



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



November 24, 2020

Governor's Office of Planning & Research

**Nov 24 2020**

Ms. Leslie Mendez  
City of Berkeley  
1947 Center Street  
Berkeley, CA 94704  
[LMendez@cityofberkeley.info](mailto:LMendez@cityofberkeley.info)

## STATE CLEARINGHOUSE

Dear Ms. Mendez:

Subject: Bayer HealthCare LLC Development Agreement Amendment Project,  
Notice of Preparation of a Subsequent Environmental Impact Report,  
SCH No. 2020100559, Alameda County

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a Subsequent Environmental Impact Report (SEIR) for the Bayer HealthCare LLC Development Agreement Amendment Project in Alameda County.

### CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

### REGULATORY REQUIREMENTS

#### *California Endangered Species Act*

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and

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15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

### *Lake and Streambed Alteration*

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

## **PROJECT DESCRIPTION AND LOCATION**

The Project location is the Bayer campus in West Berkeley, which has a primary street address of 800 Dwight Way and includes approximately 46 acres generally bounded by the Union Pacific Railroad to the west, Dwight Way to the north, Seventh Street to the east, and Grayson Street to the south. In addition, the Project location includes a surface parking lot between Dwight Way, Seventh Street, Parker Street, and Eighth Street. The site is divided into the North Properties (31.9 acres north of Carleton Street) and the South Properties (14.4 acres south of Carleton Street). Three contiguous parcels near the corner of Carleton Street and Seventh Street are not owned by Bayer and are outside of the Project location.

The Project, which consists of a conceptual development plan, proposes to rearrange the campus layout through proposed phased demolition of nine existing buildings; construction of approximately twelve new buildings for production, laboratory, and administrative uses; and replacement of surface parking with two new parking structures and new underground parking facilities. Several other buildings providing space for manufacturing, warehouses, and maintenance would be renovated and/or expanded. Maximum permitted building heights would range from 25 feet to 80 feet depending on the use and location of buildings. Building heights would be redistributed over current conditions; however, the Project does not propose heights taller than currently permissible, and also includes 15-foot "step backs" buffers and setbacks from streets. The proposed Project is intended to preserve existing view corridors on Dwight Way, Parker Street, and Carleton Street.

## **ENVIRONMENTAL SETTING**

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The Bayer campus has approximately 30 buildings, ranging in height from approximately 14 feet to the 100-foot former Colgate-Palmolive tower. The buildings total approximately 1,087,000 square feet of floor area, including 567,000 square feet on the North Properties and 520,000 square feet on the South Properties. The Bayer campus also has eight surface parking lots with a total of 1,100 parking spaces.

## COMMENTS

CDFW recommends that the SEIR require protective measures for birds during demolition and construction. Trees are present within the Project boundary and in adjacent residential areas. Both native and non-native trees provide nesting habitat for birds. CDFW recommends that the following measures be included in the SEIR:

1. **Nesting Bird Surveys:** If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), CDFW recommends that a qualified biologist conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically, the following but may differ even within species: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.
2. **Active Nest Buffers:** If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.
3. **Hooded Lighting:** Project lighting to be installed should be hooded or shielded to direct light downwards and to minimize the spillage of light outwards into adjacent areas where trees are present.

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4. Bird Collision Reduction Measures: The SEIR should require a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the maximum feasible extent. The Plan should include mandatory measures, as well as applicable and specific project Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. Suggested mandatory measures include:
  - a. Comply with federal aviation safety regulations for large buildings by installing minimum intensity white strobe lighting with three second flash instead of solid red or rotating lights.
  - b. Minimize the number of and co-locate rooftop-antennas and other rooftop structures.
  - c. Monopole structures or antennas shall not include guy wires.
  - d. Avoid the use of mirrors in landscape design.
  - e. Avoid placement of bird-friendly attractants (i.e. landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate the bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).

Suggested glazing treatments include:

- f. Use of opaque glass in window panes instead of reflective glass.
- g. Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns).
- h. Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects.
- i. Install UV-pattern reflective glass, laminated glass with a patterned UV reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans.

Suggested light reduction measures include:

- j. Extinguish nighttime architectural illumination treatments during bird migration season (February 15 to May 31 and August 1 to November 30).
- k. Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00 p.m. and sunrise.
- l. Reduce perimeter lighting whenever possible.
- m. Turn off interior lighting when offices are not be used.

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CDFW recommends discovered dead bird specimens be donated to an authorized bird conservation organization or museum (i.e. U.C. Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws.

## ENVIRONMENTAL DATA

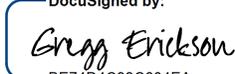
CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or [marcia.grefsrud@wildlife.ca.gov](mailto:marcia.grefsrud@wildlife.ca.gov); or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or [Brenda.blinn@wildlife.ca.gov](mailto:Brenda.blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse #2020100559  
Ryan Olah, U.S. Fish and Wildlife Service – [ryan\\_olah@fws.gov](mailto:ryan_olah@fws.gov)