUCP).

BACKGROUND/PROPOSAL

The City of Millbrae completed its Millbrae Station Area Specific Plan (MSASP) in 2015 which was reviewed at the time by the ALUC and determined to be conditionally compatible with the SFO ALUCP.

Per their ALUCP Consistency Application, Attachment 1, Millbrae is now considering the following amendments to the MSASP Table 5.1 – Permitted and Conditionally Permitted Land Uses (“Amendments”) within the Specific Plan area:

- Add the following Light Industrial uses to the TOD Zone, south of Millbrae Avenue, subject to a conditional use permit:
 - Biotechnology/Scientific Labs
 - Tech/Biotech Product Assembly
 - Tech/Biotech Component Manufacturing

- Amend Footnote 4 as follows (deletions in ~~strikeout~~/additions in underline):

[4] Light Industrial facilities in Safety Compatibility Zone 2 of ALUCP ~~shall not~~ may include hazardous uses as defined by the SFO ALUCP, Policy SP-3 on pages IV-33 and IV-34.

Since these Districts are located within Airport Influence Area (AIA) B for San Francisco International Airport, the area subject to formal CCAG/ALUC review, in accordance with the requirements of California Public Utilities Code Section 21676(b), the City of Millbrae has referred the Amendments to C/CAG, acting as the San Mateo County Airport Land Use Commission, for a determination of consistency with the SFO ALUCP.

DISCUSSION

SFO ALUCP Consistency Evaluation

The SFO ALUCP includes policies regarding establishment of: A) an Airport Influence Area, with related real estate disclosure requirements and Airport Land Use Commission review authority; B) noise compatibility policies and criteria; C) safety policies and criteria; and D) airspace protection policies. As the proposed Amendments do not involve noise sensitive uses and do not alter development standards, this review will focus on Safety Compatibility issues only.

C) **Safety Policy Consistency Analysis** – The overall objective of safety compatibility guidelines is to minimize the risks associated with potential aircraft accidents. The most fundamental safety compatibility component is to provide for the safety of people and property on the ground in the event of an aircraft accident near an airport.

The SFO ALUCP includes five sets of safety zones and identifies land uses which are either incompatible or should be avoided within each of these zones. As shown on Attachments 2 & 3, the properties impacted by the proposed Amendments lie within Safety Zone 2, the Inner Approach/Departure Zone (IADZ).

Per the SFO ALUCP, the compatibility criteria for safety are established in Table IV-2, included as Attachment 4. As shown, *Hazardous Uses* are incompatible within Safety Zone 2.

Hazardous Uses are further clarified in Safety Policy SP-3, included as Attachment 5, with relevant text excerpted below:

“D. Medical and biological research facilities handling highly toxic or infectious agents

These facilities are classified by “Biosafety Levels.” Biosafety Level 1 does not involve hazardous materials and is not subject to the restrictions on hazardous uses in Table IV-2.

Definitions of the other three biosafety levels are quoted from Biosafety in Microbiological and Biomedical Laboratories, below.

- a. *Biosafety Level 2 practices, equipment, and facility design and construction are applicable to clinical, diagnostic, teaching, and other laboratories in which work is done with the broad spectrum of indigenous moderate-risk agents that are present in the community and associated with human disease of varying severity.*
- b. *Biosafety Level 3 practices, safety equipment, and facility design and construction are applicable to clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents with a potential for respiratory transmission, and which may cause serious and potentially lethal infection.*

- c. *Biosafety Level 4 practices, safety equipment, and facility design and construction are applicable for work with dangerous and exotic agents that pose a high individual risk of life-threatening disease, which may be transmitted via the aerosol route and for which there is no available vaccine or therapy.”*

As noted in the Proposal above, the Amendments specifically request the ability to include hazardous uses within Safety Compatibility Zone 2, to accommodate Biosafety Level 2 uses, in direct conflict with the Safety Policies of the SFO ALUCP, and are therefore not consistent with these policies.

SFO Planning

Pursuant to standard practice, the project was referred to SFO Planning staff for review, who provided detailed comments, included as Attachment 5. In summary, they note objection to the Amendments as inconsistent with the SFO ALUCP Safety Policies, believe they would pose an unreasonable safety hazard for aircraft operations, and voice concern that these changes would expose residents and businesses in Millbrae to greater harm in the event of an aircraft emergency. Additionally, they note that imposing a requirement for a conditional use permit for discrete project considerations, while taking into consideration environmental concerns, does not address this inherent safety concern with hazardous material storage and use in this aircraft safety zone.

ATTACHMENTS

1. Application Materials
2. Map – TOD and Employment Center/Light Industrial Zone Areas impacted by Amendments
3. SFO ALUCP Exh. IV-9 Safety Compatibility Zones
4. SFO ALUCP Table IV-2 Safety Compatibility Criteria
5. SFO ALUCP Policy SP-2 Hazardous Uses
6. Comment letter from Acting SFO Planning Director dated October 13, 2020



APPLICATION FOR LAND USE CONSISTENCY DETERMINATION
San Mateo County Airport Land Use Commission
C/CAG ALUC

APPLICANT INFORMATIONAgency: *City of Millbrae*Project Name: *Millbrae Station Area Specific Plan Text Amendment*Address: *N/A*APN: *N/A*City: *Millbrae*State: *CA*ZIP Code: *94030*Staff Contact: *Nestor Guevara*Phone: *650-259-2335*Email: *nguevara@ci.millbrae.ca.us***PROJECT DESCRIPTION**

Text amendment to Millbrae Station Area Specific Plan to allow for Biotech uses in Transit Oriented Development zone south of Millbrae Ave and related amendments to allow hazardous uses up to Biosafety level 2 in Safety Compatibility Zone 2.

REQUIRED PROJECT INFORMATION**For General Plan, Specific Plan or Zoning Amendments and Development Projects:**

A copy of the relevant amended sections, maps, etc., together with a detailed description of the proposed changes, sufficient to provide the following:

1. Adequate information to establish the relationship of the project to the three areas of Airport Land Use compatibility concern (ex. a summary of the planning documents and/or project development materials describing how ALUCP compatibility issues are addressed):
 - a) Noise: Location of project/plan area in relation to the noise contours identified in the applicable ALUCP.
 - Identify any relevant citations/discussion included in the project/plan addressing compliance with ALUCP noise policies.
 - b) Safety: Location of project/plan area in relation to the safety zones identified in the applicable ALUCP.
 - Include any relevant citations/discussion included in the project/plan addressing compliance with ALUCP safety policies.
 - c) Airspace Protection:
 - Include relevant citations/discussion of allowable heights in relation to the protected airspace/proximity to airport, as well as addressment of any land uses or design features that may cause visual, electronic, navigational, or wildlife hazards, particularly bird strike hazards.

- If applicable, identify how property owners are advised of the need to submit Form 7460-1, *Notice of Proposed /Construction or Alteration* with the FAA.

2. Real Estate Disclosure requirements related to airport proximity
3. Any related environmental documentation (electronic copy preferred)
4. Other documentation as may be required (ex. related staff reports, etc.)

Additional information For Development Projects:

1. 25 sets of scaled plans, no larger than 11" x 17"
2. Latitude and longitude of development site
3. Building heights relative to mean sea level (MSL)

ALUCP Plans can be accessed at <http://ccag.ca.gov/plansreportslibrary/airport-land-use/>

Please contact C/CAG staff at 650 599-1467 with any questions.

<i>For C/CAG Staff Use Only</i>
Date Application Received
Date Application Deemed Complete
Tentative Hearing Dates:
- Airport Land Use Committee
- C/CAG ALUC

MSASP Zoning Amendment – C/CAG Application for Land Use Consistency Determination

Background: The Millbrae Station Area Specific Plan (MSASP) is the guiding document for development in the Millbrae Station Area. The Millbrae Station Area is the area surrounding the Millbrae BART and Caltrain stations. The MSASP, approved by Millbrae City Council in January 2016, guides future developments in the Plan area for the next 20 plus years. The MSASP divides the Plan Area into five Planning zones, with one overlay zone.

Existing Conditions: The Transit-Oriented Development (TOD) zone is in the area adjacent to the Millbrae BART and Caltrain station and allows for a multitude of uses, which include: multifamily housing of 7 or more units, public and quasi-public uses, and office, commercial and retail uses. Current uses in the TOD zones include: storage space, car rental, a martial arts school, an employment agency, and an insurance office, among other uses.

Proposed Zoning Changes: The City of Millbrae is proposing a zoning text amendment to allow for Biotech uses through a Conditional Use Permit in the TOD zone, specifically within the portion south of Millbrae Avenue. The current development climate and work lifestyle has been greatly affected by the COVID-19 global pandemic. The increase in work from home practices for an extended period of time, in some cases indefinite, has led to a decrease in the need for office space. Given the changing needs for developments and services, staff is proposing increased flexibility for allowed uses in the TOD zone.

As demand is high for biotechnology space along the peninsula, the City of Millbrae Planning staff has recently received a number of inquiries from potential applicants regarding the possibility of developing biotechnology uses along Adrian Road in the TOD zone. Biotech uses are permitted in the Employment/Light Industrial Zone directly south of the TOD zone. Allowing for Biotech use in the TOD zone south of Millbrae Ave. would achieve some of the goals set by the Millbrae General Plan in terms of Land Use and Economic Development. The zoning amendment would aid in the City's economic development through the creation of jobs, as well as help ensure maximum occupancy through the Millbrae Station area developments.

The TOD zone is located in Safety Compatibility Zone 2, per the SFO Airport Land Use Compatibility Plan (ALUCP). The proposed amendment would also allow for Biosafety Level 2 in Safety Compatibility Zone 2. Hazardous uses under Biosafety Level 2 include: practices, equipment, and facility design and construction are applicable to clinical, diagnostic, teaching, and other laboratories in which work is done with the broad spectrum of indigenous moderate-risk agents that are present in the community. Each project would go through environmental analysis as part of the Conditional Use Permit process in regards to hazardous materials and any other environmental concerns.

The proposed zoning amendment would not impact or change any development standards previously approved through the MSASP. Maximum height in the TOD zone would still be 90'-100'. The TOD zone is located outside of the noise exposure area per the SFO ALUCP.

A Program Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program was prepared for the MSASP and was adopted by the City Council on January 12, 2016. Therefore, site specific, individual projects, can be evaluated using the Program EIR to decide if all potentially significant environmental impacts of the individual project:

- Have been previously identified (are not new) and are not substantially more severe than those identified in the Program EIR;
- Will be avoided or mitigated to the extent feasible as a result of the EIR; and
- Have been examined in the EIR, site-specific project revisions, or the implementation of standards development standard regulations.

To determine if the above conditions are met, an Initial Study/Environmental Checklist must be prepared for any proposed project for a Biotech use in the TOD zone. The analysis will determine whether the proposed project is within the scope of the previous EIR, or whether an additional environmental document is required, in accordance with the California Environmental Quality Act (CEQA) Guidelines.

**PLANNING COMMISSION
STUDY SESSION
AGENDA REPORT**



**CITY OF MILLBRAE
621 Magnolia Avenue
Millbrae, CA 94030**

<p>SUBJECT: Millbrae Station Area Specific Plan Amendment to Table 5.1 “Permitted and Conditionally Permitted Land Uses” to allow with a Conditional Use Permit Biotechnology/Scientific Labs, Tech/Biotech Product Assembly, and Tech/Biotech Component Manufacturing uses in the TOD Zone portion south of Millbrae Avenue, and related amendments (Public Hearing).</p> <p>ATTACHMENTS:</p> <ol style="list-style-type: none"> 1. Resolution 2. Proposed Changes to MSASP 3. Addendum 4. MSASP Final Document and EIR (https://www.ci.millbrae.ca.us/home/showdocument?id=7429) 5. MSASP Figure 5.1: Planning and Overlay Zones <p>(all above attachments available for review and download at https://www.ci.millbrae.ca.us)</p>	<p>Report No.: 8a</p>
	<p>For Agenda of: August 17, 2020.</p>
	<p>Prepared by: Nestor Guevara, Assistant Planner</p> <p>Location: MSASP</p> <p>Applicant: City of Millbrae</p>
<p>REPORT TYPE: ACTION <input checked="" type="checkbox"/> INFORMATIONAL <input type="checkbox"/></p> <p>ITEM TYPE: PUBLIC HEARING <input checked="" type="checkbox"/> EXISTING BUSINESS <input type="checkbox"/> NEW BUSINESS <input type="checkbox"/></p>	

RECOMMENDATION

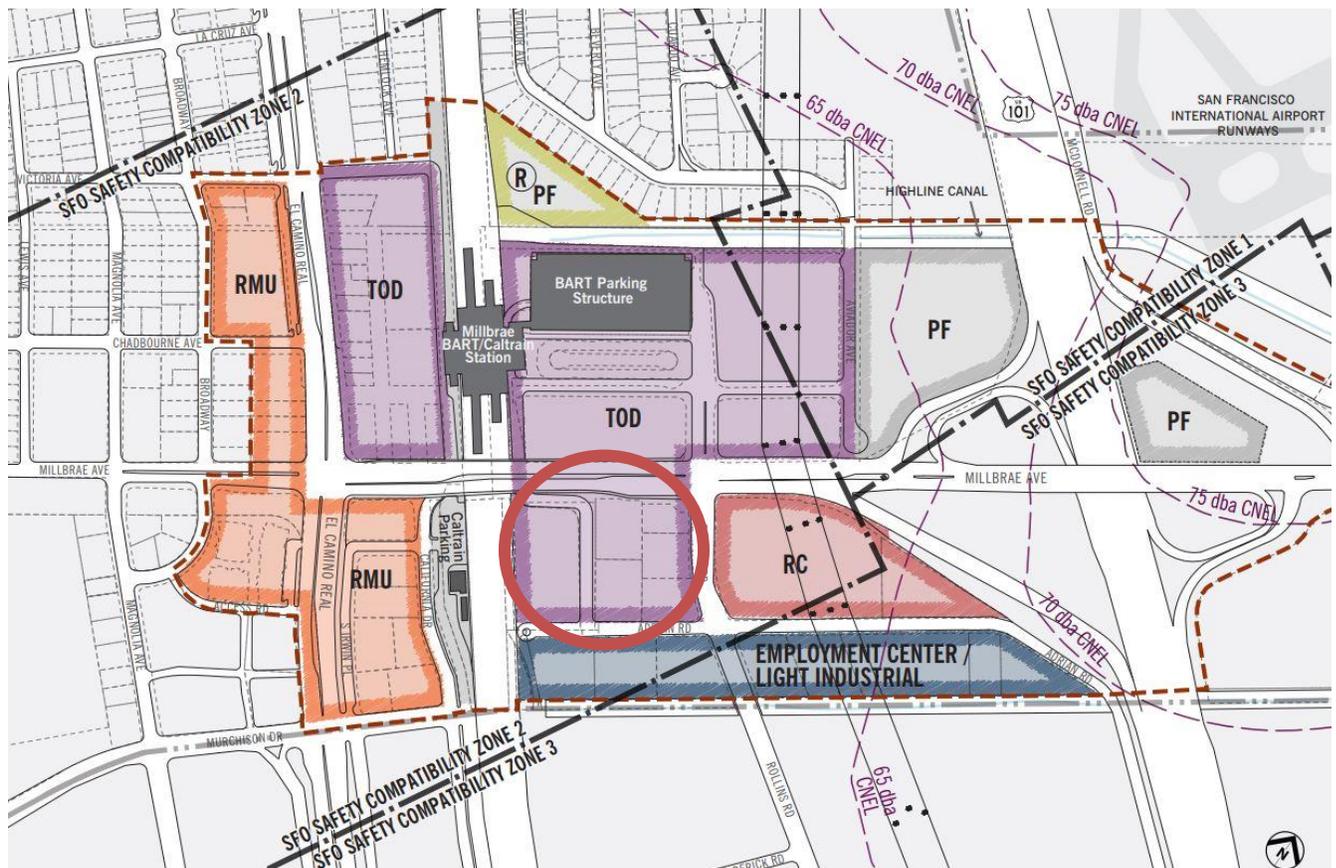
Staff recommends that the Planning Commission hold a Public Hearing to recommend that the City Council amend table 5.1 “Permitted and Conditionally Permitted Land Uses” of the 2016 Millbrae Station Area Specific Plan to allow, with a Conditional Use Permit, Biotechnology/Scientific Labs, Tech/Biotech Product Assembly, and Tech/Biotech Component Manufacturing uses in the portion of TOD Zone that is south of Millbrae Avenue, and related amendments.

BACKGROUND

City Council adopted the Millbrae Station Area Specific Plan (MSASP) in 1998 and updated the document in January 2016. The Specific Plan guides future public improvements and private development in the Plan Area over the next 20 plus years. Associated with the Specific Plan update were General Plan and Zoning Ordinance Amendments which were also updated in order to be

consistent with the MSASP.

The MSASP area is divided into five Planning Zones and one Overlay Zone that allow for a mix of uses. The Transit-Oriented Development (TOD) zone is in the area adjacent to the Millbrae BART and Caltrain station and allows for a multitude of uses, which include: multifamily housing of 7 or more units, public and quasi-public uses, office, commercial and retail uses. Currently the only Light Industrial use allowed in the TOD zone is for Research and Development Facilities, through a Conditional Use Permit, while Biotechnology uses are not allowed. Staff is recommending an amendment to the MSASP to allow for Biotechnology uses in the TOD zone section south of Millbrae Avenue. Biotechnology uses are currently only allowed in the Employment Center/Light Industrial zone of the MSASP, directly across the street from the TOD zone.



ANALYSIS

The TOD zone section south of Millbrae Avenue contains one story buildings with uses that include: storage space, car rental, a martial arts school, an employment agency, and an insurance office, among other uses. The TOD zone is meant to develop as vibrant and lively area throughout different hours of the day offering a variety of uses. The current development climate and work lifestyle has been greatly affected by the COVID-19 global pandemic. The increase in employees allowing their employers to work from home for an extended period of time, some indefinite, has led to a decrease in the need for office space. As demand is high for biotechnology space along the peninsula, the City of Millbrae Planning staff has recently received a number of inquiries from potential applicants regarding the possibility of developing biotechnology uses along Adrian Road in the TOD zone.

Given the changing needs for developments and services, staff is proposing increased flexibility for allowed uses in the TOD zone. Staff is therefore proposing an amendment to the MSASP to allow for biotechnology uses through a Conditional Use Permit in the TOD zone, specifically within the portion south of Millbrae Avenue. The amendment would allow Biosafety Level 2 uses in Safety Compatibility Zone 2 per the Comprehensive Airport Land Use Plan, the compatibility zone within which the portion of the TOD zone south of Millbrae Avenue is located. Hazardous uses under Safety Level 2 include practices, equipment, and facility design and construction are applicable to clinical, diagnostic, teaching, and other laboratories in which work is done with the broad spectrum of indigenous moderate-risk agents that are present in the community. These three uses are all allowed, through a Conditional Use Permit, in the Employment Center/Light Industrial zone just south of the TOD zone. The proposed amendment would not change any development standards, or lead to any significant noise, traffic, environmental, or other impacts. The original Final EIR environmental analysis, mitigation factors, and findings would still apply to the zoning text change if approved.

Allowing for Biotechnology uses in the TOD zone would be compatible with some of the goals set in the City of Millbrae General Plan. In particular goals LU3.1 and LU3.5 e are achieved through the amendment:

LU3.1

“Variety of Land Uses. Maintain the City's existing general pattern of land use, ensuring a variety of land use designations to provide for the community's residential, commercial, light industrial, recreational, open space, and public needs. Designate uses for undeveloped lands and consider redesignation of existing uses in accordance with the goals and policies set forth in this General Plan and in light of the City's needs, environmental conditions and changes in surrounding land uses”

LU3.5 e

“Within these parameters, development regulations should provide sufficient flexibility to respond to changing market conditions, and to promote the creation of a mixed-use district.”

The amendment would provide economic benefits to the City through the creation of jobs in the biotechnology field, while also helping ensure that buildings near the Millbrae Station remain occupied. Thus, the amendment is consistent with Goal LU4 of the City’s General Plan, along with many of the policies under LU4.

LU4

“Support Economic Development and Revitalize and Enhance Commercial Areas”

LU4.1

“Commercial and Industrial Land Use Needs. Provide sufficient land for commercial and industrial uses to allow for development that provides basic goods and services to Millbrae residents and surrounding regional economic activities such as the San Francisco International

Airport”

LU4.2

“Economic Development Needs. Provide for economic development which: (1) maintains the City's ability to finance services, and the construction and maintenance of public improvements; (2) offers local employment opportunities for Millbrae residents to reduce inter-city commuting; and (3) assures the availability and diversity of resident-serving goods and services.”

LU4.3

“Investment, Rehabilitation, and Reuse in Older, Deteriorating Areas. Encourage new development, rehabilitation, and, where appropriate, changes in land use to improve and enhance older, deteriorating areas where existing uses are no longer viable and/ or where private investment is lacking due to underuse, inadequate infrastructure, blight conditions, or other obstacles.”

LU4.5

“Sustainable Millbrae. In order to assure the long-term quality of life in Millbrae, consider the integration of the health of the local economy along with environmental integrity and human well being when considering future projects.”

LU4.8

“Key Sites Strategy. Identify and assist in the development of key commercial sites throughout the City.”

LU4.9

“Millbrae Station Area Specific Plan. Assist as appropriate in the development of lands within the Millbrae Station Area.”

The TOD zone is located in Safety Compatibility Zone 2 per the Airport Land Use Compatibility Plan (ALUCP). Safety Compatibility Zone 2 of the ALUC does not allow uses that involve hazardous materials. The text amendment would allow uses that involve hazardous materials in Safety Compatibility Zone 2. Each project would go through environmental analysis as part of the Conditional Use Permit process in regards to hazardous materials and any other environmental concerns.

In order to finalize the amendment, The City of Millbrae would need to receive a determination on the text amendment from the Airport Land Use Commission (ALUC). All proposed development and land use policy actions that affect property within a specified area of the Airport Influence Area must be submitted to the Airport Land Use Commission for a consistency determination prior to agency action on any policy decision, and prior to issuance of any development permit. Any proposed land use policy action (adoption or amendments to general plans, specific plans, zoning ordinances, and facilities master plans) within a specified area of the AIA must be submitted to the ALUC for a consistency determination prior to agency action. Upon receiving a consistency determination from the ALUC, planning

staff would present the proposed amendment and ALUC determination to City Council. City Council can choose whether or not to adopt the amendment. If the ALUC determines there is an inconsistency, the City Council may choose to override the ALUC determination with a four out of five vote.

PLANNING COMMISSION ACTION AND NEXT STEPS

Staff requests the Planning Commission review the proposed amendment and provide a recommendation to the City Council. Once City Staff receives a recommendation from the Planning Commission, the amendment would be submitted to the Airport Land Use Commission, then taken to City Council for adoption of the amendment.

RESOLUTION NO. 20-

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILLBRAE
RECOMMENDING THAT THE CITY COUNCIL ADOPT A ZONING TEXT AMENDMENT TO THE
MILLBRAE STATION AREA SPECIFIC PLAN TO ALLOW, SUBJECT TO A CONDITIONAL USE
PERMIT, BIOTECHNOLOGY/SCIENTIFIC LABS, TECH/BIOTECH PRODUCT ASSEMBLY, AND
TECH/BIOTECH COMPONENT MANUFACTURING USES IN THE PORTION OF THE TOD
OVERLAY ZONE SOUTH OF MILLBRAE AVENUE**

WHEREAS, on January 12, 2016 the City of Millbrae (“City”), acting as lead agency under the California Environmental Quality Act (“CEQA”), certified and approved an Environmental Impact Report (“EIR”, SCH no. 2014092061) for the Millbrae Station Area Specific Plan (“MSASP”) Update and Transit Oriented Developments #1 and #2; and

WHEREAS, The MSASP currently does not allow Light Industrial uses, such as Biotechnology/Scientific Labs, Tech/Biotech Product Assembly, and Tech/Biotech Component Manufacturing, in the TOD Overlay Zone; and

WHEREAS, City Staff has found that there is demand for such biotechnology uses in the TOD Overlay zone south of Millbrae Avenue and has received numerous inquiries from potential applicants for biotechnology use along Adrian Road; and

WHEREAS, The TOD overlay zone is located in Safety Compatibility Zone 2 per the Airport Land Use Compatibility Plan which does not allow for Biosafety Levels 2, 3, and 4; and

WHEREAS, The proposed MSASP amendment may allow Biosafety Level 2 in the TOZ overlay zone south of Millbrae Ave subject to a Conditional Use Permit; and

WHEREAS, City staff has considered the potential impacts of allowing such biotechnology uses, such as noise, air quality, water quality, hazardous materials, and biological resources, which would be the same as or less than other development in the TOD Overlay zone, which currently allows multifamily dwellings, office, commercial uses, research and development, and other uses, has determined that there is minimal risk associated with allowing such uses under the proposed MSASP amendment, and has prepared an addendum to the MSASP EIR pursuant to California Environmental Quality Act (CEQA) Guidelines section 15162; and

WHEREAS, The proposed text addendum to the MSASP would allow for Biotechnology/Scientific Labs, Tech/Biotech Product Assembly, and Tech/Biotech Component Manufacturing uses through a Conditional Use Permit in the TOD Overlay Zone, South of Millbrae Avenue; and

WHEREAS, Each development project would be individually assessed through the Conditional Use Permit process and consistency with CEQA in regards to hazardous materials and the risk associated with these uses.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MILLBRAE HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

1. As further set forth in City Council Resolution adopted in January 2016 and pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., the City of Millbrae City Council certified a Final Environmental Impact Report (“EIR”) that addressed the environmental impacts of the Millbrae Station Area Specific Plan (MSASP). The Final EIR prepared by the City for the Millbrae Station Area Specific Plan, including the Draft EIR (the “MSASP EIR”), identified potentially significant environmental

effects, some of which could feasibly be mitigated or avoided. Such effects and corresponding mitigation measures are identified in the MSASP EIR, and are incorporated herein by reference. The mitigation measures and mitigation monitoring program are listed in the MSASP EIR. The MSASP EIR determined that all significant environmental effects, with the exception of four discussed below, can feasibly be avoided, have been avoided, or reduced to a level of insignificance.

2. The MSASP EIR identified the significant impacts on the environment that cannot be avoided or mitigated to a level of insignificance and the City Council adopted a statement of overriding considerations when the MSASP EIR was certified that justified why the merits of the MSASP outweighed the unavoidable significant impacts. Pursuant to CEQA Guidelines section 15164(b), the City of Millbrae, as lead agency for this project, the Transit Oriented Development (TOD) overlay zoning text amendment for biotechnology land uses ("MSASP Amendment"), has determined that an addendum to the adopted MSASP EIR be prepared for this MSASP Amendment, as only minor technical changes or additions are necessary and none of the conditions described in CEQA Guidelines section 15162 requiring the preparation of a subsequent EIR have occurred.

3. The MSASP Amendment will allow for Biotechnology/Scientific Labs, Tech/Biotech Product Assembly, and Tech/Biotech Component Manufacturing uses in the TOD overlay zoning district through a Conditional Use Permit process. These uses are currently not allowed in the TOD zone. The TOD overlay zone is located in Safety Compatibility Zone 2 per the Airport Land Use Compatibility Plan which does not allow for Light Industrial Uses that include hazardous uses. The text amendment would allow for biotechnology uses that could include hazardous materials. Each project would go through environmental analysis as part of the Conditional Use Permit process in regards to hazardous materials and the risk associated with these. To the extent physical impacts can be anticipated from the amendments, which would allow biotechnology uses subject to conditions of approval that would set forth hours of operation, accessory uses, parking requirements, and other requirements. Design Review would be required for any new construction or exterior alterations as well as landscaping and site improvements, and Site Development permits would be required for modification of site conditions including grading, paving and drainage. Building permits would be required for any new or remodeling construction.

4. The City has considered the potential impacts of allowing such biotechnology uses, such as noise, air quality, water quality, hazardous materials, and biological resources, which would be the same as or less than other development in the TOD Overlay zone, which currently allows multifamily dwellings, office, commercial uses, research and development, and other uses, has determined that there is minimal risk associated with allowing such uses under the proposed MSASP amendment.

5. The amendment would not result in neither a safety hazard nor excessive noise for people residing or working in the immediate area, as the use is already allowed within Station Area, in the zone adjacent to the TOD Zone.

6. The amendment would not cause significant environmental impact due to a conflict in land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect as the proposed amendment would conform to the City General Plan and all impacts will be within the range of those identified in the Final EIR.

7. Pursuant to CEQA Guidelines section 15162(a)(1), and as stated above, there are no substantial changes proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

8. Pursuant to CEQA Guidelines section 15162(a)(2), and as stated above, there are no substantial changes with respect to the circumstances under which the MSASP Amendment is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

9. Pursuant to CEQA Guidelines section 15162(a)(3), and as stated above, no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was adopted, shows any of the following:

- a. The project will not have one or more significant effects not discussed in the previous EIR;
- b. Significant effects previously examined will not be substantially more severe than shown in the previous EIR;
- c. There are no mitigation measures previously found not to be feasible which would in fact be feasible and would not substantially reduce one or more significant effects of the project; or
- d. There are no mitigation measures which are considerably different from those analyzed in the previous EIR that would substantially reduce one or more significant effects of the environment.

10. Pursuant to CEQA Guidelines section 15162(b), because there are no significant changes to the project or its circumstances, and no new information has become available after adoption of the EIR, the City, as lead agency, has determined to prepare an addendum to the EIR.

11. Pursuant to CEQA Guidelines section 15164(d), the City Council shall consider this addendum with the adopted EIR prior to making a decision on the zoning text amendment.

12. The determination that an addendum to the previously adopted EIR will adequately satisfy the requirements of CEQA has been made pursuant to CEQA Guidelines section 15162 and 15164. In making this determination, the City has also determined that none of the conditions specified in Section 15162 of the CEQA Guidelines that call for the preparation of a subsequent environmental document are present with respect to the current project. Additionally, it is further determined that the original environmental analysis, mitigation measures and findings adopted in the prior EIR are still applicable.

13. The Planning Commission therefore recommends that the City Council adopt the MSASP Amendments, relying upon the attached Addendum, after making the findings required by law.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Millbrae, California, held on the 17th of August of 2020, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

_____ CHAIR

ATTEST:

_____ SECRETARY

ATTACHMENT 2 - Proposed Changes to Page 5.5 and 5.7 of the MSASP Document

New Text is shown Underlined

Removed Text is shown ~~Strikethrough~~

Table 5-1. PERMITTED AND CONDITIONALLY PERMITTED LAND USES

	TOD	Residential Mixed Use	Employment Center/ Light Industrial	Residential Overlay	Retail Commercial	Public Facilities
Light Industrial [4][6]						
Biotechnology/Scientific Labs	- <u>C</u>	-	C	-	-	-
Research and Development Facility (R&	C	-	P	-	-	-
Tech/Biotech Product Assembly	- <u>C</u>	-	C	-	-	-
Tech/Biotech Component Manufacturing	- <u>C</u>	-	C	-	-	-

[4] Light Industrial facilities in Safety Compatibility Zone 2 of ALUCP ~~shall not~~ may include hazardous uses up to Biosafety Level 2, as defined by the SFO ALUCP, Policy SP-3 on pages IV-33 and IV-34

[6] Biotechnology/Scientific Labs, Tech/Biotech Product Assembly, and Tech/Biotech Component Manufacturing are allowed with a Conditional Use Permit in the TOD zone portion south of Millbrae Avenue.

ATTACHMENT 3 - Addendum to the Environmental Impact Report for the Millbrae Station Area Specific Plan

Introduction

This document is an Addendum to the Environmental Impact Report (EIR) prepared for the Millbrae Station Area Specific Plan (State Clearinghouse No. 2014092061), which was certified by the City of Millbrae in January 2016 (Certified EIR). In accordance with the California Environmental Quality Act (CEQA), this Addendum analyzes proposed modifications (the Modified Project) to the MSASP Final Document approved in 2016 (the Approved Project) and demonstrates that all of the potential environmental impacts associated with the proposed modifications would be within the envelope of impacts already evaluated in the Certified EIR.

CEQA Authority for Addendum

CEQA establishes the type of environmental documentation required when changes to a project occur after an EIR is certified. Specifically, Section 15164(a) of the CEQA Guidelines states that:

The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

Section 15162 of the CEQA Guidelines requires a Subsequent EIR when an MND has already been adopted or an EIR has been certified and one or more of the following circumstances exist:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;

c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Likewise, California Public Resources Code (PRC) Section 21166 states that unless one or more of the following events occur, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency:

- Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

As demonstrated by the analysis herein, the Modified Project would not result in any new additional significant impacts, nor would it substantially increase the severity of previously anticipated significant impacts. Rather, all of the impacts associated with the Modified Project are within the envelope of impacts addressed in the Certified EIR and do not constitute new or substantially increased significant impact. Based on this determination, the Modified Project does not trigger the requirements for preparation of a Subsequent or Supplemental EIR pursuant to Section 15162 of the CEQA Guidelines.

Overview of Approved Project

The Millbrae City Council approved the final Millbrae Station Area Specific Plan (MSASP) document and accompanying EIR in January 2016. The MSASP provides a vision for the development of the area adjacent to the Millbrae Caltrain and Bart Station. The Plan sets development standards such as maximum height, density, square footage, and land use and design considerations for future development within the Plan Area. The Specific Area Plan creates five Planning Zones and one overlay zone, each with their own specific zoning and land use considerations.

The Project EIR also served as a project-level EIR for two Transit-Oriented Developments in the Millbrae Station Area, known as TOD #1 and TOD #2. TOD #1 will contain 444 residential units, approximately 290,100 square feet of office space, and approximately 13,200 square feet of office space divided among three buildings. TOD #2 is located on the parcel directly east to the Millbrae Station and will contain approximately 320 market-rate residential units, 80 affordable units, 164 hotel rooms, 150,000 square feet of office space, and approximately 44,000 square feet of retail space. Both projects have received their entitlements from the City of Millbrae and construction has begun.

Proposed Modification to Project

The MSASP creates five Planning Zones and one Overlay Zone in the Plan Area: Transit-Oriented Development (TOD) Zone, Residential Mixed Use Zone, Employment Center/Light Industrial Zone, Retail Commercial Zone, Public Facilities Zone, and Residential Overlay Zone. Each zone allows specific types of land uses either by right or conditionally. The TOD zone currently allows for: multifamily housing of 7 or more units, public and quasi-public uses, office, commercial and retail uses. The only Light Industrial Use allowed in the TOD zone is for Research and Development Facility (R&D) through a Conditional Use Permit.

The proposed amendment to the MSASP would allow for Biotechnology uses in the TOD zone south of Millbrae Avenue through a Conditional Use Permit. The amendment would also allow for hazardous materials up to Biosafety Level 2 in Safety Compatibility Zone 2 of the Comprehensive Airport Land Use Plan.

Analysis of Proposed Modifications

The proposed modifications would include changes to Table 5.1 “PERMITTED AND CONDITIONALLY PERMITTED LAND USES of the MSASP”. This table indicates the land uses that are allowed for each Planning Zone and the Overlay Zone in the MSASP. The Biotechnology uses that are being proposed in the TOD zone south of Millbrae Ave are allowed in the Employment Center/Light Industrial zone just south of the TOD zone. The amendment would not result in any in neither a safety hazard nor excessive noise for people residing or working in the immediate area, as the use is already allowed in the area adjacent to the TOD zone. The amendment would not cause significant environmental impact due to a conflict in land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect as the proposed amendment would conform to the City General Plan and all impacts will be within the range of those identified in the Final EIR. No modifications to the existing MSASP development standards are proposed as part of this amendment, and thus the amendment will not result on any additional impacts or effects other than those described in the Final EIR.

The MSASP Certified EIR analyzed environmental impacts anticipated from the build out of the MSASP, which included an evaluation of hazardous uses within the Plan Area. The amendment to the MSASP will not introduce any new environmental impacts that were not contained in the analysis of the MSASP EIR. The amendment to the MSASP does not result in changes in the project which will require major revisions of the environmental impact report as development standards will remain the same and the amendment will not introduce new environmental impacts not evaluated in the EIR. Further, as the development standards are not being amended, there are no substantial changes that are expected occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. Lastly, there is no known new information that would affect the analysis of the previously-certified EIR.

Hazardous uses up to Biosafety Level 2 are allowed in Compatibility Zone 3. Compatibility Zone 3 is adjacent to Compatibility Zone 2. These Compatibility Zones occupy a similar space to the Employment Center/Light Industrial Zone and the TOD Zone, respectively. The amendment would allow for hazardous uses up to Biosafety Level 2 in Compatibility Zone 2, south of Millbrae Avenue

only. Each individual development project in the MSASP would be evaluated through additional environmental analysis and consistency with the MSASP EIR as part of the Conditional Use Permit process in regards to hazardous materials and any other environmental concerns.

The MSASP Final EIR identified potential impacts and unavoidable significant effects of development in the Specific Plan Area. As all of the impacts would be within the envelope of impacts identified in the Certified EIR, no additional environmental analysis pursuant to Section 15162 of the CEQA Guidelines is necessary.

ATTACHMENT 4 - MSASP Final Document and EIR

<https://www.ci.millbrae.ca.us/home/showdocument?id=7429>

<https://www.ci.millbrae.ca.us/departments-services/community-development/planning-division/millbrae-station-area-specific-plan-msasp>

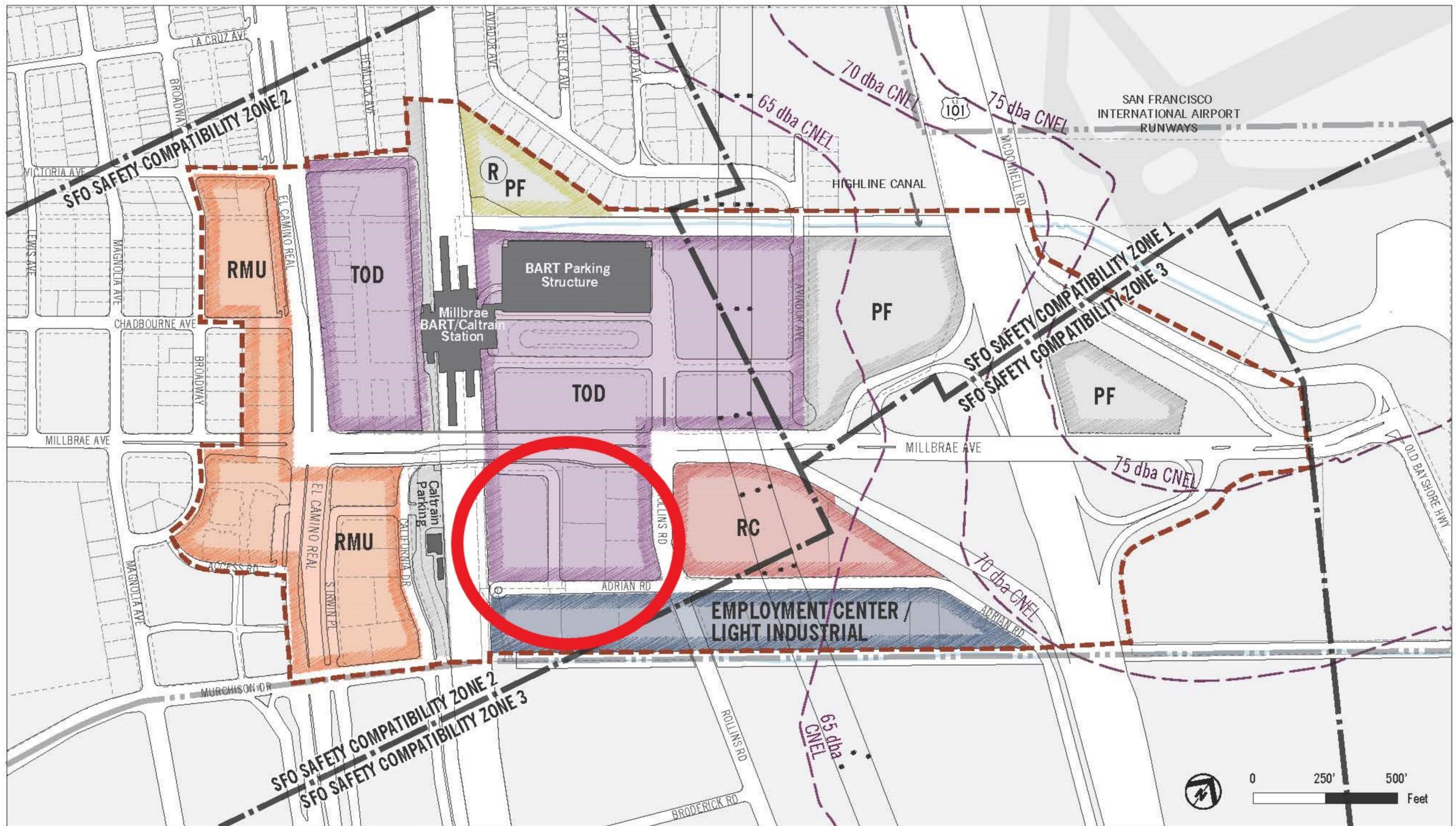
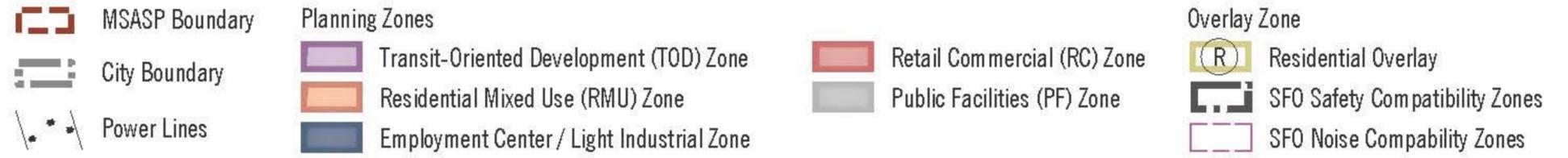
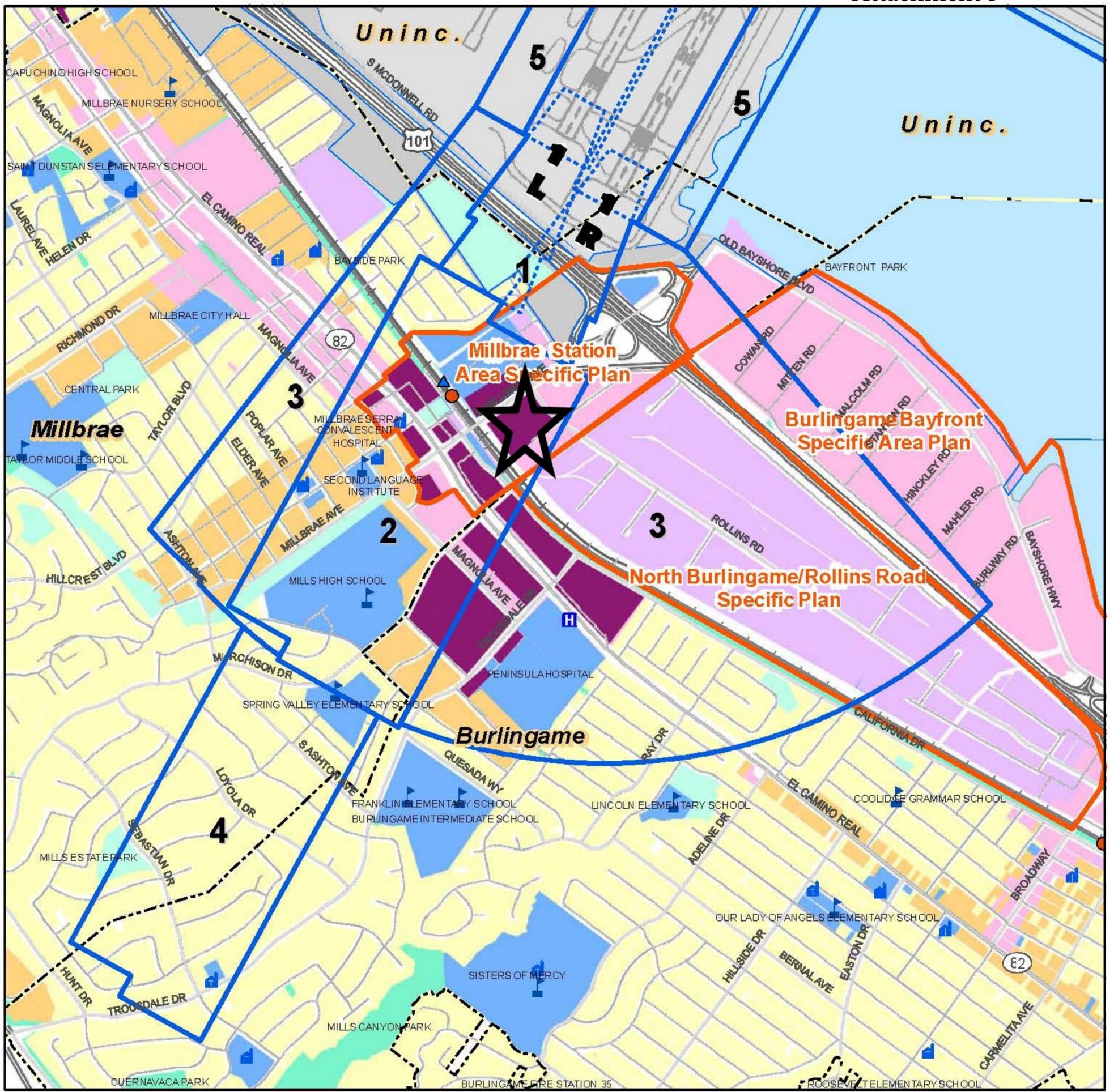


FIGURE 5-1. Planning and Overlay Zones





LEGEND

Safety Compatibility Zones

- 1 - Runway Protection Zone-Object Free Area
- 2 - Inner Approach/Departure Zone
- 3 - Inner Turning Zone
- 4 - Outer Approach/Departure Zone
- 5 - Sideline Zones
- Internal boundaries of ALP-defined areas
- Specific Plan Area
- Airport Property
- ▲ BART Station
- CALTRAIN Station
- ▤ School
- ⌘ Place of Worship
- ⌚ Hospital
- Municipal Boundary
- Railroad
- Freeway
- Major Road
- Road

Planned Land Use Per General Plans

- Public
- Multi-Family Residential
- Single Family Residential
- Mixed Use
- Transit Oriented Development
- Commercial
- Industrial, Transportation, and Utilities
- Local Park, Golf Course, Cemetery
- Regional Park or Recreation Area
- Open Space

Sources:

- Local Plans:**
- San Bruno General Plan, December 2008
 - South San Francisco General Plan, 1998

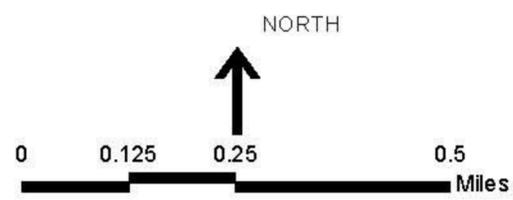


Exhibit IV-9
SAFETY COMPATIBILITY ZONES
IN THE CITIES OF BURLINGAME AND MILLBRAE
 Comprehensive Airport Land Use Plan
 for the Environs of San Francisco International Airport
CICAG
 City/County Association of Governments
 of San Mateo County, California

Table IV-2 (1 of 2) Safety Compatibility Criteria

ZONE	LAND USE CRITERIA	
	INCOMPATIBLE ^{1/}	AVOID ^{1/}
Zone 1: Runway Protection Zone and Object Free Area (RPZ-OFA)		
	All new structures ^{3/} Places of assembly not in structures Hazardous uses ^{2/} Critical public utilities ^{2/}	Nonresidential uses except very low intensity uses ^{4/} in the "controlled activity area." ^{2/}
Zone 2: Inner Approach/Departure Zone (IADZ)		
	Children's schools ^{2/} Large child day care centers and noncommercial employer-sponsored centers ancillary to a place of business ^{2/} Hospitals, nursing homes Hazardous uses ^{2/} Critical public utilities ^{2/} Theaters, meeting halls, places of assembly seating more than 300 people Stadiums, arenas	---
Zone 3: Inner Turning Zone (ITZ)		
	Biosafety Level 3 and 4 facilities ^{2/} Children's schools ^{2/} Large child day care centers ^{2/} Hospitals, nursing homes Stadiums, arenas	Hazardous uses other than Biosafety Level 3 and 4 facilities ^{2/} Critical public utilities ^{2/}
Zone 4: Outer Approach/Departure Zone (OADZ)		
	Biosafety Level 3 and 4 facilities ^{2/} Children's schools ^{2/} Large child day care centers ^{2/} Hospitals, nursing homes Stadiums, arenas	Hazardous uses other than Biosafety Level 3 and 4 facilities ^{2/} Critical public utilities ^{2/}
Zone 5: Sideline Zone (SZ)		
	Children's schools ^{2/} Large child day care facilities and noncommercial employer-sponsored centers ancillary to a place of business Hospitals, nursing homes Hazardous uses ^{2/} Critical public utilities ^{2/} Stadiums, arenas	---

Table IV-2 (2 of 2) Safety Compatibility Criteria

Notes:

- 1/ *Avoid:* Use is not fully compatible and should not be permitted unless no feasible alternative is available. Where use is allowed, habitable structures shall be provided with at least 50 percent more exits than required by applicable codes. Where the 50-percent factor results in a fraction, the number of additional exits shall be rounded to the next highest whole number.
- Incompatible:* Use is not compatible in the indicated zones and cannot be permitted.
- 2/ Definitions
- o *Biosafety Level 3 and 4 facilities:* Medical and biological research facilities involving the storage and processing of extremely toxic or infectious agents. See Policy SP-3 for additional detail.
 - o *Children's schools:* Public and private schools serving preschool through grade 12, excluding commercial services.
 - o *Controlled Activity Area:* The lateral edges of the RPZ, outside the Runway Safety Area (RSA) and the extension of the RSA, which extends to the outer edge of the RPZ. See FAA Advisory Circular 150/5300-13, Airport Design, Section 212a.(1)(b).
 - o *Critical public utilities:* Facilities that, if disabled by an aircraft accident, could lead to public safety or health emergencies. They include the following: electrical power generation plants, electrical substations, wastewater treatment plants, and public water treatment facilities.
 - o *Hazardous uses:* Uses involving the manufacture, storage, or processing of flammable, explosive, or toxic materials that would substantially aggravate the consequences of an aircraft accident. See Policy SP-3 for additional detail.
 - o *Large child day care centers:* Commercial facilities defined in accordance with Health and Safety Code, Section 1596.70, et seq., and licensed to serve 15 or more children. Family day care homes and noncommercial employer-sponsored facilities ancillary to place of business are allowed.
- 3/ Structures serving specific aeronautical functions are allowed, in compliance with applicable FAA design standards.
- 4/ Examples include parking lots and outdoor equipment storage.

SOURCE: Ricondo & Associates, Inc., June 2012.

PREPARED BY: Ricondo & Associates, Inc., June 2012.

ZONE 2 -- INNER APPROACH/DEPARTURE ZONE (IADZ)

In Zone 2, the IADZ, a variety of uses that involve hazardous materials, critical public utilities, theaters, meeting halls, places of assembly seating more than 300 people, stadiums, arenas, and those accommodating potentially vulnerable populations – such as children's schools, child day care facilities, hospitals, and nursing homes – are incompatible.

ZONE 3 -- INNER TURNING ZONE (ITZ)

The compatibility criteria in Zone 3, the ITZ, are somewhat less restrictive than in Zone 2. This is because the area is subject to less accident risk by virtue of the lower density of overflights in this area. In Zone 3, stadiums, arenas, and uses accommodating potentially vulnerable populations are incompatible. Hazardous uses and critical public utilities are not incompatible in Zone 3, but are classified as uses to be avoided. This means that they should not be permitted unless no feasible alternative is available.

ZONE 4 - OUTER APPROACH/DEPARTURE ZONE (OADZ)

The compatibility criteria in Zone 4, the OADZ, are the same as in Zone 3.

ZONE 5 – SIDELINE ZONE (SZ)

The compatibility criteria in Zone 5 are the same as those in Zone 2.

SP-3 HAZARDOUS USES

Hazardous uses, facilities involving the manufacture, processing, or storage of hazardous materials, can pose serious risks to the public in case of aircraft accidents. Hazardous materials of particular concern in this ALUCP, and which are covered by the safety compatibility criteria in Table IV-2, are the following:

- A. Aboveground fuel storage** — This includes storage tanks with capacities greater than 10,000 gallons of any substance containing at least 5 percent petroleum.¹¹ Project sponsors must provide evidence of compliance with all applicable regulations prior to the issuance of development permits.
- B. Facilities where toxic substances are manufactured, processed or stored** — Proposed land use projects involving the manufacture or storage of toxic substances may be allowed if the amounts of the substances do not exceed the threshold planning quantities for hazardous and extremely hazardous substances specified by the EPA.¹²
- C. Explosives and fireworks manufacturing and storage** — Proposed land use projects involving the manufacture or storage of explosive materials may be allowed in safety zones only in compliance with the applicable regulations of the California Division of Occupational Safety and Health (Section 5252, Table EX-1). Project sponsors must provide evidence of compliance with applicable state regulations prior to the issuance of any development permits.¹³
- D. Medical and biological research facilities handling highly toxic or infectious agents** — These facilities are classified by “Biosafety Levels.”¹⁴ Biosafety Level I does not involve hazardous materials and is not subject to the restrictions on hazardous uses in Table IV-2. Definitions of the other three biosafety levels are quoted from *Biosafety in Microbiological and Biomedical Laboratories*, below.¹⁵
 - a. Biosafety Level 2 practices, equipment, and facility design and construction are applicable to clinical, diagnostic, teaching, and other laboratories in which work is done with the broad spectrum of indigenous moderate-risk agents that are present in the community

¹¹ State of California, California Health and Safety Code, Section 25270 (*Aboveground Petroleum Storage Act*).

¹² Title 40 Code of Federal Regulations Part 355, Subpart D, Appendices A & B.

¹³ California Code of Regulations, Title 8, Subchapter 7 *General Industry Safety Orders*, Group 18 *Explosives and Pyrotechnics*, Article 114 *Storage of Explosives*.

¹⁴ *Biosafety in Microbiological and Biomedical Laboratories*, 5th Edition, 2009, published by the U.S. Department of Health and Human Services in concert with the Public Health Service, Centers for Disease Control and Prevention, and National Institutes of Health, or any successor publication.

¹⁵ *Biosafety in Microbiological and Biomedical Laboratories*, 5th Edition, 2009, published by the U.S. Department of Health and Human Services in concert with the Public Health Service, Centers for Disease Control and Prevention, and National Institutes of Health, pp. 25-26.

and associated with human disease of varying severity.

- b. Biosafety Level 3 practices, safety equipment, and facility design and construction are applicable to clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents with a potential for respiratory transmission, and which may cause serious and potentially lethal infection.
- c. Biosafety Level 4 practices, safety equipment, and facility design and construction are applicable for work with dangerous and exotic agents that pose a high individual risk of life-threatening disease, which may be transmitted via the aerosol route and for which there is no available vaccine or therapy.

4.5 Airspace Protection

The compatibility of proposed land uses with respect to airspace protection shall be evaluated in accordance with the policies set forth in this section. These policies are established with a twofold purpose:

1. To protect the public health, safety, and welfare by minimizing the public's exposure to potential safety hazards that could be created through the construction of tall structures.
2. To protect the public interest in providing for the orderly development of SFO by ensuring that new development in the Airport environs avoids compromising the airspace in the Airport vicinity. This avoids the degradation in the safety, utility, efficiency, and air service capability of the Airport that could be caused by the attendant need to raise visibility minimums, increase minimum rates of climb, or cancel, restrict, or redesign flight procedures.

4.5.1 FEDERAL REGULATIONS REGARDING TALL STRUCTURES

14 Code of Federal Regulations (CFR) Part 77, *Safe, Efficient Use and Preservation of the Navigable Airspace*, governs the FAA's review of proposed construction exceeding certain height limits, defines airspace obstruction criteria, and provides for FAA aeronautical studies of proposed construction. **Appendix F** describes the FAA airspace review process and the extent of FAA authority related to airspace protection.

4.5.2 PART 77, SUBPART B, NOTIFICATION PROCESS

Federal regulations require any person proposing to build a new structure or alter an existing structure with a height that would exceed the elevations described in CFR Part 77, Subpart B, Section 77.9, to prepare an FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, and submit the notice to the FAA. The regulations apply to buildings and other structures or portions of structures, such as mechanical equipment, flag poles, and other projections that may exceed the aforementioned elevations.



San Francisco International Airport

October 13, 2020

Susy Kalkin
 ALUC Staff
 City/County Association of Governments of San Mateo County
 555 County Center, 5th Floor
 Redwood City, CA 94063

Subject: San Francisco International Airport's Objection to Proposed Use Change in City of Millbrae's Station Area Specific Plan

Dear Ms. Kalkin:

Thank you for notifying San Francisco International Airport (SFO or "Airport") of the proposed amendment to the City of Millbrae's (Millbrae) Millbrae Station Area Specific Plan (MSASP) to allow for Biosafety Level 2 uses, specifically within the Airport's Safety Compatibility Zone 2: Inner Approach/Departure Zone and Zone 3: Inner Turning Zone. We appreciate this opportunity to coordinate with the City/County Association of Governments of San Mateo County (C/CAG) and Millbrae in evaluating this land use amendment. The Airport understands that Millbrae proposes to change its Transit-Oriented Development (TOD) zone to allow uses for Biotech, with a Conditional Use Permit, specifically within the portion south of Millbrae Avenue. The Airport objects to the proposed amendment because it would be incompatible with the land use policies in the Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport (ALUCP). The Airport accordingly recommends that the Airport Land Use Commission (ALUC) deny the land use amendment as proposed.

The California Public Utilities Code requires airport land use commissions to prepare and adopt an airport land use compatibility plan for each public use and military airport within their jurisdictions.¹ The purpose is twofold: (1) to protect airports, which are typically regional, state, and national assets, from local development that would encroach on the ability of airports to operate and (2) to promote good land use planning and zoning in communities located near airports that protects residents in the communities near airports. In 1996, C/CAG, acting in its capacity as ALUC, adopted the ALUCP. In 2012, C/CAG updated the ALUCP.

The proposed amendment is inconsistent with the ALUCP safety policies as follows. Millbrae is proposing a zoning text amendment to allow for Biotech uses up to Biosafety Level 2, with a Conditional Use Permit, in the TOD zone. Biotech uses are currently permitted in the Employment/Light Industrial Zone south of the TOD zone, but this amendment would allow it closer to Millbrae Station and the business core. However, ALUCP Policy SP-3: Hazardous Uses specifically prohibits "Medical and biological research facilities handling highly toxic or infectious agents," which include Biosafety Levels 2, 3, and 4, within Zone 2: Inner Approach/Departure Zones. Some biological research facility uses are allowed within Zone 3: Inner Turning Zone, but Biosafety Level 3 and 4 facilities remain prohibited in this zone.

The Airport understands that each individual development project in the MSASP would be evaluated through additional environmental analysis and for consistency with the MSASP EIR, as part of the Conditional Use Permit process. However, the Airport is concerned that any allowance of Biosafety Level 2 in Zone 2 would clash directly with aircraft safety. Hazardous uses in particular are not allowed in

¹ Cal. Publ. Util. Code, § 21674(c)
 AIRPORT COMMISSION, CITY AND COUNTY OF SAN FRANCISCO

Susy Kalkin
October 13, 2020
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Safety Zone 2 in case of evacuation and other emergencies. As the Federal Aviation Authority (FAA) notes, Hazardous Materials can contribute to land use conditions that can lead to catastrophic incidents. Allowing these uses in the Inner Approach/Departure Zone of an airport could create exponential damage and destruction in the event of an aircraft accident or emergency.

Additionally, while the ALUCP imposes no direct limits on heights in this area, the maximum height limits of the FAA and Airport airspace protection policies of this area indirectly impose limits on the maximum height and development in safety zones. It should be noted that there are certain areas south of Millbrae Avenue that will impede airspace protections if development is taken to the maximum 100-foot height limit of the TOD zone.

Exhibit IV-9 of the ALUCP highlights the areas of the MSASP that include Safety Zone 2 and 3, south of Millbrae Avenue.

* * *

To all these points, the proposed TOD zoning amendment to conditionally allow Biosafety Level 2 within Zone 2 is inconsistent with the SFO ALUCP and poses an unreasonable safety hazard for aircraft operations. Not only this, but it exposes residents and businesses in Millbrae to greater harm in the event of an aircraft emergency. Additionally, imposing a requirement for a conditional use permit for discrete project considerations, while taking into consideration environmental concerns, does not address this inherent safety concern with hazardous material storage and use in this aircraft safety zone.

The Airport appreciates your consideration of these comments. If I can be of assistance regarding this matter, please do not hesitate to contact me at (650) 821-9464 or at nupur.sinha@flysfo.com.

Sincerely,

DocuSigned by:
Nupur Sinha
7D552AE6A4CE495...

Nupur Sinha
Acting Airport Planning Director
San Francisco International Airport
Bureau of Planning and Environmental Affairs

cc: Sandy Wong, C/CAG
Tom Williams, City of Millbrae, City Manager
Brad Misner, City of Millbrae, Community Development Director
Nixon Lam, SFO, Environmental Affairs Manager
Ivar Satero, SFO, Airport Director
Geoff Neumayr, SFO, Chief Development Officer

C/CAG AGENDA REPORT

Date: October 22, 2020

To: Airport Land Use Committee

From: Susy Kalkin

Subject: Public Hearing to review and recommend action on proposed amendments to the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Carlos Airport intended to enhance the clarity and effectiveness of the overflight notification and aviation easement policies.

(For further information or response to questions, contact Susy Kalkin at kkalkin@smcgov.org)

RECOMMENDATION

That the C/CAG Airport Land Use Committee (ALUC) conduct a Public Hearing and recommend to the C/CAG Board of Directors, that the C/CAG Board, acting as the Airport Land Use Commission, approve the proposed amendments to the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Carlos Airport intended to enhance the clarity and effectiveness of the overflight notification and aviation easement policies.

BACKGROUND

An issue arose at the ALUC last year regarding interpretation and application of the San Carlos Airport ALUCP Overflight Policy 2 – Overflight Easement Review Area, which currently reads as:

“...The request for the grant of an aviation easement will be made to the local agency that is proposing the land use policy action and will be based on the following criteria:

- a. The proposed land use policy action involves real property located within the OERA and includes adoption of one or more of the following:
 1. General Plan
 2. General Plan Amendment
 3. Zoning Ordinance
 4. Zoning Ordinance Amendment
 5. Specific Plan
 6. Specific Plan Amendment
- b. The proposed land use policy action would either permit or result in the development or construction of noise-sensitive land uses that are considered to be conditionally compatible with aircraft noise of CNEL 60 dB or greater;
- c. The proposed land use policy action would allow the construction of structures or other objects in the vicinity of San Carlos Airport that could exceed the height standards defined in FAR Part 77, Subpart C;
- d. The proposed land use policy action would allow land uses that may cause visual, electronic, navigational, or wildlife hazards to aircraft in flight or taking off or landing at San Carlos Airport.”

At that time, there was discussion about whether an aviation easement should be required for a project that was not located within a noise impact contour, did not present a height concern and did not include any of the concerns identified in section d. While acknowledging that the existing Overflight Policy 2 is poorly worded, staff argued that criterion a. should not be utilized as a standalone criterion (since it includes all types of land use policies that are statutorily required to be reviewed by the ALUC), but rather that one of the other factors (b., c. or d.) would also need to be present to justify imposition of an aviation easement requirement.

To assist in providing clarity, C/CAG retained a consultant, Environmental Science Associates (ESA), to provide additional background and options, and to potentially propose amendments to the Policy to better reflect intent.

DISCUSSION

Background Research

ESA's initial work focused on providing a summary of approaches to promote overflight notification in areas around the Airport. Per the California Airport Land Use Planning Handbook (Caltrans Handbook), experience at many airports has shown that noise -related concerns do not stop at the boundary of the outermost mapped CNEL contour. Because noise is subjective in nature, many people are sensitive to the frequent presence of aircraft overhead even at low noise levels in areas beyond the CNEL contours. These reactions are typically expressed in the form of *annoyance*. To address this concern in areas subject to aircraft overflight, it is common for sellers of real property to utilize buyer awareness measures, which, rather than applying direct restrictions on the types of land uses, seeks to inform the public of potential annoyances associated with overflight.

The Caltrans Handbook discusses two potential approaches to advancing buyer awareness of potential for overflight. These include real estate disclosure statements and recorded deed notices. Aviation easements attached to a property can also be used to inform potential buyers of the presence of overflying aircraft, but are not recommended by Caltrans when employed strictly as buyer awareness measures.

Real Estate Disclosure Notification

The State of California's Airport Noise Disclosure law requires sellers of residential property to inform prospective purchasers or renters of the presence of all existing airports, and all proposed airports shown in the general plan of any city or county, within two statute miles. Notice of an airport in the vicinity is required as follows:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to

those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

The San Carlos ALUCP includes Overflight Policy 1 which requires Real Estate Disclosure Notification. ESA reached out to real estate agents based in the San Carlos-Redwood City market to determine how routinely airport noise-related notifications were included in disclosure reports in the San Carlos Airport environs and found that they were common practice in the area during real estate sales transactions.

ESA also contacted several apartment community management offices in the San Carlos Airport environs to determine if airport-related disclosures were included in lease agreements. Responses from apartment managers indicated renters are typically not notified of the proximity of San Carlos Airport.

Recorded Deed Notice

Deed notices are recorded in county records at the time of parcel subdivision and appear in title reports at the time of sale. A recorded deed notice can serve as a disclosure that a property is within an AIA. For example, the deed notice would include language such as “runs with the land,” which would pass from owner to owner, thus making it a permanent disclosure solution.

Inquiries made to the San Mateo County Recorder’s office revealed disclosure notices for airport-related issues are not typically recorded in title reports for newly subdivided parcels, and the County recorder would have to convene with County counsel for direction on the matter. Since, as noted above, compliance with Real Estate Disclosure requirements is standard practice on sales transactions, pursuing recorded deed notices would likely not significantly increase buyer awareness.

Avigation Easements

In airport land use compatibility planning, avigation easements are acquired by agencies and airport operators from property owners in exchange for approval to develop certain land uses in the airport environs (e.g., residential units in areas exposed to aircraft noise). Like recorded deed notices, avigation easements pass with real property from owner to owner, informing potential buyers of the presence of overflights. However, although avigation easements permanently establish notification that aircraft pass over the property, they are not strictly suited for use as buyer awareness measures. Avigation easements are typically associated with imaginary airspace protection surfaces, runway protection zones (RPZs), and airport noise. In addressing these concerns, avigation easements may convey specific rights to the property and impose land use restrictions. The rights and restrictions attached to an avigation easement may include one or more of the following:

- Right to fly above ground surface.
- Right to cause noise, vibrations, fumes, dust, fuel particles.

- Prevention of locating structures and trees above the ground surface.
- Right of entry to property to remove or mark structures and vegetation.
- Prohibition of electromagnetic interference, or confusing lights or glare.

The rights and restrictions noted above are intended to prevent interference with aircraft in flight and the development of incompatible land uses. Because even the most limited in scope aviation easements establish the right of aircraft to pass over the property and expose people on the property to noise, vibrations, fumes, and particulate matter, they may be perceived as unnecessarily intrusive as a buyer awareness measure. Furthermore, if intended solely as a means of disclosing aircraft overflight, then any impositions attached to the easement would present legal issues. If overflight notification is the policy objective, then criteria specifically directed at noise or airspace protection may not be appropriate from a legal perspective. For example, an aviation easement establishing the right of aircraft to pass over the property and create noise may not make sense in areas outside of modeled noise exposure contours. For these reasons, the Caltrans Handbook does not recommend use of aviation easements in instances where buyer awareness is the only consideration.

Overflight Policy Working Group Discussion

Because of the complexity of the issue and the variety of stakeholders involved, an Overflight Policy Working Group was formed, consisting of ALUC members Rak, Oliva and Ford; planning staff members from Redwood City and San Carlos; Gretchen Kelly, San Carlos Airport Manager; and ALUC staff.

A meeting with the Overflight Policy Working Group was convened in early July to present the above background information and discuss two options that ESA put forward to address this issue: 1) reconstructing the Overflight Policy 2 criteria to minimize the potential for confusion; or 2) extracting the aviation easement requirements from the overflight notification policies and introducing new aviation easement policies under the noise and airspace protection policies. As neither the ALUC Aviation representative nor the Airport Manager were able to attend the first meeting, a second meeting was held the following week to solicit their input.

After discussion, and noting that in both the SFO and Half Moon Bay ALUCPs aviation easement discussions are included under the noise compatibility policies, there was general support from the members of the Overflight Policy Working Group to pursue the second option. Accordingly, Amendments have been drafted, as shown on Attachment 1, and are summarized below:

- **Add Noise Policy 7 – Noise Easement Review Area** to ensure that new noise-sensitive land uses within the CNEL 60 dB and higher contours are made compatible with aircraft noise. Both the C/CAG ALUC and the C/CAG Board, acting as the Airport Land Use Commission, will consider the need for the granting of an aviation easement to the County of San Mateo as part of their reviews of proposed local agency land use policy actions that involve noise sensitive land uses

within the defined CNEL 60 dB and higher contours for San Carlos Airport.

- **Add Airspace Protection Policy 7 - Airspace Protection Avigation Easement.** The request for the grant of an avigation easement will be based on the following criteria:
 - a) The proposed land use policy action involves real property located beneath the airspace protection surfaces; *and*
 - b) The proposed land use policy action would allow the construction of structures or other objects in the vicinity of San Carlos Airport that could exceed the height standards as defined in 14 CFR Part 77, Subpart C, and based on the elevation above mean sea level (AMSL) of the applicable runway end; or
 - c) The proposed land use policy action would allow land uses that may cause visual, electronic, navigational, or wildlife hazards to aircraft in flight or taking off or landing at San Carlos Airport.
- **Eliminate Overflight Policy 2, Overflight Easement Review Area (OERA).** The criteria included in Overflight Policy 2 would be transferred to a new Noise Policy 7 and Airspace Protection Policy 7 where they would be more appropriately applied.
- **Replace Appendix E, Exhibit E-1 – Sample Standard Avigation Easement, with Appendix E, Exhibit E-1A: Grant of Airspace Protection Avigation Easement and Exhibit E-1B: Grant of Noise Avigation Easement** to address noise and airspace protection as potentially separate issues.

Note: A legal notice was placed in the San Mateo Daily Journal on October 12, 2020 advertising this public hearing and the availability of the Proposed Amendments for public review and comment.

ATTACHMENTS

1. Proposed Amendments

Proposed Amendments to the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Carlos Airport

Overflight Notification and Avigation Easement Policies

October 2020

The following sections present draft policies for the Noise (4.2.1), Airspace Protection (4.2.3), and Overflight (4.2.4) sections of the SQL ALUCP. Sample easement language is also included in revised Exhibit E.1. Changes are shown in double underline (additions) and strikeout (deletions).

Noise Policy Update

There are currently six policies addressing noise compatibility in the SQL ALUCP:

- Noise Policy 1 – Noise Impact Area
- Noise Policy 2 – Airport Noise/Land Use Compatibility Criteria
- Noise Policy 3 – Residential Land Uses
- Noise Policy 4 – Interior Noise Levels
- Noise Policy 5 – Application of Noise Contours to Individual Project Sites to Determine Compatibility
- Noise Policy 6 - Engine Run-Up and Testing Noise

Add a seventh noise compatibility policy to Section 4.2.1, as follows:

Noise Policy 7 – Noise Easement Review Area

The C/CAG Board deems it necessary to ensure that new noise-sensitive land uses within the CNEL 60 dB and higher contours (please see Exhibit 4-2) are made compatible with aircraft noise in accordance with 21 California Code of Regulations (CCR) Section 5014. Both the C/CAG ALUC and the C/CAG Board, acting as the Airport Land Use Commission, will consider the need for the granting of an avigation easement to the County of San Mateo as part of their reviews of proposed local agency land use policy actions that affect property within the defined CNEL 60 dB and higher contours for San Carlos Airport. Applicable land use policy actions include adoption of the following:

1. General Plan
2. General Plan Updates
3. General Plan Amendments
4. Zoning Ordinance

5. Zoning Ordinance Amendments
6. Specific Plans
7. Specific Plan Amendments

The request for the grant of an avigation easement will be made to the local agency that is proposing the land use policy action and will be based on meeting both the following criteria:

- a) The proposed land use policy action involves real property located within the CNEL 60 dB and higher contours;

and

- b) The proposed land use policy action would either permit or result in the development or construction of noise-sensitive land uses that are identified in Table 4-3 as conditionally compatible in areas within the CNEL 60 dB or greater contours (see Exhibit 4-2).

The process for requesting the grant of an avigation easement to the County of San Mateo will include the following steps:

- 1) The C/CAG ALUC reviews a proposed local agency land use policy action and submits a recommendation to the Airport Land Use Commission (C/CAG Board) regarding a request for a grant of an avigation easement to the County of San Mateo.
- 2) The Airport Land Use Commission (C/CAG Board) reviews the proposed local agency land use policy action and considers the ALUC recommendation.
- 3) If the Airport Land Use Commission (C/CAG Board) concurs with the ALUC recommendation, it shall notify the affected local agency of its action and shall formally request the agency to require the grant of an avigation easement to the County of San Mateo as part of the agency's final approval of the proposed action.

When deemed necessary, the C/CAG Board shall condition its approval of the proposed development upon the owner of the subject property granting an avigation easement to San Mateo County, as the proprietor of San Carlos Airport. The local governmental agency with the ultimate permitting and approval authority over the proposed development shall ensure that this condition is implemented prior to final approval of the proposed development. If the approval action for the proposed development includes construction of a building(s) and/or other structures, the local permitting authority shall require the grant of an avigation easement to San Mateo County prior to issuance of a building permit(s) for the proposed building or structure. If the proposed development is not built, then, upon notice by the local permitting authority, San Mateo County shall record a notice of termination of the avigation easement. The avigation easement to be used in fulfilling this condition is presented in **Exhibit E-1B**.

Airspace Protection Policy Update

There are currently six airspace protection policies in the SQL ALUCP:

- Airspace Protection Policy 1 – Airspace Protection Compatibility for New Development
- Airspace Protection Policy 2 – Requirements for FAA Notification of Proposed Construction
- Airspace Protection Policy 3 – Compliance with Findings of FAA Aeronautical Studies
- Airspace Protection Policy 4 – Airspace Obstruction Criteria
- Airspace Protection Policy 5 – Maximum Compatible Building Height
- Airspace Protection Policy 6 – Other Flight Hazards are Incompatible

Add a seventh airspace protection compatibility policy to Section 4.2.3 as follows:

Airspace Protection Policy 7 – Airspace Protection Avigation Easement

Areas beneath the following imaginary airspace surfaces (as defined under 14 CFR Part 77) are subject to this policy.

1. Horizontal surface as depicted on Exhibit 4-4
2. Approach surfaces depicted on Exhibit 4-4
3. Transitional surfaces depicted on Exhibit 4-4

The C/CAG Board deems it necessary to: (1) ensure the unimpeded use of airspace in the vicinity of San Carlos Airport; and (2) to provide notice to owners of real property near San Carlos Airport of the proximity to the airport and of the potential impacts that could occur on the property from airport/aircraft operations. Both the C/CAG ALUC and the C/CAG Board, acting as the Airport Land Use Commission will consider the need for the granting of an avigation easement to the County of San Mateo, as part of their reviews of proposed local agency land use policy actions that affect property within the defined APERA for San Carlos Airport. Applicable land use policy actions include adoption of the following:

1. General Plans
2. General Plan Updates
3. General Plan Amendments
4. Zoning Ordinances
5. Zoning Ordinance Amendments
6. Specific Plans
7. Specific Plan Amendments

The request for the grant of an aviation easement will be made to the local agency that is proposing the land use policy action and will be based on the following criteria:

- a) The proposed land use policy action involves real property located beneath the airspace protection surfaces;

and

- b) The proposed land use policy action would allow the construction of structures or other objects in the vicinity of San Carlos Airport that could exceed the height standards as defined in 14 CFR Part 77, Subpart C, and based on the elevation above mean sea level (AMSL) of the applicable runway end; or
- c) The proposed land use policy action would allow land uses that may cause visual, electronic, navigational, or wildlife hazards to aircraft in flight or taking off or landing at San Carlos Airport.

The process for requesting the grant of an aviation easement to the County of San Mateo will include the following steps:

1. The C/CAG ALUC reviews a proposed local agency land use policy action and submits a recommendation to the Airport Land Use Commission (C/CAG Board), regarding a request for a grant of an aviation easement to the County of San Mateo.
2. The Airport Land Use Commission (C/CAG Board) reviews the proposed local agency land use policy action and considers the ALUC recommendation.
3. If the Airport Land Use Commission (C/CAG Board) concurs with the ALUC recommendation it shall notify the affected local agency of its action and shall formally request the agency to require the grant of an aviation easement to the County of San Mateo as part of the agency's final approval of the proposed action.

When deemed necessary, the C/CAG Board shall condition its approval of the proposed development upon the owner of the subject property granting an aviation easement to San Mateo County, as the proprietor of San Carlos Airport. The local governmental agency with the ultimate permitting and approval authority over the proposed development shall ensure that this condition is implemented prior to final approval of the proposed development. If the approval action for the proposed development includes construction of a building(s) and/or other structures, the local permitting authority shall require the grant of an aviation easement to San Mateo County prior to issuance of a building permit(s) for the proposed building or structure. If the proposed development is not built, then, upon notice by the local permitting authority, San Mateo County shall record a notice of termination of the aviation easement. The aviation easement to be used in fulfilling this condition is presented in **Appendix E-1A**.

Overflight Policy Update

There are currently two overflight policies in the SQL ALUCP:

- Overflight Policy 1 – Real Estate Transfer Disclosure
- Overflight Policy 2 – Overflight Easement Review Area

Delete Overflight Policy 2 from Section 4.2.4 in its entirety, as follows:

~~Overflight Policy 2 – Overflight Easement Review Area~~

~~The 1996 CLUP established an Avigation Easement Review Area (AERA) that is based on the CNEL 55 dB contour, the FAR Part 77 horizontal surface, the FAR Part 77 approach surface, and the FAR Part 77 transitional surface. The AERA is hereby modified as follows:~~

- ~~a. The AERA is renamed the Overflight Easement Review Area (OERA)~~
- ~~b. The OERA boundary for San Carlos Airport is based on the combination of the:~~
 - ~~1. 60 dB CNEL noise contour as depicted on Exhibit 4-2~~
 - ~~2. The FAR Part 77 horizontal surface as depicted on Exhibit 4-4~~
 - ~~3. The FAR Part 77 approach surface depicted on Exhibit 4-4~~
 - ~~4. The FAR Part 77 transitional surface depicted on Exhibit 4-4~~

~~The C/CAG Board deems it necessary to: (1) ensure the unimpeded use of airspace in the vicinity of San Carlos Airport; (2) to ensure that new noise-sensitive land uses within the CNEL 60 dB contour are made compatible with aircraft noise in accordance with California Code of Regulations, Title 21, Section 5014; and (3) to provide notice to owners of real property near San Carlos Airport of the proximity to the airport and of the potential impacts that could occur on the property from airport/aircraft operations. Both the C/CAG ALUC and the C/CAG Board, acting as the Airport Land Use Commission, will consider the need for the granting of an avigation easement to the County of San Mateo, as part of their reviews of proposed local agency land use policy actions that affect property within the defined OERA for San Carlos Airport. The request for the grant of an avigation easement will be made to the local agency that is proposing the land use policy action and will be based on the following criteria:~~

- ~~a. The proposed land use policy action involves real property located within the OERA and includes adoption of one or more of the following:~~
 - ~~1. General Plan~~
 - ~~2. General Plan Amendment~~
 - ~~3. Zoning Ordinance~~
 - ~~4. Zoning Ordinance Amendment~~
 - ~~5. Specific Plan~~
 - ~~6. Specific Plan Amendment~~
- ~~b. The proposed land use policy action would either permit or result in the development or construction of noise-sensitive land uses that are considered to be conditionally compatible with aircraft noise of CNEL 60 dB or greater;~~
- ~~c. The proposed land use policy action would allow the construction of structures or other objects in the vicinity of San Carlos Airport that could exceed the height standards defined in FAR Part 77, Subpart C;~~

- d. The proposed land use policy action would allow land uses that may cause visual, electronic, navigational, or wildlife hazards to aircraft in flight or taking off or landing at San Carlos Airport.

The process for requesting the grant of an aviation easement to the County of San Mateo will include the following steps:

1. The C/CAG ALUC reviews a proposed local agency land use policy action and submits a recommendation to the Airport Land Use Commission (C/CAG Board), regarding a request for a grant of an aviation easement to the County of San Mateo.
2. The Airport Land Use Commission (C/CAG Board) reviews the proposed local agency land use policy action and considers the ALUC recommendation.
3. If the Airport Land Use Commission (C/CAG Board) concurs with the ALUC recommendation it shall notify the affected local agency of its action and shall formally request the agency to require the grant of an aviation easement to the County of San Mateo as part of the agency's final approval of the proposed action.

When deemed necessary, the C/CAG Board shall condition its approval of the proposed development upon the owner of the subject property granting an aviation easement to San Mateo County, as the proprietor of San Carlos Airport. The local governmental agency with the ultimate permitting and approval authority over the proposed development shall ensure that this condition is implemented prior to final approval of the proposed development. If the approval action for the proposed development includes construction of a building(s) and/or other structures, the local permitting authority shall require the grant of an aviation easement to San Mateo County prior to issuance of a building permit(s) for the proposed building or structure. If the proposed development is not built, then, upon notice by the local permitting authority, San Mateo County shall record a notice of termination of the aviation easement. The aviation easement to be used in fulfilling this condition is presented in **Appendix E**.

Replace Existing Appendix E.1, Avigation Easement, with the following:

Appendix E

Implementation Materials

E.1 Avigation Easements

Avigation easements transfer certain property rights from the owner of a property to the owner of the airport (i.e., the County of San Mateo). ALUCs may recommend the dedication of an avigation easement as a condition for approval of development on property subject to high noise levels. Avigation easements can also be used to restrict heights of structures and trees to less than might ordinarily occur on a property. Samples of standard avigation easements for San Carlos Airport are presented in Exhibit E-1A Grant of Airspace Protection Avigation Easement and E-1B Grant of Noise Avigation Easement.

Exhibit E-1A: Grant of Airspace Protection Avigation Easement

When recorded return to:

County of San Mateo

County Manager's Office

Real Property Division

455 County Center, 5th Floor

Redwood City, CA 94063

COUNTY OF SAN MATEO

AVIGATION EASEMENT

This easement is made this _____ day of _____ by and between _____, hereinafter referred to as "GRANTOR" and the County of San Mateo, a political subdivision of the State of California, hereinafter referred to as "COUNTY" or "GRANTEE."

Recitals

A. COUNTY is the owner of certain real property, commonly known as the San Carlos Airport, situated in the County of San Mateo, State of California and generally described as Assessor Parcel Numbers 046-081-730; 600; 680 and 700; 046-082-010; 095-030-210 and 230; 095-222-070; 130 and 140. The County of San Mateo operates the San Carlos Airport as a Category B-II, General Aviation Airport, as defined in Federal Aviation Administration Advisory Circular 150/5300-13 "Airport Design" and Federal Aviation Regulations, Part 77. For purposes of this easement, the San Carlos Airport property is the dominant tenement

B. GRANTOR is the owner in fee of certain real property situated in the County of San Mateo, State of California, as more particularly described in Exhibit A attached hereto, and incorporated herein by reference (the "Grantor Property"). For purposes of this easement, the Grantor Property is the servient tenement.

C. GRANTOR has proposed a _____
_____, near San Carlos Airport.

D. GRANTOR and GRANTEE wish to establish the terms and conditions of an avigation easement so that the aircraft that use San Carlos Airport will have the right to use the airspace over and above GRANTOR'S property.

NOW, THEREFORE, the parties hereto agree as follows:

1. GRANT OF EASEMENT

Grantor GRANTS to COUNTY, its successors and assigns a perpetual easement over the Grantor Property, as described in Exhibit A hereto, on the terms and conditions stated herein. The easement is an easement appurtenant to the San Carlos Airport, and an easement in gross as to the general flying public using San Carlos Airport.

2. PURPOSE OF EASEMENT

The purposes of this easement are (1) to allow for the free and unobstructed passage and flight of operationally compatible aircraft using San Carlos Airport, in through, over and across the airspace of the Grantor Property and (2) to provide notice to GRANTOR and any future owners of the GRANTOR property that the PROPERTY is located in the vicinity of San Carlos Airport and may be subject to impacts of aircraft operations at such airport.

3. RIGHTS GRANTED BY EASEMENT

Subject to limitations in Paragraph 5, below, this easement grants to the COUNTY and members of the public who use San Carlos Airport, the right to fly aircraft in the airspace above the Grantor Property, together with the following rights:

- a) For the use and benefit of the public, the easement and continuing right to fly, or cause or permit the flight by any and all persons, or any aircraft, of any and all kinds now or hereafter known, in, through, across, or about any portion of the Airspace hereinabove described; and
- b) A continuing right to clear and keep clear from the Airspace any portions of buildings, structures, or improvements of any kinds, and of trees or other objects, including the right to remove or demolish those portions of such buildings, structures, improvements, trees, or other things which extend into or above said Airspace, and the right to cut to the ground level and remove, any trees which extend into or above the Airspace; and
- c) The right to mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, any and all buildings, structures, or other improvements, and trees or other objects, which extend into or above the Airspace; and
- d) The right of ingress to, passage within, and egress from the hereinabove described real property, for the purposes described in subparagraphs (3) and (4) above at reasonable times and after reasonable notice.

- e) The prohibition against creating on the real property electrical and electronic interference, glint, glare, and other conditions that would impair the vision of pilots, high-velocity exhaust plumes, and other interference with radio, radar, microwave, or means of aircraft communication, and uses or features that make it difficult for pilots to distinguish between airfield navigation lights and visual aids and other lights, hazardous wildlife attractants, and other potential hazards to flight.

4. GRANTOR'S OBLIGATIONS

GRANTOR shall not construct, nor permit the construction of, nor permit the growth of, any structure, tree or other natural or man-made object that a) penetrates the designated transitional, horizontal or approach surface, as shown in Exhibit B, attached hereto and incorporated herein by this reference (hereafter "Prohibited Zone") such as to constitute an obstruction or hazard to air navigation as defined in 14 CFR Part 77, "Objects Affecting Navigable Airspace", or b) obstructs or interferes with the use of the flight easement and right of way granted herein, or c) creates electrical interference with radio communication between any installation located at San Carlos Airport and any aircraft, or d) impairs visibility to an extent that it interferes with the safe operation of aircraft at San Carlos Airport, or e) attracts wildlife which could be hazardous to aircraft in flight as determined by the FAA.

5. WAIVER AND RELEASE OF CLAIMS

GRANTOR hereby waives, releases, and discharges, for itself and on behalf of GRANTOR'S heirs, assigns and successors in interest to all or any part of the Grantor Property, any and all claims or causes of action it may have now or in the future against COUNTY arising out of any of the activities authorized under this easement to include, but not limited to, activities which cause noise, vibrations, fumes, exhaust, dust, fuel particles, radio and television interference, and other effects which may be caused by the legal and proper operation of aircraft landing at or taking off from, or operating at San Carlos Airport.

6. ACKNOWLEDGEMENT OF EFFECTS OF AIRCRAFT OPERATION.

The Grantor Property is located within the boundary of the adopted Airport Influence Area (AIA) and the airspace protection surfaces defined under 14 CFR Part 77 for the San Carlos Airport. GRANTOR acknowledges and understands that, because the GRANTOR'S private property is in close proximity to San Carlos Airport, operation of the airport and aircraft utilizing the airport may affect such property.

7. RESERVATION OF RIGHTS AGAINST UNLAWFUL OPERATION.

a) This grant of easement shall not operate to deprive the GRANTOR, and GRANTOR'S successors or assigns, of any rights that it may have against any individual or private operator of aircraft for negligent or unlawful operation of aircraft as such operation may affect the Grantor Property.

b) This grant of easement does not waive any claim GRANTOR or GRANTOR'S successors or assigns, or by any person lawfully on the Grantor Property, for damages for personal injury or damage to personal or real property sustained as a result of an aircraft crash or from objects falling from aircraft flying over the Grantor Property.

8. INTERPRETATION AND ENFORCEMENT.

a) COUNTY shall have the sole right and authority to enforce this easement on behalf of itself and members of the public using San Carlos Airport.

b) COUNTY may bring any action in court necessary to enforce the terms of this easement including, but not limited to, injunction to terminate a breaching activity, or an action to enforce the terms and provisions hereof by specific performance. The enforcement proceedings specified in this paragraph are not exclusive. Any forbearance on the part of the COUNTY to enforce the terms and conditions hereof shall not be deemed a waiver of COUNTY'S right regarding any subsequent breach.

9. COVENANT RUNS WITH THE LAND.

The covenants and agreements described herein shall run with the land and are binding upon the heirs, administrators, executors, successors and assigns of the GRANTOR and GRANTEE. This easement benefits and burdens the Grantor Property and the San Carlos Airport property.

10. APPLICABLE LAW.

Provisions of this easement shall be interpreted, applied and enforced in accordance with the provisions of State and Federal Laws recited herein as they exist as of the effective date of this easement, except to the extent such provisions are preempted by any future amendment or amendments to such State or Federal laws, in which case the amended provisions of State and Federal law shall apply.

11. TERMINATION.

This grant of easement, and the covenants and agreements contained therein, shall continue in effect until San Carlos Airport shall be permanently abandoned and shall cease to be used for public airport purposes.

(NAME OF GRANTOR)

Dated: _____ by: _____

APPROVED AS TO FORM

Dated: _____

City Attorney

COUNTY OF SAN MATEO

Dated: _____ by: _____

County Manager

Exhibit E-1B: Grant of Noise Avigation Easement

When recorded return to:

County of San Mateo

County Manager's Office

Real Property Division

455 County Center, 5th Floor

Redwood City, CA 94063

COUNTY OF SAN MATEO

AVIGATION EASEMENT

This easement is made this _____ day of _____ by and between _____, hereinafter referred to as "GRANTOR" and the County of San Mateo, a political subdivision of the State of California, hereinafter referred to as "COUNTY" or "GRANTEE."

Recitals

A. COUNTY is the owner of certain real property, commonly known as the San Carlos Airport, situated in the County of San Mateo, State of California and generally described as Assessor Parcel Numbers 046-081-730; 600; 680 and 700; 046-082-010; 095-030-210 and 230; 095-222-070; 130 and 140. The County of San Mateo operates the San Carlos Airport as a Category B-II, General Aviation Airport, as defined in Federal Aviation Administration Advisory Circular 150/5300-13 "Airport Design" and Federal Aviation Regulations, Part 77. For purposes of this easement, the San Carlos Airport property is the dominant tenement

B. GRANTOR is the owner in fee of certain real property situated in the County of San Mateo, State of California, as more particularly described in Exhibit A attached hereto, and incorporated herein by reference (the "Grantor Property"). For purposes of this easement, the Grantor Property is the servient tenement.

C. GRANTOR has proposed a _____

_____, near San Carlos Airport.

D. GRANTOR and GRANTEE wish to establish the terms and conditions of an avigation easement so that the aircraft that use San Carlos Airport will have the right to use the airspace over and above GRANTOR'S property.

NOW, THEREFORE, the parties hereto agree as follows:

1. GRANT OF EASEMENT

Grantor GRANTS to COUNTY, its successors and assigns a perpetual easement over the Grantor Property, as described in Exhibit A hereto, on the terms and conditions stated herein. The easement is

an easement appurtenant to the San Carlos Airport, and an easement in gross as to the general flying public using San Carlos Airport.

2. PURPOSE OF EASEMENT

The purposes of this easement are (1) to allow for the free and unobstructed passage and flight of operationally compatible aircraft using San Carlos Airport, in through, over and across the airspace of the Grantor Property and (2) to provide notice to GRANTOR and any future owners of the GRANTOR property that the PROPERTY is located in the vicinity of San Carlos Airport and may be subject to impacts of aircraft operations at such airport.

3. RIGHTS GRANTED BY EASEMENT

Subject to limitations in Paragraph 5, below, this easement grants to the COUNTY and members of the public who use San Carlos Airport, the right to fly aircraft in the airspace above the Grantor Property, together with the following rights:

a) The right to cause such noise, vibration, fumes, exhaust, dust and fuel particles that result from the legal and proper operation of such aircraft.

b) The right to cause radio, television, and other electromagnetic interference associated with the legal and proper operation of such aircraft.

c) The right to cause such other effects that are inherent in the legal and proper operation of such aircraft.

5. COUNTY'S OBLIGATION UNDER GRANT OF EASEMENT

COUNTY shall exercise efforts to control and prohibit such aircraft operations at San Carlos Airport which:

a) are in violation of Federal noise abatement regulations and operational and noise abatement flight procedures set forth in Volume 14 of the Code of Federal Regulations and Federal Aviation Administration (FAA) orders applicable to aircraft operations at San Carlos Airport; or

b) cause noise impacts in violation of Title 21, Subchapter 6 of the California Code of Regulations.

A violation or violations of the noise criteria set forth in this paragraph shall not operate to invalidate this easement or any provision of this easement or relieve GRANTOR from complying with the provisions of this easement.

6. WAIVER AND RELEASE OF CLAIMS

GRANTOR hereby waives, releases, and discharges, for itself and on behalf of GRANTOR'S heirs, assigns and successors in interest to all or any part of the Grantor Property, any and all claims or causes of action it may have now or in the future against COUNTY arising out of any of the activities authorized under this easement to include, but not limited to, activities which cause noise, vibrations, fumes, exhaust, dust, fuel particles, radio and television interference, and other effects which may be caused by the legal and proper operation of aircraft landing at or taking off from, or operating at San Carlos Airport.

7. ACKNOWLEDGEMENT OF EFFECTS OF AIRCRAFT OPERATION.

The Grantor Property is located within the boundary of the adopted Airport Influence Area (AIA) and the CNEL 60 dB and higher contours for the San Carlos Airport. GRANTOR acknowledges and understands that, because the GRANTOR'S private property is in close proximity to San Carlos Airport, operation of the airport and aircraft utilizing the airport may affect such property.

8. LIMITATIONS ON NOISE.

This grant of easement shall not: extend to permit an aircraft noise level over the Grantor Property that exceeds 65dB CNEL.

9. RESERVATION OF RIGHTS AGAINST UNLAWFUL OPERATION.

a) This grant of easement shall not operate to deprive the GRANTOR, and GRANTOR'S successors or assigns, of any rights that it may have against any individual or private operator of aircraft for negligent or unlawful operation of aircraft as such operation may affect the Grantor Property.

b) This grant of easement does not waive any claim GRANTOR or GRANTOR'S successors or assigns, or by any person lawfully on the Grantor Property, for damages for personal injury or damage to personal or real property sustained as a result of an aircraft crash or from objects falling from aircraft flying over the Grantor Property.

10. INTERPRETATION AND ENFORCEMENT.

a) COUNTY shall have the sole right and authority to enforce this easement on behalf of itself and members of the public using San Carlos Airport.

b) COUNTY may bring any action in court necessary to enforce the terms of this easement including, but not limited to, injunction to terminate a breaching activity, or an action to enforce the terms and provisions hereof by specific performance. The enforcement proceedings specified in this paragraph are not exclusive. Any forbearance on the part of the COUNTY to enforce the terms and conditions hereof shall not be deemed a waiver of COUNTY'S right regarding any subsequent breach.

11. COVENANT RUNS WITH THE LAND.

The covenants and agreements described herein shall run with the land and are binding upon the heirs, administrators, executors, successors and assigns of the GRANTOR and GRANTEE. This easement benefits and burdens the Grantor Property and the San Carlos Airport property.

12. APPLICABLE LAW.

Provisions of this easement shall be interpreted, applied and enforced in accordance with the provisions of State and Federal Laws recited herein as they exist as of the effective date of this easement, except to the extent such provisions are preempted by any future amendment or amendments to such State or Federal laws, in which case the amended provisions of State and Federal law shall apply.

