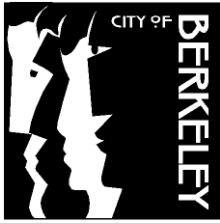


# Appendix B

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Notice of Preparation (NOP) and NOP Comments



Planning and Development Department  
Land Use Planning Division

## NOTICE OF PREPARATION (NOP) OF A SUBSEQUENT ENVIRONMENTAL IMPACT REPORT AND SCOPING MEETINGS FOR THE PROPOSED BAYER HEALTHCARE LLC DEVELOPMENT AGREEMENT AMENDMENT

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The City of Berkeley is preparing a Subsequent Environmental Impact Report (SEIR) for proposed amendment to Bayer HealthCare LLC's Development Agreement ("proposed project"), as identified below, and is requesting comments on the scope and content of the SEIR, possible impacts on the physical environment, ways in which potential adverse effects might be minimized, and alternatives to the proposed project. The SEIR and associated Initial Study will address the potential physical and environmental effects of the proposed project for each of the environmental topics outlined in the California Environmental Quality Act (CEQA), as set forth in Section 15162 of the CEQA Guidelines.

The City of Berkeley is the Lead Agency for the proposed project. This notice is being sent to the California State Clearinghouse, Alameda County Clerk, potential responsible agencies, and other interested parties. Responsible agencies are those public agencies, besides the City of Berkeley, that also have a role in approving or carrying out the project. When the SEIR is published, a Notice of Availability of a SEIR will be sent to Responsible Agencies, other public agencies, and interested parties and individuals who have indicated that they would like to review the SEIR.

Responses to this NOP and any questions or comments should be directed in writing to: *Leslie Mendez, Senior Planner, Planning and Development Department, 1947 Center Street, 2nd Floor, Berkeley, CA 94704; or [LMendez@cityofberkeley.info](mailto:LMendez@cityofberkeley.info)*. Comments on the NOP must be received **by December 3, 2020** (postmarked on or before December 3<sup>rd</sup> if sent via U.S. Postal Service, time stamped on or before December 3<sup>rd</sup> if sent electronically).

**EIR PUBLIC SCOPING MEETINGS:** The City will hold two scoping meetings.

The City of Berkeley **Zoning Adjustments Board (ZAB)** will take comments on the scope of the SEIR at a public hearing on **November 12, 2020**. The ZAB meeting will be virtual and begins at **7:00 PM**. Interested parties should visit the ZAB Meeting Agenda, linked on the ZAB webpage to confirm the meeting, time, date, and instructions to join the meeting: <https://www.cityofberkeley.info/zoningadjustmentsboard/>.

The City of Berkeley **Planning Commission (PC)** will take comments on the scope of the SEIR at a public hearing on **November 18, 2020**. The PC meeting will be virtual and begins at **7:00 PM**. Interested parties should visit the PC Meeting Agenda, linked on the PC webpage to confirm the meeting time, date, and instructions to join the meeting:

<https://www.cityofberkeley.info/PC/>.

**PROJECT TITLE: Bayer HealthCare LLC Development Agreement Amendment Project**

**PROJECT 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. Figure 1 shows the project location.

**PROJECT SPONSOR:** Bayer HealthCare LLC

**EXISTING CONDITIONS:** The Bayer campus currently develops and produces commercial biopharmaceuticals that are distributed globally. The 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. The buildings provide space for the following permitted uses:

- 1) Production: pilot plants, processing areas, and fill and finishing areas
- 2) Laboratories: research into production and manufacturing technologies, quality assurance examination and testing of therapeutic pharmaceuticals
- 3) Warehouse: holding space for distribution of products
- 4) Administration: offices, conference rooms, computer rooms, fitness/health facilities, security, training rooms, library, and cafeteria
- 5) Utilities: equipment for water distillation, refrigeration, electrical operations, and steam generation
- 6) Maintenance: workshops and maintenance bays for repair, replacement, and preventative activities

Four former facilities located on the project site are included on the Cortese List under Government Code section 65962.5 due to their inclusion on the State Water Resources Control Board's list of Leaking Underground Storage Tank Sites on the Board's Geo Tracker database. These facilities are located at 800 Dwight Way, 801 Grayson Street, 2560 Seventh Street, and 2700 Seventh Street. All tanks have been removed and have merited closure status by regulatory agencies except for one; a closure report has been submitted to the San Francisco Regional Water Quality Control Board for the remaining tank, and review is pending.

**PROJECT DESCRIPTION and BACKGROUND:** Bayer's existing 30-year Development Agreement (DA) with the City of Berkeley, covering the North Properties, was approved in 1992 and is set to expire in 2022. An EIR analyzed the potential impacts of the development proposed as part of the original DA; the EIR was certified in 1991. The

current DA covers only the North Properties. Because Bayer acquired the South Properties after the 1999 major amendment to the 1992 DA, the South Properties are not included in the original DA’s project area. The City approved a Use Permit (UP#00-1000008) for the South Properties and adopted a Mitigated Negative Declaration on July 21, 2000.

The proposed project would amend the existing DA to cover both the North and South Properties, while extending its duration an additional 30 years until February 2052. Overall, as illustrated in the table below, the project proposes to reduce the maximum allowable square footage entitled under the current DA and South Properties Use Permit by 148,000 square feet. Within the 30-year time frame, Bayer envisions retaining approximately 820,000 square feet of existing square footage, demolishing nine buildings totaling approximately 267,000 square feet, and constructing approximately 918,000 square feet of new facilities. Conceptual 30-year buildout is illustrated in Figure 2.

Existing Built Sq. Ft.	Existing Maximum Permitted Sq. Ft.	Proposed Maximum Permitted Sq. Ft.	Existing Sq. Ft. to be Retained	Proposed Sq. Ft. to be Demolished	Proposed Sq. Ft. to be Constructed	Proposed Change from (E) Permissible Sq. Ft.
1,087,000	1,886,000	1,738,000	820,000	-276,000	918,000	-148,000

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.

The proposed project would continue to authorize the biotech development, quality assurance, and production of pharmaceutical therapies, which includes the use of risk group 1 and 2 biological agents, as defined by the National Institutes of Health (NIH). Group 1 agents are bacterial, fungal, viral, rickettsia, and chlamydial agents that are found in the environment and do not cause disease in healthy humans. Group 2 includes moderate-risk agents that occur in the community and are associated with human disease of varying severity. In addition, the proposed project would allow the use of non-mammalian cells. Bayer would adhere to biosafety measures according to guidelines adopted by the NIH and the Centers for Disease Control and Prevention (CDC). While the existing DA does not assume the use of gamma irradiation devices, the proposed project envisions the installation of up to two fully-protected gamma irradiation devices

that comply with all applicable safety regulations.

To provide adequate water service to new development on the Bayer campus, the proposed project may require an enlargement of underground pipes that carry water supplied by the East Bay Municipal Utilities District (EBMUD). The proposed DA also anticipates that Bayer would install two new emergency generators along Grayson Street and a new boiler in the North Properties, though with the retirement of other equipment, the total number of generators and boilers is not expected to exceed the equipment inventory that currently exists on the site.

In summary, the proposed project would:

1. Extend the terms of the DA for another 30 years from its February 2022 expiration date to 2052;
2. Extend the boundaries of the DA to include the South Properties; and
3. Modify various development standards, operational restrictions, and campus layout.

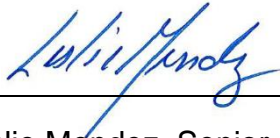
For more information about the project, please visit the City's website: [https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/Bayer\\_Development\\_Agreement.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/Bayer_Development_Agreement.aspx)

**ENVIRONMENTAL ISSUES ADDRESSED IN THE SEIR:** The SEIR will evaluate whether the proposed Project would result in one or more significant environmental effects. Based on the initial analysis and past CEQA analysis conducted for Bayer Campus, the following issues will be analyzed in depth in the SEIR:

- Air Quality;
- Cultural Resources;
- Greenhouse Gas Emissions;
- Hazards and Hazardous Materials;
- Noise;
- Transportation; and
- Utilities and Service Systems.

All other CEQA environmental topics are anticipated to have less than significant impacts and will be analyzed in an Initial Study which will be an appendix to the SEIR. Consistent with the requirements of CEQA Guidelines Section 15162, the Subsequent EIR will analyze the environmental impacts of (1) substantial changes in the proposed project, (2) substantial changes that have occurred with respect to the circumstances under which the project will be undertaken, and (3) new information of substantial importance, which was not known and could not have been known at the time the previous EIR was certified.

The SEIR will also examine the range of alternatives to the project to determine whether alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, or whether alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment. The SEIR will also analyze the cumulative impacts that could result from changes to the DA.



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Leslie Mendez, Senior Planner

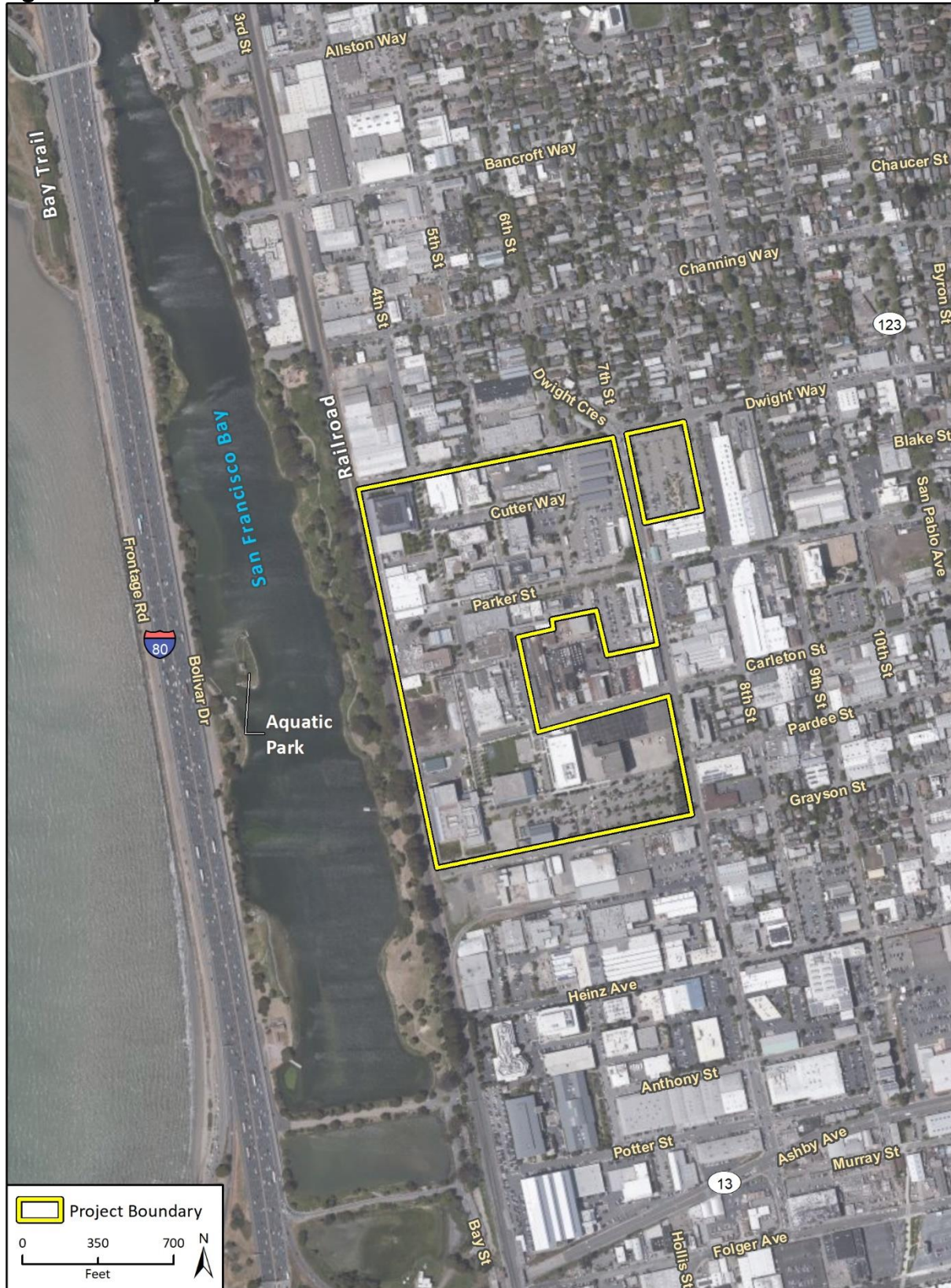
Date of Distribution: October 29, 2020

Attachment:

Figure 1: Location

Figure 2: Conceptual Development Plan Building Uses at Year-30

Figure 1: Project Location



Imagery provided by Microsoft Bing and its licensors © 2020.

Fig 2.2 Project Site Location

Figure 2: Conceptual Development Plan Build Out by Use at Year-30 (2052)







State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



November 24, 2020

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

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

Ms. Leslie Mendez  
City of Berkeley  
November 24, 2020  
Page 2 of 5

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**

Ms. Leslie Mendez  
City of Berkeley  
November 24, 2020  
Page 3 of 5

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.

Ms. Leslie Mendez  
City of Berkeley  
November 24, 2020  
Page 4 of 5

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.

Ms. Leslie Mendez  
City of Berkeley  
November 24, 2020  
Page 5 of 5

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

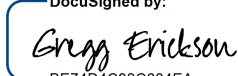
CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status 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)

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4

OFFICE OF TRANSIT AND COMMUNITY PLANNING

P.O. BOX 23660, MS-10D

OAKLAND, CA 94623-0660

PHONE (510) 286-5528

TTY 711

www.dot.ca.gov

*Making Conservation  
a California Way of Life.*

December 2, 2020

SCH #: 2020100559

GTS #: 04-ALA-2020-567

GTS ID: 21176

Co/Rt/Pm: ALA/80/5.221

Leslie Mendez, Senior Planner  
City of Berkeley Planning Department  
1947 Center Street, 3rd Floor  
Berkeley, CA 94704

**Re: Bayer Healthcare Development Agreement Amendment- Notice of Preparation (NOP) of a Supplemental Environmental Impact Report (SEIR)**

Dear Leslie Mendez:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Bayer Healthcare Development Agreement Amendment Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the November 2020 NOP.

**Project Understanding**

This project proposes to extend Bayer's 30-year Development Agreement with the City of Berkeley to cover new development and inclusion of the South Properties (acquired after the original 1992 DA). The project site is within ¼ mile of San Pablo Avenue, Ashby Avenue and Interstate (I)-580/I-80.

**Travel Demand Analysis**

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide.

If the project meets the screening criteria established in the City's adopted Vehicle Miles Traveled (VMT) policy to be presumed to have a less-than-significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the exempt status in align with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the SEIR, which should include the following:

- VMT analysis pursuant to the City's guidelines. Projects that result in automobile VMT per capita above the threshold of significance for existing (i.e. baseline) city-wide or regional values for similar land use types may indicate a significant impact. If necessary, mitigation for increasing VMT should be identified. Mitigation should support the use of transit and active transportation modes. Potential mitigation measures that include the requirements of other agencies such as Caltrans are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.
- A schematic illustration of walking, biking and auto conditions at the project site and study area roadways. Potential safety issues for all road users should be identified and fully mitigated.
- The project's primary and secondary effects on pedestrians, bicycles, travelers with disabilities and transit performance should be evaluated, including countermeasures and trade-offs resulting from mitigating VMT increases. Access to pedestrians, bicycle, and transit facilities must be maintained.
- Clarification of the intensity of events/receptions to be held at the location and how the associated travel demand and VMT will be mitigated.

### **Mitigation Strategies**

Location efficiency factors, including community design and regional accessibility, influence a project's impact on the environment. Using Caltrans' *Smart Mobility 2010: A Call to Action for the New Decade*, the proposed project site is identified as a Close-In Compact Community where community design is strong and regional accessibility is high.

Given the place, type and size of the project, the SEIR should include a robust Transportation Demand Management (TDM) Program to reduce VMT and greenhouse gas emissions from future development in this area. Some of the

measures listed below have been quantified by California Air Pollution Control Officers Association (CAPCOA) and shown to have different efficiencies reducing regional VMT:

- Project design to encourage mode shift like walking, bicycling and transit access;
- Transit and trip planning resources such as a commute information kiosk;
- Real-time transit information systems;
- Transit access supporting infrastructure (including bus shelter improvements and sidewalk/ crosswalk safety facilities);
- New development vehicle parking reductions;
- Designated parking spaces for a car share program;
- Wayfinding and bicycle route mapping resources;
- Participation/Formation in/of a Transportation Management Association (TMA) in partnership with other developments in the area;
- Aggressive trip reduction targets with Lead Agency monitoring and enforcement;
- VMT Banking and/or Exchange program;
- Employer-based vanpool;
- Telecommuting programs and alternative work schedules

Using a combination of strategies appropriate to the project and the site can reduce VMT, along with related impacts on the environment and State facilities. TDM programs should be documented with annual monitoring reports by a TDM coordinator to demonstrate effectiveness. If the project does not achieve the VMT reduction goals, the reports should also include next steps to take in order to achieve those targets.

Please reach out to Caltrans for further information about TDM measures and a toolbox for implementing these measures in land use projects. Additionally, Federal Highway Administration's Integrating Demand Management into the Transportation Planning Process: A Desk Reference (Chapter 8). The reference is available online at:

<http://www.ops.fhwa.dot.gov/publications/fhwahop12035/fhwahop12035.pdf>.

### **Transportation Impact Fees**

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements necessitated by the proposed projects; viable funding sources such as development and/or transportation



Leslie Mendez, Senior Planner  
December 2, 2020  
Page 4

impact fees should also be identified. We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

**Lead Agency**

As the Lead Agency, the City of Berkeley is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Laurel Sears at [laurel.sears@dot.ca.gov](mailto:laurel.sears@dot.ca.gov). Additionally, for future notifications and requests for review of new projects, please contact [LDIGR-D4@dot.ca.gov](mailto:LDIGR-D4@dot.ca.gov).

Sincerely,



MARK LEONG  
District Branch Chief  
Local Development - Intergovernmental Review  
c: State Clearinghouse

## Mendez, Leslie

---

**From:** Feetham, Brian <brian.feetham@ebmud.com>  
**Sent:** Wednesday, November 18, 2020 7:46 AM  
**To:** Mendez, Leslie  
**Subject:** EBMUD Comments RE: NOP of SEIR for Bay Healthcare LLC Development Agreement  
**Attachments:** sb20\_243\_Bayer HealthCare LLC Development Agreement Amendment (Signed).pdf

**WARNING:** This email originated outside of City of Berkeley.

**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Good morning Leslie,

Please find attached comments from East Bay Municipal Utility District regarding the *Notice of Preparation of a Subsequent Environmental Impact Report for the Bayer Healthcare LLC Development Agreement* in the City of Berkeley. A hardcopy of this document has also been sent via USPS.

Please reply to this email confirming you have received the electronic version attached.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section, at (510) 287-1981.

Thank you,

Brian Feetham, Administrative Secretary II  
Water Distribution Planning Division  
East Bay Municipal Utility District  
375 Eleventh Street MS 701, Oakland, CA 94607  
(510) 287-1908 | [brian.feetham@ebmud.com](mailto:brian.feetham@ebmud.com)

November 17, 2020

Leslie Mendez, Senior Planner  
City of Berkeley, Planning and Development Department  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Re: Notice of Preparation of a Subsequent Environmental Impact Report – Bayer HealthCare LLC Development Agreement Amendment Program, Berkeley

Dear Ms. Mendez:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Notice of Preparation of a Subsequent Environmental Impact Report for the Bayer HealthCare Campus located at 800 Dwight Way, 801 Grayson Street, 2560 Seventh Street, and 2700 Seventh Street in the City of Berkeley (City). EBMUD has the following comments.

## **GENERAL**

Pursuant to Section 15155 of the California Environmental Quality Act Guidelines and Sections 10910-10915 of the California Water Code, a Water Supply Assessment (WSA) will be required as the project exceeds the threshold requirement for an assessment of water supply availability based on the amount of water this project would require (greater than a 250,000 square-foot commercial office building). Please submit a written request to EBMUD to prepare a WSA. EBMUD requires the project sponsor to provide future water demand data and estimates for the project site for the analysis of the WSA. Please be aware that the WSA can take up to 90 days to complete from the day on which the request is received.

## **WATER SERVICE**

EBMUD's Central Pressure Zone, with a service elevation range between 0 and 100 feet, will serve the proposed development. Separate structures on a single parcel require separate water services. A water main extension, at the project sponsor's expense, may be required to serve the property depending on EBMUD's metering requirements and fire flow requirements set by the local fire department. Off-site pipeline improvements and water main abandonments, also at the project sponsor's expense, may be required to serve the proposed development. Off-site pipeline improvements include, but are not limited to, replacement of existing pipelines to the project site. The project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine the costs and conditions of providing additional water service to the proposed development. Engineering and installation of water mains, off-site pipeline improvements, water main

abandonments, and services require substantial lead time, which should be provided for in the project sponsor's development schedule.

A minimum 20-foot wide right-of-way is required for installation of new and replacement water mains. Utilities to be installed in the right-of-way with the water mains must be located such that the new water mains meet the minimum horizontal and vertical separation distances with other utilities as set forth in the California (Waterworks Standards) Code of Regulations, Title 22, Section 64572 (Water Main Separation) and EBMUD requirements for placement of water mains within a right-of-way. These minimum horizontal separation distance requirements include, but are not limited to, 10 feet between the water main and sewer, 5 feet between the water main and storm drain, 7 feet from the face of curb, and 5 feet from the edge of the right-of-way. In addition, water mains must be vertically located a minimum of one foot above sewers and storm drains.

EBMUD's Standard Site Assessment Report and the project's August 2014 Initial Study indicate the potential for contaminated soils or groundwater to be present within the project site boundaries. The project sponsor should be aware that EBMUD will not install piping or services in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may be hazardous to the health and safety of construction and maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. The project sponsor must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete and specific written remediation plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and groundwater.

EBMUD will not design piping or services until soil and groundwater quality data and remediation plans have been received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsor is insufficient, EBMUD may require the project sponsor to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation, or EBMUD may perform such sampling and analysis at the project sponsor's expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

## **WASTEWATER SERVICE**

EBMUD's Main Wastewater Treatment Plant (MWWTP) and interceptor system are anticipated to have adequate dry weather capacity to accommodate the proposed

wastewater flows from the project and treat such flows provided that the wastewater generated by the project meets the requirements of the EBMUD Wastewater Control Ordinance. However, wet weather flows are a concern. The East Bay regional wastewater collection system experiences exceptionally high peak flows during storms due to excessive infiltration and inflow (I/I) that enters the system through cracks and misconnections in both public and private sewer lines. EBMUD has historically operated three Wet Weather Facilities (WWFs) to provide primary treatment and disinfection for peak wet weather flows that exceed the treatment capacity of the MWWTP. Due to reinterpretation of applicable law, EBMUD's National Pollutant Discharge Elimination System (NPDES) permit now prohibits discharges from EBMUD's WWFs. Additionally, the seven wastewater collection system agencies that discharge to the EBMUD wastewater interceptor system ("Satellite Agencies") hold NPDES permits that prohibit them from causing or contributing to WWF discharges. These NPDES permits have removed the regulatory coverage the East Bay wastewater agencies once relied upon to manage peak wet weather flows.

A federal consent decree, negotiated among EBMUD, the Satellite Agencies, the Environmental Protection Agency (EPA), the State Water Resources Control Board (SWRCB), and the Regional Water Quality Control Board (RWQCB), requires EBMUD and the Satellite Agencies to eliminate WWF discharges by 2036. To meet this requirement, actions will need to be taken over time to reduce I/I in the system. The consent decree requires EBMUD to continue implementation of its Regional Private Sewer Lateral Ordinance ([www.eastbaypsl.com](http://www.eastbaypsl.com)), construct various improvements to its interceptor system, and identify key areas of inflow and rapid infiltration over a 22-year period. Over the same time period, the consent decree requires the Satellite Agencies to perform I/I reduction work including sewer main rehabilitation and elimination of inflow sources. EBMUD and the Satellite Agencies must jointly demonstrate at specified intervals that this work has resulted in a sufficient, pre-determined level of reduction in WWF discharges. If sufficient I/I reductions are not achieved, additional investment into the region's wastewater infrastructure will be required, which may result in significant financial implications for East Bay residents.

To ensure that the projects within the City contribute to these legally required I/I reductions, the lead agency should require projects to comply with EBMUD's Regional Private Sewer Lateral Ordinance. Additionally, it would be prudent for the lead agency to require the following mitigation measures for future proposed projects: (1) replace or rehabilitate any existing sanitary sewer collection systems, including sewer lateral lines, to ensure that such systems and lines are free from defects or, alternatively, disconnected from the sanitary sewer system, and (2) ensure any new wastewater collection systems, including sewer lateral lines, for the project are constructed to prevent I/I to the maximum extent feasible while meeting all requirements contained in the Regional Private Sewer Lateral Ordinance and applicable municipal codes or Satellite Agency ordinances.

## **WATER RECYCLING**

EBMUD's Policy 9.05 requires that customers use non-potable water, including recycled water, for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant, fish and wildlife to offset demand on EBMUD's limited potable water supply. Appropriate recycled water uses include landscape irrigation, commercial and industrial process uses, toilet and urinal flushing in non-residential buildings, and other applications.

The proposed project location lies in the vicinity of EBMUD's future planned recycled water pipeline expansion to the City. Once the irrigation demand estimates are available, EBMUD will assess if the project should be served with recycled water. EBMUD recommends that the City and the project sponsor continue to coordinate closely with EBMUD during the planning of the project to further explore the options and requirements relating to recycled water use.

## **WATER CONSERVATION**

The project presents an opportunity to incorporate water conservation measures. EBMUD requests that the City include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,



David J. Rehnstrom  
Manager of Water Distribution Planning

DJR:VDC:btf  
sb20\_243.doc

cc: Victor Warren, Architect  
Bayer HealthCare LLC  
800 Dwight Way  
Berkeley, CA 94701-1986

## Mendez, Leslie

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**From:** Oliver Iberien <oliver@fastmail.net>  
**Sent:** Thursday, November 5, 2020 9:49 AM  
**To:** Mendez, Leslie  
**Subject:** Comments on the NOP for the Bayer Development Agreement Amendment SEIR

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Hello,

I am submitting comments on the NOP for the Bayer Development Agreement Amendment SEIR.

Given that the facility is on bay fill and substantial structures are proposed, I assume that pile driving is anticipated. Please consider requiring vibratory pile driving rather than impact pile driving to reduce the noise impacts on neighboring residential land uses.

Please reconsider your omission of visual impacts from analysis in the SEIR. The massing of the facility is changing substantially, from a cluster of buildings buffered by parking lots to the filling of the entire property with buildings of substantial bulk to within 15' of the property lines. It will loom over neighboring residential land uses. A shade study for new structures at the property line, particularly the new parking garage to the east of 7th St., should be required.

The NOP is not very forthcoming on the subject of impacts to traffic and transportation. I know that LOS is no longer a consideration but the apparent two-fold expansion of use will generate many more vehicular miles traveled on streets that currently pose multiple bottlenecks to commuter traffic. (For example, I know from personal experience that the single eastbound lane of Dwight Way is already fully occupied during the evening commute hours by traffic, storage for traffic at the left turn from 6th St. northbound onto University is far from sufficient, and the current series of multiple stoplights and their timings results in a similar backup at the area of the 7th St./Ashby Ave. intersection.) It would not be reasonable to adopt overriding considerations for impacts from adding vehicle miles travelled without limiting parking construction at the expanded Bayer facility and relying instead on an expansion of public-transportation options, including additional shuttles to BART, that would be funded by Bayer.

Thank you,

Oliver Iberien  
2455 7th St.  
Berkeley, CA 94710

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Oliver Iberien  
oliver@fastmail.net





CENTER FOR  
GENETICS  
AND SOCIETY

1122 University Avenue, Suite 100 | Berkeley, CA 94702 | USA  
1.510.665.7760 | [geneticsandsociety.org](http://geneticsandsociety.org)

November 14, 2020

To the Berkeley Planning Commission:

The Center for Genetics and Society, whose office has been in the city of Berkeley since 2009, is a public interest organization working to encourage responsible uses and effective governance of human genetic and assisted reproductive technologies.

We have very recently become aware of the proposed Bayer Development Agreement Update project. Our concerns begin with the timing of the process: We understand that this project has been under consideration since March of this year, but insufficient notice has been received by the community and Berkeley-based organizations and businesses, perhaps because the period between March 2020 and now exactly coincides with the COVID-19 pandemic.

Moving to substantive matters, we are deeply concerned by the prospect of situating laboratories in West Berkeley that handle high-risk biological agents. Although Bayer has pledged to “adhere to biosafety measures according to guidelines adopted by the NIH and the CDC,” any community – and especially one dedicated to public safety such as Berkeley – should think long and hard before approving high-risk laboratories that could endanger workers and the surrounding community.

The City of Berkeley must ascertain not only what Bayer plans to work on in the immediate future, but also what they might work on in the future within the approved biosafety level(s). Even the lower safety levels (1 and 2) are not without risk to the community. Higher-level biosafety levels would be of even greater concern. The prospect of any dangers to community safety, including ones that could be posed by future work in these laboratories, must be investigated in advance of any approval. Accidental releases of and contamination by pathogenic agents have occurred and caused harm in the past.

We note with additional concern that Bayer has requested the lifting of restrictions that exist in its current agreement with the City of Berkeley. The justification for this change, which could turn out to be enormously consequential, is brief and non-specific. Please see pp 8-9 of “Bayer Development Agreement Amendment Update & EIR Scoping Meeting,” which says only this: “Due to advancements in technology and knowledge, it is now possible to undertake this research with minimal safety risks, as such Bayer is requesting to lift these restrictions so that these activities may be included as part of the refined project operations.”

At a minimum, we urge the Planning Commission to learn much more detail and specifics about what lifting these existing restrictions would allow, and to investigate thoroughly what that might mean.

The current global pandemic has made us all acutely aware of both the benefits and the risks of biotechnology laboratories. While the biotech, genetic, and cell-based investigations planned for the proposed Bayer laboratories may yield benefits, they may also pose grave risks. It is imperative that the City of Berkeley understand thoroughly and completely exactly what techniques will be used for the entire duration of the new Development Agreement.

Thank you,  
Marcy Darnovsky, PhD  
Executive Director

Lapira, Katrina

---

**From:** Devers, C. W. <deverscw@yahoo.com>  
**Sent:** Sunday, November 15, 2020 12:18 PM  
**Subject:** A concerned and supportive citizen

**WARNING:** This email originated outside of City of Berkeley.  
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To whom it may concern,

My name is Cecil W. Devers, LCSW. I am a concerned citizen writing in support of the African-American Holistic Resource Center (AAHRC), I am advocating for the use of Measure T1 funding to renovate a City owned building that will be the brick and mortar home of the AAHRC. It is imperative that this center is built to help support the African-American community in Berkeley. For far too long BIPOC in Berkeley and nationwide have been subjected to marginalization, historical and systemic racism. This problem has resulted in an increase of exposure to violence, gentrification, and has had a negative impact in the areas of: housing, health, education, access to resources, employment, and a safe communal meeting space.

During this tri-pronged pandemic of COVID-19, racial injustice, and climate change, we know that the African American community has been struck particularly hard. Unfortunately, what we do not know, is the long-term impact that these concerns will have on the African American community, particularly here in Berkeley. Based on the City of Berkeley 2018 Health Status Report page 117, "... the age-adjusted mortality rate for African Americans is twice as high as the mortality rate of Whites and is higher than the population overall. **This disparity has remained unchanged throughout these years** [2005-2016]". History as our lesson tells us, as a

community, positive change has to happen; the AAHRC is that change.

I want to be on the right side of history; therefore, I am making my voice clear, I am in support of the AAHRC and the use of Measure T1 funds to support these efforts.

Sincerely,

Devers, C.W.  
deverscw@yahoo.com  
(773) 886 - 2674

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November 15, 2020  
Clifford Fred  
Berkeley, California

To The City of Berkeley Planning Commission - November 18, 2020 Commission Meeting  
Agenda Item #9

#### SCOPING & GENERAL COMMENTS FOR BAYER DEVELOPMENT AGREEMENT DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT - DSEIR

Thank you for the opportunity to make these Scoping Comments.

It is disrespectful to the citizens of Berkeley for the City to have an “on-line” Scoping Session, and not waiting for the Covid Virus Pandemic to end so that a public Scoping Session can be held, as normally would occur. Surely the Bayer corporation, which already has extensive activities on-going at its southwest Berkeley compound, can wait a few more months for work to proceed on its Development Agreement.

Many people do not have access to Zoom, or choose not to use Zoom, due to radiation and privacy concerns.

Many people who would otherwise want to participate, might be ill with the Covid Virus, or taking care of someone who is.

I urge the city to delay the SEIR Scoping Session and the Notice of Preparation until the Covid-19 Pandemic is over, and the Scoping Session can be held in public with members of the public attending.

#### INCORPORATED BY REFERENCE

All documents, reports, studies, newspaper & magazine articles, ordinances, ballot measures including City of Berkeley Ballot Measures L & N, statutes, regulations, etc. cited in any way in these comments are hereby incorporated into these comments by reference.

#### A NEW AND FULL ENVIRONMENTAL IMPACT REPORT IS NEEDED

It has been almost 30 years since a Bayer Development Agreement was first approved by the Berkeley Planning Commission and City Council. I was a member of the Berkeley Planning Commission in 1990 and 1991 when the original Development Agreement was being considered and approved.

There have been unanticipated and enormous and breath-taking changes in the character, population, and density of the City of Berkeley since 1990.

Someone who left Berkeley in 1990 and returned today would not recognize much of the City.

Assumptions made in the original Bayer Development Agreement and EIR in 1990-1991, and in any supplements and addendum to that Development Agreement and EIR are no longer relevant or valid.

The pending Bayer Development Agreement should be treated as a new project with a new and Full Environmental Impact Report.

#### PROJECT ALTERNATIVES

A Draft EIR must describe a range of reasonable alternatives to the proposed

project, or to its location, that could feasibly attain the project' s basic objective, and must evaluate the comparative merits of each alternative. (CEQA Guidelines section 15126 & section 21100.) The discussion must focus on alternatives capable of either eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if such alternatives would be more costly or to some degree would impede the project' s objectives. (CEQA Guidelines section 15126.)

If the lead agency prefers the project as specifically proposed or one of the suggested alternatives, the EIR must explain why the agency chooses to reject the other alternatives. (CEQA Guidelines section 15126.)

The EIR should examine 3 or more alternative plans, giving each plan equal weight. The EIR preparation, review and revision process should then be used to arrive at a Preferred Alternative Plan.

In each project alternative, there should be an agreement that Bayer' s controversial weedkiller Glyphosate - Round-UP will not be manufactured in Berkeley, nor allowed to be sold, stored nor used anywhere in Berkeley.

In each of the Project Alternatives, the existing height limits at Bayer' s southwest Berkeley compound should be strictly honored and adhered to.

In none of the Project Alternatives shall any City of Berkeley street or other right of way be abandoned nor deeded over to Bayer.

In none of the project Alternatives shall Bayer be allowed to acquire any additional land in Berkeley beyond what it already owns in Berkeley.

At least one Project Alternative analyzed should immediately freeze all additional development at the Bayer compound in southwest Berkeley.

At least one of the Project Alternatives in the EIR should include a significant reduction of the development footprint and square footage of the Bayer compound, and a reduction in the number of employees at the Bayer compound.

At least one of the Project Alternatives in the EIR should include the cessation of the manufacture of any and all hazardous and dangerous materials now manufactured at the Berkeley Bayer site, and should include a substantial reduction in the use and storage of any and all hazardous and dangerous materials currently found at the site.

#### PROJECT ALTERNATIVES AND THE COVID PANDEMIC

For each project alternative, there should be an analysis as to how well "social distancing" would succeed in limiting the spread of infectious diseases in the event that the current Covid Virus continues into the foreseeable future.

This analysis is also needed in the event that the current Pandemic wanes but it is still advised or required to practicing "social distancing" to make sure it does not reemerge, or if the Covid Pandemic has a second wave, or if another pandemic materializes.

This analysis is also needed in the event that the current Pandemic wanes but it is still advised or required to practicing “social distancing” to make sure it does not reemerge, or if the Covid Pandemic has a second wave, or if another pandemic materializes.

Each Project Alternative should be analyzed into how the reliance of public transit for Bayer employees to get to and from the compound will be effected assuming that “social distancing” will continue to be practiced into the foreseeable future. This would occur if the current Covid Virus continues into the foreseeable future.

This analysis is also needed in the event that the current Pandemic wanes but it is still advised or required to practicing “social distancing” to make sure it does not reemerge, or if the Covid Virus Pandemic has a second wave, or if another pandemic materializes.

People have been avoiding public transit in droves since social distancing began in the second week of March 2020.

#### 2020 COVID VIRUS PANDEMIC

All work on the BAYER DEVELOPMENT AGREEMENT and on the DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT should be put on hold until the Corona ViT rus Pandemic is determined to be unquestionably over.

The maximum number of employees that can safely work at the Bayer compound needs to carefully be reassessed base on the Covid Virus Pandemic. How can social distancing be safely practiced if there are a thousand or more new Bayer employees in Berkeley?

#### WESTERN UNITED STATES MEGA-DROUGHT

According to a report in Science Daily, April 20, 2020, which cites material gathered by Earth Institute at Columbia University, the Western United States is likely entering a mega-drought, the worse drought in recorded history.

The Bayer Development agreement should not assume an unlimited water supply for the Bayer compounds’ on-going growth. The EIR needs to do a thorough analysis of the likely worsening drought conditions in the SF Bay Area, and the resulting declining East Bay water supply.

Based on these projections, Bayer should be planning on steadily reducing it’ s footprint, water usage, and impact in Berkeley in the coming years, not steadily increasing the compound’ s density and number of employees.

#### THE CITY’ S PERKS, GIFTS & CONCESSIONS TO BAYER SINCE 1990

The EIR should include a thorough accounting of of all perks, gifts and concessions the City of Berkeley has made to Bayer since 1990. This includes all height and density concession, all city streets abandoned and deeded over to Bayer, any other Public Right of Way that has been abandoned and deeded over to Bayer, and any permit and other fees that the City waived for Bayer.

An accurate as possible monetary valuation should be made for each of these perks, gifts, concessions, and street and other public right of way title transfers.

## HAZARDOUS MATERIALS MANUFACTURED, USED & STORED AT THE BAYER COMPOUND

The EIR should contain a comprehensive list of all hazardous and dangerous materials currently manufactured, used and/or stored at the southwest Berkeley Bayer compound. The list should include the quantities of each of these materials, and what exactly they are used for.

The EIR should also contain a comprehensive list of any increase in the volume of hazardous material to be manufactured, used and/or stored at the Berkeley Bayer compound that is anticipated in the Development Agreement, and any new hazardous or dangerous material that the Development Agreement anticipates will be manufactured,

used and/or stored at the Bayer site in the future that is currently not manufactured, used and/or stored at the site.

## DEVELOPMENT AGREEMENT & EIR REVIEW PROCESS; SCHEDULING OF PUBLIC HEARINGS

The Project applicants and/or their representatives should be in attendance at each CEQA meeting concerning the plans, including at the Scoping Session, the hearings on the Draft EIR and hearing on any revised Draft or Final EIR. They need to make their presence known and make themselves available to answer questions.

The City should schedule ample time at each CEQA meeting for members of the public to make comments and pose questions to the EIR's preparers and to pose questions to any Bayer representatives who are present.

All written and oral Scoping Comments should be printed in the Draft EIR at full size. The public's scoping comments should not be printed in a reduced size.

In addition to being available on-line, the Draft EIR and all subsequent versions of the EIR, as well as the Draft Development Agreement, and all subsequent versions of the EIR and the Development Agreement should be available in printed form to the public. A minimum of 200 copies of each of the above should be produced and made available to public (no more than one copy per person) free of charge.

There should be a minimum 90 day comment period on the Draft EIR, and a minimum 60 day comment period on any Revised Draft EIR, Draft Final EIR, and/or any Final EIR.

The Planning Commission should hold at least two hearings on the Draft EIR, one during the work day, and one in the evening, so that a maximum number of residents will be able to comment on the EIR.

The hearing, or hearings, on the Draft EIR should be held in a large, comfortable and easily accessible room, without noisy vending machines or other distractions.

The public hearing(s) on the Draft EIR should be held at least 60 days after the EIR is made available. These are lengthy and complicated documents, and members of the public should be given ample time to review and prepare their comments on the Draft EIR.

There should be at least one additional comment period and public hearing on the revised version of the Draft EIR that is prepared.



Members of the public are entitled to see how the EIR's preparers responded to their comments on the Draft EIR, and to see what changes, if any, were made in the Draft Development Agreement as a result of the public Draft EIR comments.

The public hearing(s) on the revised EIR that follows the Draft EIR should be held at least 45 days after the revised EIR is made available.

They should also be notified when the Draft EIR and any subsequent EIRs are available; when hearings on the Draft EIR and any subsequent EIRs will be held; and also when any Draft, Revised Draft or Final Bayer Development Agreement is available, and when any City meetings on the Development Agreement will be held.

Any Final EIR and Final Bayer Development Agreement should be made available to members of the public at least 45 days prior to these plans and document being

discussed and voted on by the Planning Commission, and by the City Council.

The EIR and the Bayer Development Agreement should not be voted on at the same meeting. They will each be lengthy and complicated documents, and each will need and deserve separate discussions.

The EIR should provide details of all Development Agreements and other agreements made between Bayer and the City of Berkeley from 1990 to the present.

The EIR should chart the annual increase in Bayer's development square footage and number of employees annually from 1990 to the present.

#### 2020 CENSUS

All work on the Bayer Development Agreement and its Supplemental EIR should be put on hold until the results of the 2020 US Census are available.

#### PENDING CLOSURE OF ALTA BATES HOSPITAL

The Cumulative Impact analysis in the EIR should consider the likely closure of Alta Bates Hospital and its emergency room - the last emergency room in Berkeley, and the additional time it will take to get to an emergency room in Oakland.

All the new apartments and dormitories now being constructed, and that are now pending approval in Berkeley will be increasing the City's population by over 15,000 people. And the population of Berkeley is aging. Yet all the new development now occurring and likely to occur over the next several years is significantly worsening traffic congestion in Berkeley, and will dramatically add to the time it will take to reach an emergency room several miles south of Berkeley in Oakland.

The considerable amount of development being proposed in the new Bayer Development Agreement will add to the cumulative traffic congestion in Berkeley and thus add to the time it will take to reach an emergency room, especially after Alta Bates Hospital closes.

The EIR needs to discuss how this project will (along with recently built and soon to be built projects in Berkeley) will make evacuation after a major earthquake more difficult, and exacerbated by the fact that there will likely not be an emergency room left in Berkeley when a major quake on the Hayward Fault inevitably occurs.

The EIR needs to analyze how the new Bayer Development Agreement, along with all pending and reasonably foreseeable projects throughout the City of Berkeley will cumulatively effect traffic flow in the West Berkeley and throughout Berkeley.

This analysis should include the increased traffic gridlock that will occur, the longer waits to get through intersections that will occur, and how this will contribute to the worsening of air quality. Air quality is already very bad in Berkeley, especially in West Berkeley.

Bayer and the city of Berkeley thus far done a poor job in informing the residents of Berkeley of Bayer' s planned new Development Agreement.

The Bayer Development Agreement planning process should be frozen until the residents of the City of Berkeley are fully brought up to date as to exactly what is in the draft Bayer Development Agreement.

#### TRAFFIC ANALYSIS

The traffic analysis, studies and base level readings should only be done on week days during the AM and PM rush hours when the University of California is in session and people are at work.

The base level traffic readings and studies should not be done in the summer, on weekends, on holidays, at night, nor during the present or any future Covid Virus shelter in place orders, nor outside of the fall or spring University of California sessions, nor during any UCB student breaks.

The base line traffic readings and studies should not be done on any City of Berkeley holidays, including Malcolm X day, nor other holidays observed by the City of Berkeley but not the University of California or the State of California.

Nor should the base line traffic studies be done on any Friday on which the City of Berkeley government is not in full operation. The City government will often partially shut down on Fridays.

All traffic analysis should also include any traffic data that can be found in prior City of Berkeley or University of California EIRs going back to 1990, so as to see how traffic has increased in the past 30 years.

#### CUMULATIVE IMPACTS

A Draft EIR must discuss "cumulative impacts" when they are significant (CEQA Guidelines, section 15130. subd. (a).) When "cumulative impacts" are not deemed significant, the EIR must explain the basis for that conclusion. (Citizens to Preserve the Ojai v. County of Ventura 1985)

All traffic level projections and analysis should include the cumulative impact all recently approved but not yet built, recently built but not yet occupied, and all reasonably foreseeable development in the City of Berkeley. According to the City of Berkeley' s Current Zoning Applications web site, there are over 35 multi-story, new multi-unit residential buildings pending approval. All of the projects listed on this web site are hereby incorporated into these comments by reference. See the City of Berkeley Current Zoning Applications web site -

[https://www.cityofberkeley.info/Planning\\_and\\_Development/Land\\_Use\\_Division/Current\\_Zoning\\_Applications\\_Log.aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Current_Zoning_Applications_Log.aspx) - for a list of all pending development projects in Berkeley.

Based on the dramatic weakening of local control over development by the various Weiner-Skinner bills in the state legislature, it should be assumed that all of the proposed housing developments in the pipeline in Berkeley will be approved.

The Draft EIR should also analyze the cumulative impact of the Bayer Development Agreement in combination with all already approved and reasonably foreseeable development in Berkeley (see above) in regards to noise, air pollution, financial impact, water usage, loss of open space, impact on birds and other urban wildlife, loss of views and loss of sunlight.

The EIR should clearly spell out how many employees Bayer expects to have at its compound at the ultimate build-out of its Development Agreement.

Thank you for your careful review and response to these comments.

Clifford Fred  
Berkeley, California

## Lapira, Katrina

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**From:** Soula Culver <soculver@gmail.com>  
**Sent:** Monday, November 16, 2020 10:55 AM  
**To:** Pearson, Alene; ToxicsMailbox; Building and Safety; Planning Dept. Mailbox  
**Subject:** City of Berkeley Planning Commission – November 18, 2020 Commission Meeting  
Agenda Item #9

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re November 18, 2020 Commission Meeting Agenda Item #9

Dear Planning Commission

You know that people in Berkeley will be very concerned with the idea of expanding the Bayer development. You had best be very cautious about allowing this development plan to go forward or you will have a public-relations fiasco on your hands.

Bayer and the city of Berkeley have done a poor job in informing the residents of Berkeley of Bayer's planned new "Development Agreement."

Clearly, the planning process should be frozen until the residents of the City of Berkeley are fully brought up to date about exactly what is in the draft "Bayer Development Agreement."

This pending agreement should be treated as a new project with a new and Full Environmental Impact Report (EIR).

The Cumulative Impact analysis in the EIR should consider the likely closure of Alta Bates Hospital and its emergency room – the last emergency room in Berkeley, and the additional time it will take to get to an emergency room in Oakland.

All the new apartments and dormitories now being constructed and that are now awaiting approval in Berkeley will be increasing the City's population by over 15,000 people. And the population of Berkeley is aging. Yet all the new development now occurring and likely to occur over the next several years is significantly worsening traffic congestion in Berkeley, and will dramatically add to the time it will take to reach an emergency room several miles south of Berkeley in Oakland.

--Soula Culver  
Berkeley, CA

--  
sent from my wired computer w all wireless functions OFF

**Lapira, Katrina**

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**From:** jenny miller <jennymllr@hotmail.com>  
**Sent:** Monday, November 16, 2020 7:53 AM  
**To:** Pearson, Alene  
**Subject:** My article re Bayer's EIR and plans for expansion

**WARNING:** This email originated outside of City of Berkeley.  
**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

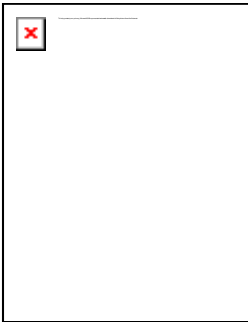
Dear Ms. Pearson,

Thirty years ago when Bayer's development agreement was up for consideration, I wrote this article. Someone who used to be on the Planning Commission said Bayer plans to use the same EIR from 30 years ago? I don't know if that's true, since so much has changed in that time, but in any case, I did a very close examination of Bayer's EIR thirty years ago, and my comments are contained in this article. I hope you will find it useful.

Sincerely,

Jenny Miller

[https://www.opednews.com/articles/Buyer-Beware--An-Historic-by-jenny-miller-Anthrax\\_Auschwitz\\_Bayer\\_Bio-weapons-160917-415.html](https://www.opednews.com/articles/Buyer-Beware--An-Historic-by-jenny-miller-Anthrax_Auschwitz_Bayer_Bio-weapons-160917-415.html)



Article: Buyer Beware: An Historical Look at Bayer's Unethical Practices | OpEdNews

Article: Buyer Beware: An Historical Look at Bayer's Unethical Practices - This lengthy investigation into the history of Bayer's unethical practices was prompted by the proposed expansion of its ...

[www.opednews.com](http://www.opednews.com)

Berkeley Planning Commission  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704

To the Commission Members,

I am writing as a developmental biologist, a member of my own University's Biosafety Committee, and someone with a long relationship with and affection for Berkeley (both of my daughters received their Ph.D.s at UCB). It is my understanding that an application for approval of a new commercial biotechnology laboratory is up for discussion by the Planning Commission. Whether or not the community ultimately decides that such a facility is a good fit for Berkeley, which I anticipate will involve deliberations on both safety and broader cultural impacts, I urge you to consider the following points.

Of all the matters currently occupying the imaginations of scientists such as myself, and biotechnologists, two stand out, one regarding the present, the other the future. The most urgent one concerns the origin of SARS-Cov2, the virus wreaking havoc with the world's health and economies. How did it come about – was it incubated in animals consumed by humans, picked up from the leavings of wild animals by miners, or brought with specimens into a research laboratory where it was passaged in cultures and genetically manipulated in order to explore its pathogenicity? We don't know the answer, but the "gain-of-function" scenario, whereby a virus is altered to make it more infective or damaging, is extremely troubling, since it suggests that what some consider a legitimate medical science program could, with inadvertent escape, have unleashed our modern plague.

The future matter, the prospect of genetically engineering our offspring, is potentially even more worrying. It would not disrupt our society in a temporary fashion, as the coronavirus is doing, but transform our civilization in a permanent fashion. This would occur if we start thinking of people as perfectible products of technology. Even if we begin with the objective of preventing serious genetically related conditions in planned offspring, we would wind up with attempts to introduce optional modifications that, given our market system, will be offered and sought by prospective parents to advantage their future children. Part of this can only be expected to be spurred by racist and eugenicist ideologies which have pervaded and corrupted our country from its inception.

It's important to recognize that even while some scientists and bioethicists are proposing a "wait-and-see" attitude toward heritable modifications of children, pending improvements in the accuracy of CRISPR and related genetic modification techniques, specialists in developmental biology, such as myself and my colleagues, know well that embryos are not constructed like machines with replaceable parts. Humans at early stages of development are not engineerable, raising the real prospect that CRISPR-modification of children will do more harm than good.

This brings me to the reason for this statement. I urge you to consider the following points: Both gain-of-function research and human embryo modification are legal in the United States if conducted under private auspices. Both are associated with powerful and useful research and technology programs – virology and vaccine development, gene modification of cells and tissues of existing ill human patients, animal developmental biology – that will plausibly occur in any new laboratories proposed for Berkeley. While the proprietors may disavow undertaking gain-of-function and human embryo gene modification

research programs in their initial application, as a scientist, I strongly urge that the City of Berkeley make prohibition of these activities part of the permanent charter of any approved facilities.

Berkeley and its resident educational and research institutions have long been icons of scientific thought and progressive values. For the sake of the new chance we now may be afforded to learn from the past and improve our country's and the world's prospects, let's move ahead unburdened by what are likely destructive technologies.

Stuart A. Newman, Ph.D.  
Professor of Cell Biology and Anatomy  
New York Medical College  
Valhalla, New York 10595  
[stuart\\_newman@nymc.edu](mailto:stuart_newman@nymc.edu)





# Alliance for Humane Biotechnology

[www.humanebiotech.org](http://www.humanebiotech.org)

155 Twenty-first Avenue, San Francisco, California 94121-1205 (415) 483-9410

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November 16, 2020

Berkeley Planning Commission  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704

Dear Berkeley Planning Commission:

I am writing as the director of a national non-profit dedicated to raising public awareness about the ethics and social implications of biotechnologies, as a graduate of UC Berkeley and as a Berkeley resident. As the City of Berkeley considers permitting laboratory construction in civic areas, hopefully city administrators will consider it important to require companies, in this case Bayer, to present information on what biosafety level labs the company intends to site, provide information on how the labs will comply with federal regulations, and take an interest in what kind of research it will be possible to conduct in their labs. The City of Berkeley has a unique opportunity and responsibility to explicitly reject “techno-eugenic” research, that is, human germline genetic engineering, from being undertaken in labs for which it approves siting.

Pursuing gene or cell therapy research to find cures for existing diseases is laudable. An explicit understanding must be expressed and a clear line drawn, however, between research conducted on somatic (body) cells and genetically manipulating germline cells (eggs, sperm, or embryos). While the one is noncontroversial and to be encouraged, the other is socially divisive and medically dangerous. The term techno-eugenics underscores how genetically altering the human germline opens the possibilities and increases the probability of creating designer children or indeed, creating human entities designed for specific purposes.

Insisting that this border not be breached cannot be left to the self-regulation of bio-researchers. There is an unmistakable increase in the number of bioentrepreneurial scientists seeking to normalize human germline manipulations. When in 2018 the scientist He Jiankui announced that he had genetically modified twin infants, he was met with broad censure nationally and internationally. Since then, however, the tone of professional discussion has moved steadily toward acceptance of germline genetic manipulations. Rather than calling for decisive prohibition, science organizations have asked merely for “more discussion,” mildly cautioning that further implementation must await increased skill. This is not the case with civil

institutions, however. Around the globe, out of 106 countries recently surveyed, 75 explicitly prohibit heritable human genome editing.

<https://www.geneticsandsociety.org/biopolitical-times/assessing-global-policy-landscape-human-germline-and-heritable-genome-editing>

As a city in the state of California, Berkeley has a special responsibility to call for prohibition of human germline genetic engineering in laboratories it approves. The state has acknowledged the baleful role it played in 20th century eugenics and has undertaken to make amends for it. In March 2003, Governor Gray Davis apologized to all those affected by California's eugenics movement.

<https://www.latimes.com/archives/la-xpm-2003-mar-12-me-sterile12-story.html>

And in June 2003, the California Senate passed Senate Resolution SR 20

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=200320040SR20](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040SR20) which acknowledged that: "The goal of the eugenics movement of the twentieth century was racial betterment through the elimination of hereditary disorders or genetic defects by means of sterilization, selective breeding, and social engineering." It urged all citizens to become familiar with the history of the eugenics movement, and resolved that: "this resolution addresses past bigotry and intolerance against the persons with disabilities and others who were viewed as "genetically unfit" by the eugenics movement..." More recently, there has been sustained effort to compensate the victims of state sponsored eugenics. [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB3052](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3052)

Finally, Berkeley's history includes the recent discovery of the Genealogical Eugenics Institute Fund originally dedicated to studying eugenics and housed in the University of California's School of Public Health. In 2018 the funds were frozen and in 2020 the payout now has been repurposed. The resources will be used to educate the campus community and the public about eugenics' cruel history.

<https://news.berkeley.edu/2020/10/26/berkeley-public-health-announces-plans-to-rename-repurpose-former-eugenics-fund/> This positive development is one that the City of Berkeley's rejection of techno-eugenics in the contemporary context will reinforce.

By prohibiting the conduct of techno-eugenics in facilities now being planned, the City of Berkeley will aptly assume leadership and responsibility in implementing the State's mandate for public awareness of past abuses of science for anti-social purposes as well as support a global effort to avoid future abuses.

Sincerely,

Tina Stevens, PhD  
Berkeley Resident  
Director, Alliance for Humane Biotechnology

Dear Berkeley Planning Commission-

Thank you for the time you are taking to update and amend an EIR for the proposed Bayer project (agenda #9). I was born in Berkeley, a homeowner not far from the proposed site, and care deeply about the health and safety of our community.

I am writing to express concern about a number of issues that I hope the Planning Commission may address. The recombinant DNA and genetic engineering activities proposed now and those which Bayer may wish to house in its facilities in the future raise many concerns for local ecosystem, and in particular for worker and community safety.

It will be critical for the Planning Commission to know what biosafety level will these laboratories have the capacity for, and what level you are assessing. The Federal government approves the levels (BSL 1-4) levels, but given worker and community safety, it is in Berkeley's best interest to not have BSL 3 or BSL 4 labs in our community, let alone near homes and the sensitive Bay ecosystem. The Planning Commission needs to look ahead, and inquire not just about what Bayer wishes to work on in the near term, but what they might work on, given what the safety level of the lab allows. Even BSL 2 labs need extra safety attention, as they could push the limits of what they are allowed to do, but BSL 3 and 4 labs present significant and clear dangers to the Berkeley and larger Bay Area communities. For example, gain of function research could be done in a BSL 4 lab.

(See: <https://www.cdc.gov/training/quicklearns/biosafety/>)

As the Planning Commission speaks to experts about the environmental concerns, public health and community safety risks, it should also consider that safety is one of the core responsibilities of this commission. The Commission should be clear what biosafety levels they are planning for at this location and that they are taking a precautionary approach, and not just following minimum government regulations. That fact finding should be done before any substantive feedback can be given and realistically, before serious consideration of the facility happens.

Specifically, I would offer the following suggestions:

- Bayer names that the labs will be BSL 1 & 2, for which there are environmental and public health precautions that Berkeley must account for. However, the level of environmental and public health risks increases significantly if Bayer were to ever petition to include a BSL 3 or 4 lab in its facility. **The EIR, Development Agreement and contract with Bayer should include a clause which guarantees that no BSL 3 or 4 sections will be built in this facility in the future.**
- At the bottom of page 8 in the Development Agreement, Bayer requests to lift restrictions on numerous genetic engineering activities. Although Bayer suggests that there are minimal safety risks, this statement is not backed up by the scientific community. In fact, expert international bodies such as the UN Convention on Biodiversity have expressed explicit concern about the significant safety risks, both for

biodiversity and health, related to new genetic engineering technologies. The new and emerging recombinant DNA research is largely underassessed, is virtually unregulated at the national level and has almost no oversight. **The Planning Commission and City of Berkeley should leave in place the restrictions on recombinant DNA research and development activities.** Indeed, the pharmaceutical and pesticide industry, including Bayer, has lobbied that the very programs necessary to evaluate and assess environmental and public health risks from these emerging genetic engineering technologies be deregulated.

- In addition to restrictions on research, there should be a specific guarantee that **Bayer, or any entity renting its facility, will not conduct any gain of function research.**

In addition to the environmental and public health risks that the Planning Commission should consider, there are also controversial issues that raise other questions, such as germline editing and research which builds techno-eugenics. While there may be different risks/benefits to germline editing research, it will be important for Berkeley to think of how it wants to be known and what is in the City's best interest. Indeed, 75 countries already prohibit heritable human genome editing, and Berkeley certainly should be a leader in supporting California's commitment to avoid using scientific technologies for abusive applications like eugenics. **The Commission and City of Berkeley should also prohibit techno-eugenics and human germline editing research.**

I thank the Planning Commission for taking a deep, careful look at the implications of the proposed development and crafting a very important EIR. Again, **I recommend that the current research restrictions not be lifted, that there be a permanent clause noting that this development may not include any BSL 3 or 4 facilities, and that the City of Berkeley will not engage in gain of function research or heritable human genome editing research.**

I would be happy to elaborate on any of these statements and refer the Planning Commission to experts across the country who would be able to share specific examples and measures that the EIR and Development Agreement should include in order to set the best practices for protecting the environment, workers, community and Berkeley's leadership in environmental, health, and social responsibility.

Sincerely,

Dana Perls, MCP

Berkeley Resident

## Mendez, Leslie

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**From:** Anna Lappe <alappe@gmail.com>  
**Sent:** Monday, November 30, 2020 3:00 PM  
**To:** Mendez, Leslie  
**Subject:** Re: Bayer Community Agreement / Expansion Plans

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**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

November 30, 2020

### **City of Berkeley Planning Commission**

% Leslie Mendez, Senior Planner

Re: Bayer Community Agreement / Expansion Plans

Dear Berkeley Planning Commission:

Thank you for the opportunity for community members to weigh in on questions and concerns about the Bayer expansion. My husband and I bought our house not far from the Bayer site in 2012 and are raising our two children here. Much as Bayer hopes to extend its contract another 30 years, my family and I hope to live here for many decades to come.

For us as a community, this long time horizon for Bayer's renewal agreement brings up unique concerns about how to evaluate not only the risks that current and near-term operations might pose, but also the long-term risks. I am including here some of these areas of concern that I hope will be of particular focus as the Commission moves forward in this exploratory phase.

(In this letter, I don't talk about Community Benefits, but I think there are a lot of areas to explore there, including many great ideas raised during the public comment period at your last Commission meeting about this project. I concur with community members who urged the city to explore demands around a wide range of benefits.)

I submit these comments as a community member as well as someone whose professional work informs the perspective I share: For the past two decades, I have worked as a researcher, funder, and advocate alongside colleagues in the United States and around the world seeking to address the harmful impacts of agrochemical companies (including Bayer and Monsanto), advocate for regulations to protect communities from toxics, address monopolies in our food and agriculture markets, and expose the regulatory influence of industry within the U.S. and in intergovernmental bodies.

**Biosafety Levels 3 and 4** — As I said in my public comment, I was pleased to hear the Bayer representative clearly state the company will not be developing laboratories at BSL 3 or BSL 4 at this site. I would stress the need to ensure that the Development Agreement with Bayer includes clear language that guarantees no BSL 3 or 4 sections will be built in this facility in the future. While of course lower safety levels also require special attention, Levels 3 and 4 pose even greater risk.

**Environmental Risk Factors** — A point I also raised on the call, I am concerned about the potential environmental contamination of genetically engineered organisms that may be used in the future in labs at this location. Experts who are tracking the frontiers of these kinds of organisms being used in labs have raised alarm

at the inability to ensure these organisms will not escape into the environment. I am particularly concerned about this kind of work happening in such a vulnerable location: Clearly, the site is at high-risk for earthquakes. It is also proximate to the San Francisco Bay, which would be particularly threatened were microorganisms to escape the lab. Finally, the site is also at elevated risk for flooding over the next three decades with expected climate change-induced sea level rise and more extreme weather events.

**Risks of New Technologies** — As I said on the call, thirty years ago we could never have imagined the new technologies we see today; we can presume we will only witness even more radical technological change in the coming decades. It's important to consider how to build guardrails around the technologies that would be used at this site, particularly if this agreement is to protect our communities for another generation. How does the agreement create protections for future, as-yet-developed, technologies, particularly around genetic engineering activities? This is a question I don't have an answer to, but I would hope the Commission would enlist expertise across the city, state, and around the world, to answer.

A commissioner mentioned at the meeting that for many such agreements local communities can lean on compliance with federal regulations (OSHA, EPA, etc.) for sufficient protection. But federal regulations are not keeping up with these technologies. We have also seen significant lobbying by Bayer and other pharmaceutical companies and agrochemical companies to reduce restrictions at the national level. With all that said, it is critical that the city pull in expertise to figure out what elements would need to be put in place to ensure community protections.

**Precautionary Principle** — Through my work at a private family foundation for the last six years, I've been supporting groups around the world that have been advocating for common sense regulation of pesticides, including those produced by Bayer and formerly Monsanto. While this facility is obviously not part of the company's agrochemical division, I do think it's helpful to mention here the track record of Bayer (and formerly Monsanto).

There are numerous, well-documented examples of the company knowingly hiding evidence about the environmental harms of their operations or products. The company also has a long history of lengthy court battles and appeals processes to shirk responsibility for these impacts, and, in many cases, significant legal settlements. I'm flagging just a few of these examples:

- **National (2020):** Currently, Bayer faces a **\$650 million settlement** with 2,500 U.S. cities, including [\\$1 million to Berkeley](#), to resolve a lawsuit over the company's production, promotion, and sale of toxic polychlorinated biphenyls (PCBs) that impacted these cities natural resources and put the health of residents at risk. The lawsuit alleges that Monsanto sold PCBs for nearly 50 years, despite knowing these chemicals would pollute waterways, kill wildlife, and cause significant health problems in humans, including cancer and liver damage. Examples of payouts to cities include [Washington DC \\$52 million](#), and [Washington state \\$95 million](#).
- **Missouri (2020):** **\$265 million settlement from Bayer and BASF** after the companies' dicamba-based weed killers caused widespread damage to fruit trees across the state.
- **Global (2020):** Bayer could pay up to **\$10.9 billion to settle litigation over subsidiary Monsanto's weedkiller Roundup** and that includes more than 100,000 people whose cancer has been linked to the company's product.
- **Texas, Louisiana, Mississippi, Arkansas and Missouri (2007):** **\$750 million** from Bayer to over 700 rice farmers after the company developed a rice variety with the mutation. While still in the development, the modified rice escaped from the test plots and contaminated rice production in Texas, Louisiana, Mississippi, Arkansas and Missouri, likely contamination happened in 2001. [Link](#)
- **Louisiana (2004):** **\$45 million** settlement with 1,600 crawfish farmers in a lawsuit against Bayer CropScience for its insecticide Fipronil, sold as ICON, for damage to crawfish. [Link](#)
- **Anniston, Alabama (2003):** **\$700 million** settlement with Solutia and Monsanto after the company admitted to poisoning residents of Anniston, Alabama with PCBs for decades. [Link](#)

I flag these examples not because there is a direct parallel with production at this facility, but because together these settlements reveal a clear pattern: a pattern of negligence, impact, and the stonewalling of calls for financial restitution. I raise this point to underscore the need to evaluate plans carefully and ensure our community is protected—so that we don't find ourselves three decades from now with regrets about not asking the right questions at this juncture.

**Ethical Questions** — Finally, there are a number of biomedical ethics questions raised by the prospects of lab activities, which fall outside the clear framework of “hazards” yet are critical to explore. As my colleague Dana Perls at Friends of the Earth mentioned in the public comment period, these include for example concerns about any possible human germline editing research.

My father, [Marc Lappé](#), was a bioethicist, toxicologist, and epidemiologist who lived most of his life in California. He served as chief of the Office of Health, Law and Values in Governor Jerry Brown's first administration, taught at UC Berkeley, and was the founder of the California-based non-profit Center for Ethics and Toxic Substances (CETOS). Were he alive today, I know he would be urging all of us to be asking these foundational ethical questions, and urging you to bring in experts in the field of medical ethics to help brief the Commission, the city, and its residents on these complex ethical questions.

Thanks for your thoughtful consideration.

I would welcome the opportunity to support this process by connecting those deliberating about this project with experts in my networks around the world. How this agreement is drafted will set critical precedent as other communities worldwide face similar questions.

Sincerely,

Anna Lappé

1130 Dwight Way

Berkeley, CA 94702

[alappe@gmail.com](mailto:alappe@gmail.com)

## Mendez, Leslie

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**From:** Jeremy Gruber <jeremygruber@gmail.com>  
**Sent:** Monday, November 30, 2020 12:34 PM  
**To:** Mendez, Leslie  
**Cc:** Pearson, Alene  
**Subject:** Application by Bayer for Laboratory Construction

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**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

November 30, 2020

Leslie Mendez  
Senior Planner  
City of Berkeley Planning Commission

RE: Application by Bayer for Laboratory Construction

Ms. Mendez,

I am writing to you about the recent application by Bayer Lab for laboratory construction in the city of Berkeley and urge the Commission to take the following seriously. The biosafety level two (BSL-2) work that is reportedly envisioned by Bayer Labs in their zoning request is not without concern. BSL 2 labs work with agents associated with human disease, in other words, pathogenic or infectious organisms posing a hazard. Examples include pathogenic strains of Escherichia coli and Staphylococcus, Salmonella, Plasmodium falciparum, and Toxoplasma gondii. If proper lab procedures aren't followed at all times, there is risk of laboratory-acquired infections or accidental release of a pathogen into the environment.

While these labs are regulated by the Federal government, it cannot be stated more emphatically that they are very lightly monitored at best-there is little resources available for stricter review. It is in fact largely up to these facilities to self-monitor. Indeed, there have been record numbers of errors and mistakes at even higher level biolabs that are supposedly even better monitored.

(See: <https://www.usatoday.com/story/news/2015/05/28/biolabs-pathogens-location-incidents/26587505/> )

Therefore it is incumbent on communities that care about the health and safety of their population and environment to not just get assurances that any proposed lab is following established regulations, but a detailed accounting of the types of organisms to be studied and an ongoing, transparent dialogue regarding the results of internal lab safety monitoring and procedures for notification to the community of any lapses in safety protocols.



This is particularly important for two additional reasons. There is increasing pressure to conduct higher level pathogenic research, normally required in BSL-3 labs, in BSL-2 labs. This is due to the fact that there are simply more of these labs-higher level labs are much fewer in number. More and more BSL-2 labs are operating as what is commonly known as a BSL-2 plus lab. Such labs aren't officially recognized by the CDC, despite their frequency, but are handling higher virulent pathogens nevertheless. There has been increasing pressure to study Covid-19, the pathogen that causes coronavirus, in such labs for example.

Additionally, BSL-2 labs can be upgraded to higher level labs that handle much more dangerous, exotic pathogens. Any community welcoming a BSL-2 facility should require a commitment from the facility not to seek an upgraded status in the future.

I ask that this note be shared with the rest of the members of the Planning Commission, as well as the City Council. Please let me know if I can answer any questions you have or be helpful in any way as you assess Bayer's application

Sincerely,  
Jeremy Gruber  
Past President, Council for Responsible Genetics  
(609) 610-1602  
[jeremygruber@gmail.com](mailto:jeremygruber@gmail.com)

## Mendez, Leslie

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**From:** cactus feather <bearfootfree@gmail.com>  
**Sent:** Wednesday, December 2, 2020 6:46 PM  
**To:** Mendez, Leslie  
**Subject:** Re: Bayer Site Plan in Berkeley - NO ANIMAL TESTING

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**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Dec. 2, 2020

Dear Leslie,

I am a resident of W. Berkeley and I wish to express my concern about Bayer and its research. I wish to emphasize the importance of NOT using ANY animals in testing in ANY research/ clinical trials. Testing animals is archaic and unnecessary. At this time there are other ways to determine the efficacy of pharmaceuticals. No animals should be held in cages and subjected to any testing procedures.

Bayer should declare clearly in the EIR its commitment that it will NOT use ANY animals in the process of its research.

Please notify Bayer of my concern and enter it into the public record:

**NO ANIMAL TESTING**

Sincerely,

Cactus Feather/ Beverly Dove

## Mendez, Leslie

---

**From:** Perls, Dana <DPerls@foe.org>  
**Sent:** Wednesday, December 2, 2020 9:35 AM  
**To:** Mendez, Leslie  
**Cc:** T Stevens  
**Subject:** FW: Clarifying position on Bayer and its Development Agreement with City of Berkeley

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**WARNING:** This email originated outside of City of Berkeley.  
**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Dear Leslie,

I'm forwarding the following email from Tina Stevens, Director of Alliance for Humane Biotechnology, with regards to the Bayer Development. I have her permission to request that her comment be added to the public record, and please forward to the whole Planning Commission and Berkeley City Council.

Many thanks for receiving comments for this precedent setting development.

Sincerely,  
Dana Perls

---

**From:** T Stevens <mltstevens70@gmail.com>  
**Sent:** Tuesday, December 1, 2020 7:42 PM  
**To:** Perls, Dana <DPerls@foe.org>  
**Subject:** Clarifying position on Bayer and its Development Agreement with City of Berkeley

Hi Dana,

It is very important that Bayer agree not to engage any germline research — not just that they aren't considering it now, will talk about it with the public or bioethicists, etc. It would be a mistake to agree only to an ongoing committee to oversee developments, etc. A clear line needs to be drawn and Bayer and the City of Berkeley are the best entities to do it. Why?

Bayer is a German company — that is, it is from a country that has denounced techno-eugenics because of that country's major historic role in eugenics. Bayer is also one of the companies that developed/distributed the Zyklon B gas that murdered millions during WWII, motivated by eugenic rationales. What we are asking of Bayer is to demonstrate a global leadership that is consistent with its home country's leadership in denouncing the new eugenics. They don't need to "talk about it." This is an opportunity for Bayer — and can be framed that way.

Similarly, it is an opportunity for the City of Berkeley to show leadership in implementing the California legislature's mandate to teach the public about eugenics and to decry eugenic cruelty. Typically, rather than advising or committing not to do it, bioethicists and bio-researchers prefer to talk with the public about whether such research is a good idea. This just keeps it on the table as an option and serves to foster it. It is, without a doubt, part of the problem.

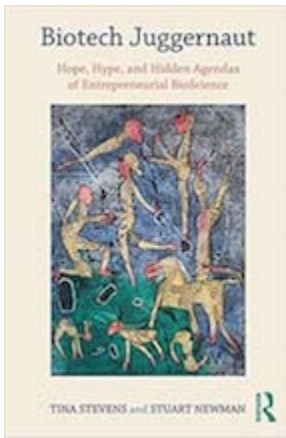
Please feel free to forward this if you think it would be helpful.

Best Regards,

Tina

Tina Stevens, PhD

[Director, Alliance for Humane Biotechnology](#)  
[Emerita, San Francisco State University](#)



Available on [Amazon](#)  
and from [Routledge](#)

## Mendez, Leslie

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**From:** Anastasia Glikshtern <apglikshtern@gmail.com>  
**Sent:** Thursday, December 3, 2020 4:18 PM  
**To:** Mendez, Leslie  
**Subject:** Comments on Bayer development in Berkeley

**WARNING:** This email originated outside of City of Berkeley.

**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Dear Sir/Madam,

The city of Berkeley should explore the ways to get the Bayer - war criminals, perpetrators of crimes against humanity, intimately involved with the death factories of Nazi regime - out of the city - instead of allowing them to expend developments and their criminal activities even further.

I'm providing this link to an article with an historical look at Bayer's unethical practices:

[https://www.opednews.com/articles/Buyer-Beware--An-Historic-by-jenny-miller-Anthrax\\_Auschwitz\\_Bayer\\_Bio-weapons-160917-415.html](https://www.opednews.com/articles/Buyer-Beware--An-Historic-by-jenny-miller-Anthrax_Auschwitz_Bayer_Bio-weapons-160917-415.html)

With the aquisition of Monsanto they are now also peddling glyphosate (along with other toxic chemicals) - poisoning our environment and giving cancers to all of us.

Berkley should get rid of them.

Sincerely,

Anastasia Glikshtern



Virus-free. [www.avast.com](http://www.avast.com)

December 3, 2020  
Clifford Fred  
Berkeley, California

To Leslie Mendez,  
Senior Planner, City of Berkeley

Hello Ms. Mendez,  
Please consider the following scoping & general comments for the pending Bayer Development Agreement and EIR. Please include these comments in the Draft EIR.  
Thank you,  
Clifford Fred

#### SCOPING & GENERAL COMMENTS FOR BAYER DEVELOPMENT AGREEMENT DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT – DSEIR

Thank you for the opportunity to make these Scoping Comments.

It is disrespectful to the citizens of Berkeley for the City to have an “on-line” Scoping Session, and not waiting for the Covid Virus Pandemic to end so that a public Scoping Session can be held, as normally would occur. Surely the Bayer corporation, which already has extensive activities on-going at its southwest Berkeley compound, can wait a few more months for work to proceed on its Development Agreement.

Many people do not have access to Zoom, or choose not to use Zoom, due to radiation and privacy concerns.

Many people who would otherwise want to participate, might be ill with the Covid Virus, or taking care of someone who is.

I urge the city to delay the SEIR Scoping Session and the Notice of Preparation until the Covid-19 Pandemic is over, and the Scoping Session can be held in public with members of the public attending.

#### INCORPORATED BY REFERENCE

All documents, reports, studies, newspaper & magazine articles, ordinances, ballot measures including City of Berkeley Ballot Measures L & N, statutes, regulations, etc. cited in any way in these comments are hereby incorporated into these comments by reference.

#### A NEW AND FULL ENVIRONMENTAL IMPACT REPORT IS NEEDED

It has been almost 30 years since a Bayer Development Agreement was first approved by the Berkeley Planning Commission and City Council. I was a member of the Berkeley Planning Commission in 1990 and 1991 when the original Development Agreement was being considered and approved.

There have been unanticipated, enormous and disruptive changes in the character, population, and density of the City of Berkeley since 1990.

Someone who left Berkeley in 1990 and returned today would not recognize much of the City. Assumptions made in the original Bayer Development Agreement and EIR in 1990-1991, and in any supplements and addendum to that Development Agreement and EIR are no longer relevant or valid.

The pending Bayer Development Agreement should be treated as a new project with a new and Full Environmental Impact Report.

## PROJECT ALTERNATIVES

A Draft EIR must describe a range of reasonable alternatives to the proposed

project, or to its location, that could feasibly attain the project's basic objective, and must evaluate the comparative merits of each alternative. (CEQA Guidelines section 15126 & section 21100.) The discussion must focus on alternatives capable of either eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if such alternatives would be more costly or to some degree would impede the project's objectives. (CEQA Guidelines section 15126.)

If the lead agency prefers the project as specifically proposed or one of the suggested alternatives, the EIR must explain why the agency chooses to reject the other alternatives. (CEQA Guidelines section 15126.)

The EIR should examine 3 or more alternative plans, giving each plan equal weight. The EIR preparation, review and revision process should then be used to arrive at a Preferred Alternative Plan.

## NO ROUND-UP – GLYCOPHATE IN BERKELEY

In each project alternative, there should be an agreement that Bayer's controversial weedkiller Glyphosate – Round-Up will not be manufactured in Berkeley, nor allowed to be sold, stored nor used anywhere in Berkeley.

## NO GAIN OF FUNCTION RESEARCH, NO HUMAN EMBRYO MODIFICATION, NO HUMAN GERMLINE MANIPULATIONS, & NO TECHNO EUGENICS SHOULD BE ALLOWED

In each of the project alternatives, there should be an agreement by Bayer and the City of Berkeley that there will be no "gain of function" research, no "human embryo modification," no "human germline manipulations," and no "techno-eugenics" allowed at the Bayer site, nor anywhere else in the City of Berkeley. Please refer to the letters to the Planning Commission concerning the pending Bayer development agreement and EIR from Tina Stevens Ph.D. and from Stuart Newman Ph.D.

In each of the Project Alternatives, the existing height limits at Bayer's southwest Berkeley compound should be strictly honored and adhered to.

In none of the Project Alternatives shall any City of Berkeley street or other right of way be abandoned nor deeded over to Bayer.

In none of the project Alternatives shall Bayer be allowed to acquire any additional land in Berkeley beyond what it already owns in Berkeley.

At least one Project Alternative analyzed should immediately freeze all additional development at the Bayer compound in southwest Berkeley.

At least one of the Project Alternatives in the EIR should include a significant reduction of the development footprint and square footage of the Bayer compound, and a reduction in the number of employees at the Bayer compound.

At least one of the Project Alternatives in the EIR should include the cessation of the manufacture of any and all hazardous and dangerous materials now manufactured at the Berkeley Bayer site, and should include a substantial reduction in the use and storage of any and all hazardous and dangerous materials currently found at the site.

## PROJECT ALTERNATIVES AND THE COVID PANDEMIC

For each project alternative, there should be an analysis as to how well “social distancing” would succeed in limiting the spread of infectious diseases in the event that the current Covid Virus continues into the foreseeable future.

This analysis is also needed in the event that the current Pandemic wanes but it is still advised or required to practicing “social distancing” to make sure it does not reemerge, or if the Covid Pandemic has a second wave, or if another pandemic materializes.

This analysis is also needed in the event that the current Pandemic wanes but it is still advised or required to practicing “social distancing” to make sure it does not reemerge, or if the Covid Pandemic has a second wave, or if another pandemic materializes.

Each Project Alternative should be analyzed into how the reliance of public transit for Bayer employees to get to and from the compound will be effected assuming that “social distancing” will continue to be practiced into the foreseeable future. This would occur if the current Covid Virus continues into the foreseeable future.

This analysis is also needed in the event that the current Pandemic wanes but it is still advised or required to practicing “social distancing” to make sure it does not reemerge, or if the Covid Virus Pandemic has a second wave, or if another pandemic materializes.

People have been avoiding public transit in droves since social distancing began in the second week of March 2020.

## 2020 COVID VIRUS PANDEMIC

All work on the BAYER DEVELOPMENT AGREEMENT and on the DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT should be put on hold until the Corona ViT rus Pandemic is determined to be unquestionably over.

The maximum number of employees that can safely work at the Bayer compound needs to carefully be reassessed base on the Covid Virus Pandemic. How can social distancing be safely practiced if there are a thousand or more new Bayer employees in Berkeley?

## WESTERN UNITED STATES MEGA-DROUGHT

According to a report in Science Daily, April 20, 2020, which cites material gathered by Earth Institute at Columbia University, the Western United States is likely entering a mega-drought, the worse drought in recorded history.

The Bayer Development agreement should not assume an unlimited water supply for the Bayer compounds’ on-going growth. The EIR needs to do a thorough analysis of the likely worsening drought conditions in the SF Bay Area, and the resulting declining East Bay water supply.



Based on these projections, Bayer should be planning on steadily reducing its footprint, water usage, and impact in Berkeley in the coming years, not steadily increasing the compound's density and number of employees.

#### THE CITY'S PERKS, GIFTS & CONCESSIONS TO BAYER SINCE 1990

The EIR should include a thorough accounting of all perks, gifts and concessions the City of Berkeley has made to Bayer since 1990.

This includes all height and density concession, all city streets abandoned and deeded over to Bayer, any other Public Right of Way that has been abandoned and deeded over to Bayer, and any permit and other fees that the City waived for Bayer.

An accurate as possible monetary valuation should be made for each of these perks, gifts, concessions, and street and other public right of way title transfers.

#### HAZARDOUS MATERIALS MANUFACTURED, USED & STORED AT THE BAYER COMPOUND

The EIR should contain a comprehensive list of all hazardous and dangerous materials currently manufactured, used and/or stored at the southwest Berkeley Bayer compound. The list should include the quantities of each of these materials, and what exactly they are used for.

The EIR should also contain a comprehensive list of any increase in the volume of hazardous material to be manufactured, used and/or stored at the Berkeley Bayer compound that is anticipated in the Development Agreement, and any new hazardous or dangerous material that the Development Agreement anticipates will be manufactured,

used and/or stored at the Bayer site in the future that is currently not manufactured, used and/or stored at the site.

#### DEVELOPMENT AGREEMENT & EIR REVIEW PROCESS; SCHEDULING OF PUBLIC HEARINGS

The Project applicants and/or their representatives should be in attendance at each CEQA meeting concerning the plans, including at the Scoping Session, the hearings on the Draft EIR and hearing on any revised Draft or Final EIR. They need to make their presence known and make themselves available to answer questions.

The City should schedule ample time at each CEQA meeting for members of the public to make comments and pose questions to the EIR's preparers and to pose questions to any Bayer representatives who are present.

All written and oral Scoping Comments should be printed in the Draft EIR at full size. The public's scoping comments should not be printed in a reduced size.

In addition to being available on-line, the Draft EIR and all subsequent versions of the EIR, as well as the Draft Development Agreement, and all subsequent versions of the EIR and the Development Agreement should be available in printed form to the public. A minimum of 200 copies of each of the above should be produced and made available to public (no more than one copy per person) free of charge.

There should be a minimum 90 day comment period on the Draft EIR, and a minimum 60 day comment period on any Revised Draft EIR, Draft Final EIR, and/or any Final EIR.

The Planning Commission should hold at least two hearings on the Draft EIR, one during the work day, and one in the evening, so that a maximum number of residents will be able to comment on the EIR.

The hearing, or hearings, on the Draft EIR should be held in a large, comfortable and easily accessible room, without noisy vending machines or other distractions.

The public hearing(s) on the Draft EIR should be held at least 60 days after the EIR is made available. These are lengthy and complicated documents, and members of the public should be given ample time to review and prepare their comments on the Draft EIR.

There should be at least one additional comment period and public hearing on the revised version of the Draft EIR that is prepared.

Members of the public are entitled to see how the EIR's preparers responded to their comments on the Draft EIR, and to see what changes, if any, were made in the Draft Development Agreement as a result of the public Draft EIR comments.

The public hearing(s) on the revised EIR that follows the Draft EIR should be held at least 45 days after the revised EIR is made available.

They should also be notified when the Draft EIR and any subsequent EIRs are available; when hearings on the Draft EIR and any subsequent EIRs will be held; and also when any Draft, Revised Draft or Final Bayer Development Agreement is available, and when any City meetings on the Development Agreement will be held.

Any Final EIR and Final Bayer Development Agreement should be made available to members of the public at least 45 days prior to these plans and document being

discussed and voted on by the Planning Commission, and by the City Council.

The EIR and the Bayer Development Agreement should not be voted on at the same meeting. They will each be lengthy and complicated documents, and each will need and deserve separate discussions.

The EIR should provide details of all Development Agreements and other agreement made between Bayer and the City of Berkeley from 1990 to the present.

The EIR should chart the annual increase in Bayer's development square footage and number of employees annually from 1990 to the present.

## 2020 CENSUS

All work on the Bayer Development Agreement and its Supplemental EIR should be put on hold until the results of the 2020 US Census are available.

## PENDING CLOSURE OF ALTA BATES HOSPITAL

The Cumulative Impact analysis in the EIR should consider the likely closure of Alta Bates Hospital and its emergency room – the last emergency room in Berkeley, and the additional time it will take to get to an emergency room in Oakland.

All the new apartments and dormitories now being constructed, and that are now pending approval in Berkeley will be increasing the City's population by over 15,000 people. And the population of Berkeley is aging. Yet all the new development now occurring and likely to occur over the next several years is significantly worsening traffic congestion in Berkeley, and will dramatically add to the time it will take to reach an emergency room several miles south of Berkeley in Oakland.

The considerable amount of development being proposed in the new Bayer Development Agreement will add to the cumulative traffic congestion in Berkeley and thus add to the time it will take to reach an emergency room, especially after Alta Bates Hospital closes.

The EIR needs to discuss how this project will (along with recently built and soon to be built projects in Berkeley) will make evacuation after a major earthquake more difficult, and exacerbated by the fact that there will likely not be an emergency room left in Berkeley when a major quake on the Hayward Fault inevitably occurs.

The EIR needs to analyze how the new Bayer Development Agreement, along with all pending and reasonably foreseeable projects throughout the City of Berkeley will cumulatively effect traffic flow in the West Berkeley and throughout Berkeley.

This analysis should include the increased traffic gridlock that will occur, the longer waits to get through intersections that will occur, and how this will contribute to the worsening of air quality. Air quality is already very bad in Berkeley, especially in West Berkeley.

Bayer and the city of Berkeley thus far done a poor job in informing the residents of Berkeley of Bayer's planned new Development Agreement.

The Bayer Development Agreement planning process should be frozen until the residents of the City of Berkeley are fully brought up to date as to exactly what is in the draft Bayer Development Agreement.

## TRAFFIC ANALYSIS

The traffic analysis, studies and base level readings should only be done on week days during the AM and PM rush hours when the University of California is in session and people are at work.

The base level traffic readings and studies should not be done in the summer, on weekends, on holidays, at night, nor during the present or any future Covid Virus shelter in place orders, nor outside of the fall or spring University of California sessions, nor during any UCB student breaks.

The base line traffic readings and studies should not be done on any City of Berkeley holidays, including Malcolm X day, nor other holidays observed by the City of Berkeley but not the University of California or the State of California.

Nor should the base line traffic studies be done on any Friday on which the City of Berkeley government is not in full operation. The City government will often partially shut down on Fridays.

All traffic analysis should also include any traffic data that can be found in prior City of Berkeley or University of California EIRs going back to 1990, so as to see how traffic has increased in the past 30 years.

## CUMULATIVE IMPACTS

A Draft EIR must discuss “cumulative impacts” when they are significant (CEQA Guidelines, section 15130. subd. (a).) When “cumulative impacts” are not deemed significant, the EIR must explain the basis for that conclusion. (Citizens to Preserve the Ojai v. County of Ventura 1985)

All traffic level projections and analysis should include the cumulative impact all recently approved but not yet built, recently built but not yet occupied, and all reasonably foreseeable development in the City of Berkeley. According to the City of Berkeley’s Current Zoning Applications web site, there are over 35 multi-story, new multi-unit residential buildings pending approval. All of the projects listed on this web site are hereby incorporated into these comments by reference. See the City of Berkeley Current Zoning Applications web site - [https://www.cityofberkeley.info/Planning\\_and\\_Development/Land\\_Use\\_Division/Current\\_Zoning\\_Applications\\_Log.aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Current_Zoning_Applications_Log.aspx) – for a list of all pending development projects in Berkeley.

Based on the dramatic weakening of local control over development by the various Weiner-Skinner bills in the state legislature, it should be assumed that all of the proposed housing developments in the pipeline in Berkeley will be approved.

The Draft EIR should also analyze the cumulative impact of the Bayer Development Agreement in combination with all already approved and reasonably foreseeable development in Berkeley (see above) in regards to noise, air pollution, financial impact, water usage, loss of open space, impact on birds and other urban wildlife, loss of views and loss of sunlight.

The EIR should clearly spell out how many employees Bayer expects to have at its compound at the ultimate build-out of its Development Agreement.

Thank you for your careful review and response to these comments.

Clifford Fred  
Berkeley, California

**Lapira, Katrina**

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**From:** Perls, Dana [mailto:DPerls@foe.org]

**Sent:** Tuesday, December 1, 2020 2:36 PM

**To:** Mendez, Leslie <LMendez@cityofberkeley.info>; Pearson, Alene <apearson@cityofberkeley.info>

**Subject:** Public comments about Bayers proposed development in West Berkeley

**WARNING:** This email originated outside of City of Berkeley.

**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Thank you to each of the Commissioners for this opportunity to raise critical questions and concerns to be addressed in the EIR and development agreement.

My name is Dana Perls. I am a South Berkeley resident and the Food and Technology program manager at Friends of the Earth, located in downtown Berkeley.

I want to refer you to my written comments sent in Supplemental Packet 2, raising questions about public and worker safety. Now I'd like to raise concerns about the environmental health risks for the EIR to address.

1. Expert scientists at the UN have advised national governments to put in stricter regulations and oversight for new genetic engineering technologies, including CRISPR. **Given how little scientists understand, I ask that the current research restrictions be left in place.**
2. For BSL 1 & 2 labs, **it'll be critical that the EIR look at the environmental risks associated with genetically modified microorganisms escaping.** There is no such thing as 100% containment. GE algae could have devastating impacts on the nearby Bay. Similarly, GE yeast will breed with wild-type yeast, which could have devastating public health impacts.
  - a. **What will Bayer do in their operation to ensure the yeast or other microbes don't get out, and no wild-type get in and develop a hybrid strain that they aren't prepared to deal with?**
  - b. The EIR should restrict **Bayer to only use microbes that have been approved by the EPA as being of least environmental concern.** These are listed in the microbial activity notice at the EPA. Also, NO organisms should be developed for use in environmental applications. **Bayer should be required to give complete reports to community about the microbial activity notice that they give the EPA.** (This includes all the data on the environmental and human health effects.) When FOE requests this information through FOIA, it comes back redacted. The community has a right to know.
3. **Biohazard waste should be dehydrated and incinerated.**
4. **NO BSL 3 or BSL 4 lab should be allowed on-site, not now or in the future.** This guarantee should be written into the contract. Those levels require a whole different type of environmental review and

should not be allowed, even with a petition. It should also be written into the contract that Bayer will not conduct any human germline editing.

5. The EIR should look at alternative sites. The site should be somewhere with least likelihood of environmental damage and with the lowest population density, not along the Bay and near such high density of people.
6. Berkeley will need to **demand a very high bond to protect citizens of Berkeley** and to cover damages created by unintended consequences from microbes and products that we don't fully understand.
7. Lastly , I would like to refer you to the [Principles for the Oversight of Synthetic biology](#) as a guide for putting together the EIR to address the proposed labs.

Given how new some of these technologies are, many of them may not be captured or addressed in an EIR or CEQA analysis. Indeed, currently federal regulations are still inadequate to properly assess, monitor, evaluate or regulate new recombinant DNA technologies and applications. It will be critical for the City to seek and consider advise from independent experts about how to establish environmental and public health protections, to outline what technologies may not be used, what transparency protocols Berkeley wants, and how to anticipate technology development over the next 30 years. It will be necessary to address many of these concerns in the Development Agreement.


I also want to share this [article](#) (content sponsored by Bayer), which lists some of the biotechnology interests that were not named in either the ZAB meeting or the Planning Commission meeting. In order to protect Berkeley's sensitive ecosystems and the wider Bay Area environment, and to safeguard worker and community public health safety, it will be critical for complete transparency about what technologies and applications are being proposed, and placing limits on what should not be used. Only with this specific and transparent information, will Berkeley be able to figure out what is appropriate and what is risky, and how best to protect people and the environment.

I look forward to helping the Planning Commission and City have the highest environmental and safety standards. Please share this note with the members of the Planning Commission and City Council, and reach out to me with any questions. Thank you in advance for addressing these concerns in the draft EIR and the development agreement.

Sincerely,

Dana Perls  
South Berkeley resident  
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