



Planning Commission

# AGENDA

## SPECIAL MEETING OF THE PLANNING COMMISSION

Click here to view the entire Agenda Packet

**Wednesday, October 20, 2021**

**7:00 PM**

**PUBLIC ADVISORY:** THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

**To access the meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us06web.zoom.us/j/81926950794>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial **1 669 900 6833** and enter Meeting ID: **819 2695 0794**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

See **"MEETING PROCEDURES"** below.

**All written materials identified on this agenda are available on the Planning Commission webpage:** [https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)

### **PRELIMINARY MATTERS**

- 1. Roll Call:** **Wiblin, Brad**, appointed by Councilmember Kesarwani, District 1  
**Vincent, Jeff**, appointed by Councilmember Taplin, District 2  
**Moore III, John E. "Chip"**, appointed by Councilmember Bartlett, District 3  
**Oatfield, Christina**, appointed by Councilmember Harrison, District 4  
**Mikiten, Elisa**, appointed by Councilmember Hahn, District 5

**Kapla, Robb, Chair**, appointed by Councilmember Wengraf, District 6  
**Twu, Alfred**, appointed by Councilmember Robinson, District 7  
**Hauser, Savlan, Vice Chair**, appointed by Councilmember Droste, District 8  
**Ghosh, Barnali**, appointed by Mayor Arreguin

2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting.
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** Approval of Draft Minutes from the meeting on **October 6, 2021**.
8. **Future Agenda Items and Other Planning-Related Events:**

**AGENDA ITEMS:** All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- |                           |  |
|---------------------------|--|
| <b>9. Action:</b>         | <b>Public Hearing: Bayer Development Agreement (DA)</b><br>Conduct a public hearing to receive public testimony on the proposed DA amendment and CEQA documents, and make a recommendation to City Council |
| <b>Recommendation:</b>    | Attached   |
| <b>Written Materials:</b> | Linked   |
| <b>Presentation:</b>      | N/A  |

**ADDITIONAL AGENDA ITEMS:** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

**Information Items:**

- September 21 – City Council: Work Session Item 1 Housing Element Update

**Communications:**

- BART Communications
- Bayer Communications

- Bird Safety – Weeden
- R&D - Jackson

**Late Communications:** (Received after the packet deadline):

- Supplemental Packet One – received by noon two days before the meeting
- Supplemental Packet Two
- Supplemental Packet Three

## **ADJOURNMENT**

\*\*\*\* **MEETING PROCEDURES** \*\*\*\*

### **Public Testimony Guidelines:**

All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

### **Procedures for Correspondence to the Commissioners:**

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info). All materials will be made available via the Planning Commission agenda page online at this address:

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

Correspondence received by **12 noon, nine days** before this public meeting, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public meeting, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public meeting.
- Correspondence received after the above deadline and before the meeting will be included in a second and/or third Supplemental Packet, as needed, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public meeting.

**Note: It will not be possible to submit written comments at the meeting.**

**Communications are Public Records:** Communications to Berkeley boards, commissions, or committees are public records and will become part of the City’s electronic records, which are

accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

**Communication Access:** To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

**Meeting Access:** To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

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I hereby certify that the agenda for this regular meeting of the Planning Commission was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **October 15, 2021**.

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Alene Pearson  
Planning Commission Secretary





Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**

2   **October 6, 2021**

3    The meeting was called to order at 7:02 p.m.

4    **Location:** Virtual meeting via Zoom

5    **1. ROLL CALL:**

6       **Commissioners Present:** Barnali Ghosh, Robb Kapla, Elisa Mikiten, Chip Moore, Christina  
7       Oatfield, Alfred Twu, Jeff Vincent (arrived 7:40), and Brad Wiblin.

8       **Commissioners Absent:** Savlan Hauser.

9       **Staff Present:** Secretary Alene Pearson, Katrina Lapira, Samantha Updegrave, and Eleanor  
10       Holander.

11   **2. ORDER OF AGENDA:** No changes.

12   **3. PUBLIC COMMENT PERIOD:** 0

13   **4. PLANNING STAFF REPORT:**

- 14       • City Council
- 15           ○ September 14 – BZO presentation and deliberation
- 16           ○ September 28 – BZO first reading adopted
- 17               ▪ Takes effect December 1, 2021
- 18           ○ October 12 – Accessory Dwelling Units Ordinance and second reading of the BZO
- 19       • Objective Standards – ZORP Phase II
- 20           ○ Proposing December 15 subcommittee meeting
- 21           ○

22   **Information Items:**

- 23       • September 28 – City Council: Item 32 Baseline Zoning Ordinance (BZO) Zoning  
24       Ordinance Revision Project – BZO Document (Link)
- 25       •

26   **Communications:**

- 27       • BART Communications

28   **Late Communications:** *See agenda for links.*

- 29       • Supplemental Packet One
- 30       • Supplemental Packet Two

- 31       • Supplemental Packet Three

32   **5. CHAIR REPORT:**

- 33       • None

34  
35   **6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the  
36 items below, additional matters may be reported at the meeting.

- 37  
38       • None.

39   **7. APPROVAL OF MINUTES:**

40   Motion/Second/Carried (Wiblin/Moore) to approve the Planning Commission Meeting Minutes  
41 from

42  
43   Ayes: Kapla, Mikiten, Moore, Oatfield, Twu, and Wiblin. Noes: None. Abstain: Ghosh. Absent:  
44   Hauser and Vincent. (6-0-1-2)

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46   **8. FUTURE AGENDA ITEMS AND OTHER PLANNING:**

- 47       • Planning Commission
- 48           ○ October 20
    - 49               ▪ Bayer Development Agreement (Public Hearing)
  - 50           ○ November 3
    - 51               ▪ BART Development Zoning Standards and EIR (Public Hearing)
    - 52               ▪ Tentative Tract Map (Public Hearing)
    - 53               ▪ 2022 Planning Commission Meetings Calendar
  - 54           ○ November 17
    - 55               ▪ Housing Element EIR Scoping Meeting
    - 56               ▪ Citywide Affordable Housing Requirements (Public Hearing)
  - 57           ○ December 1 – Several items
  - 58           ○ December 15 ZORP Subcommittee meeting (HOLD)

59   **AGENDA ITEMS**

60   **9. Public Hearing: Business Support Zoning Amendment Referrals – Research and**  
61   **Development (R&D) Definition**

62   Staff provided background information on the referral and shared the proposed R&D  
63 definition. After staff's presentation, the Planning Commission held a public hearing, received  
64 comments, discussed the proposed amendments, and made a recommendation for the  
65 consideration of City Council.

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Motion/Second/Carried (Kapla/Vincent) to recommend that the City Council adopt the following land use definition for Research and Development.

***Research and Development***

*An establishment engaged in the following activities:*

- *Industrial, biological, or scientific research; and*
- *product or process:*
  - *design, or*
  - *development, or*
  - *prototyping, or*
  - *testing.*

*This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.*

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Ayes: Ghosh, Kapla, Mikiten, Moore, Twu, Vincent, and Wiblin. Noes: Oatfield. Abstain: None. Absent: Hauser. (7-1-0-1)

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Motion/Second/Carried (Vincent/Wiblin) close the public hearing on the Business Support Zoning Amendment Referrals – Research and Development (R&D) Definition at 9:11pm

Ayes: Ghosh, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Hauser. (8-0-0-1)

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**Public Comments: 2**

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**10. Action: Gentrification and Displacement Referral**

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Planning Commission re-established a subcommittee to address the Gentrification and Displacement referral.

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Motion/Second/Carried (Kapla/Vincent) to appoint Commissioners Moore, Hauser, and Kapla (alternate) to the Gentrification and Displacement subcommittee.

Ayes: Ghosh, Hauser, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Hauser. (8-0-0-1)

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94 **Public Comments: 0**

95 Motion/Second/Carried (Vincent/Mikiten) to adjourn the Planning Commission meeting at  
96 9:27pm.

97  
98 Ayes: Ghosh, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain:  
99 None. Absent: Hauser. (8-0-0-1)

100

101 **Members in the public in attendance: 27**

102 **Public Speakers: 47**

103 **Length of the meeting: 2hr 25minutes**

DRAFT



**Planning and Development Department**  
Land Use Planning Division

## STAFF REPORT

DATE: October 20, 2021

TO: Members of the Planning Commission

FROM: Steven Buckley, Land Use Planning Manager

SUBJECT: Final Subsequent Environmental Impact Report and Entitlement for the Bayer HealthCare LLC Development Agreement Amendment

### Recommendation

Conduct a public hearing to receive public testimony on the Final Subsequent EIR for the Development Agreement Amendment between the City of Berkeley and Bayer Healthcare LLC, Draft CEQA Findings, Draft Mitigation Monitoring and Reporting Program (MMRP), and the proposed Development Agreement Amendment, including the development parameters, permit thresholds, and community benefits. Provide comments and recommendations to the City Council.

### Summary

The purpose of this public hearing is to review the CEQA Response to Comments document and the Amendment of the Development Agreement between the City of Berkeley and Bayer Healthcare LLC (Bayer), to solicit comments from the Planning Commission and members of the community prior to review by the City Council.

In 1991, the City of Berkeley prepared the Miles Inc./Cutter Biological Long Range Plan EIR, which discusses the environmental impacts of the existing Development Agreement, which was approved by the City of Berkeley in 1992 and covers development within the North Properties (described in more detail below). The City approved an amendment to the existing DA along with adoption of an Initial Study and Mitigated Negative Declaration on April 27, 1999. The City also approved a Use Permit (UP#00-10000008) for the South Properties and adopted a Mitigated Negative Declaration for the Use Permit on July 21, 2000.

In March 2020, Bayer HealthCare LLC (successor to Miles/Cutter) submitted application materials for an amendment of the existing DA, including the following:

- Extend the DA duration an additional 30 years until February 2052.
- Add the South Properties to be covered by the DA.
- Allow buildout of a conceptual development plan, which proposes to rearrange the campus layout through 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.

- Modify terms of the existing DA including use restrictions, development standards, and permit thresholds and processes.

In spring 2020, the City of Berkeley and Bayer initiated proceedings to amend the existing DA in accordance with the provisions of Berkeley Municipal Code 22.16.080 Development Agreement Procedures – Amendment or cancellation.

A Draft Subsequent EIR (“Draft SEIR”) was prepared to evaluate the potential physical impacts of the proposed amendments and was circulated for public review from May 21, 2021 to July 6, 2021. It describes the proposed project, and analyzes potentially significant impacts related to the following environmental topics in detail: air quality; cultural resources; greenhouse gas emissions; hazards and hazardous materials; noise; transportation; and utilities and service systems. All environmental effects in those areas were found to be less than significant or less than significant with mitigation incorporated. The EIR also considers several alternatives and the cumulative impacts of the project. The EIR was presented to the Planning Commission, as well as the Zoning Adjustments Board, in July 2021.

A Response to Comments / Final SEIR was circulated for public review on October 15, 2021. The conclusions of the Draft SEIR are not changed, though some clarification is provided in the responses to comments. The Planning Commission may make a recommendation to the City Council regarding the adequacy of the Final SEIR. A mitigation monitoring program is also provided for review by the Planning Commission in advance of possible adoption by the City Council.

Bayer is also proposing community benefits contributions associated with the DA amendment. Bayer initially proposed community benefits contributions that included a total annual contribution of \$720,000 in the first year of the extended term, with annual increases of 2%. That proposal was reviewed in July 2021 by the Planning Commission, Zoning Adjustments Board, and City Council. In September 2021, Bayer submitted a revised proposal (Exhibit D) that includes a total annual contribution of \$800,000 in year 1, with annual increases, to support STEAM and career technical education, the West Berkeley Fund for community infrastructure and resiliency, the City of Berkeley’s affordable housing trust fund, the City of Berkeley’s affordable childcare trust fund, and the City of Berkeley’s private percent for art fund.

Staff recommends that the Planning Commission conduct a public hearing to receive public testimony on the proposed DA amendment and CEQA documents, and make a recommendation to City Council regarding the DA amendment. In accordance with BMC 22.16.050.F, in formulating its recommendation the Planning Commission should consider whether or not the proposed development agreement:

1. Is consistent with the goals, objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan.
2. Is compatible with the uses authorized in, and the zoning district in which the real property is located.
3. Has duly considered City mitigation programs in effect at the time of execution of the agreement.

4. Will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.
5. Complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto.

### **Project Description**

The project site, now generally known as the Bayer Campus, is located approximately 2.5 miles west of downtown Berkeley. The Bayer Campus consists of 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. The project site comprises two primary areas divided by Carleton Street:

- The North Properties at 800 Dwight Way, which includes 31.9 acres north of Carleton Street; and
- The South Properties at 801 Grayson Street, which includes 14.4 acres south of Carleton Street.

In addition, the project site includes a surface parking lot on a property bounded by Dwight Way, Seventh Street, and Eighth Street.

Bayer currently uses the site to develop and produce 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 buildings provide space for the following permitted uses: production, laboratories, warehouse, administration, utilities, and maintenance. The Bayer campus also has eight surface parking lots with a total of 1,100 parking spaces.

In addition to extending the term of the DA by 30 years, the proposed amended DA would include a conceptual development plan that would allow for rearranging 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.

Overall, as shown in Table 1 below, the project would involve a reduction of the maximum allowable square footage entitled under the current DA and South Properties Use Permit by 128,000 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.

**Table 1: Existing, Entitled, and Proposed Buildout by Square Footage**

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 Permissible Sq. Ft.
1,087,000	1,866,000	1,738,000	820,000	-276,000	918,000	-128,000

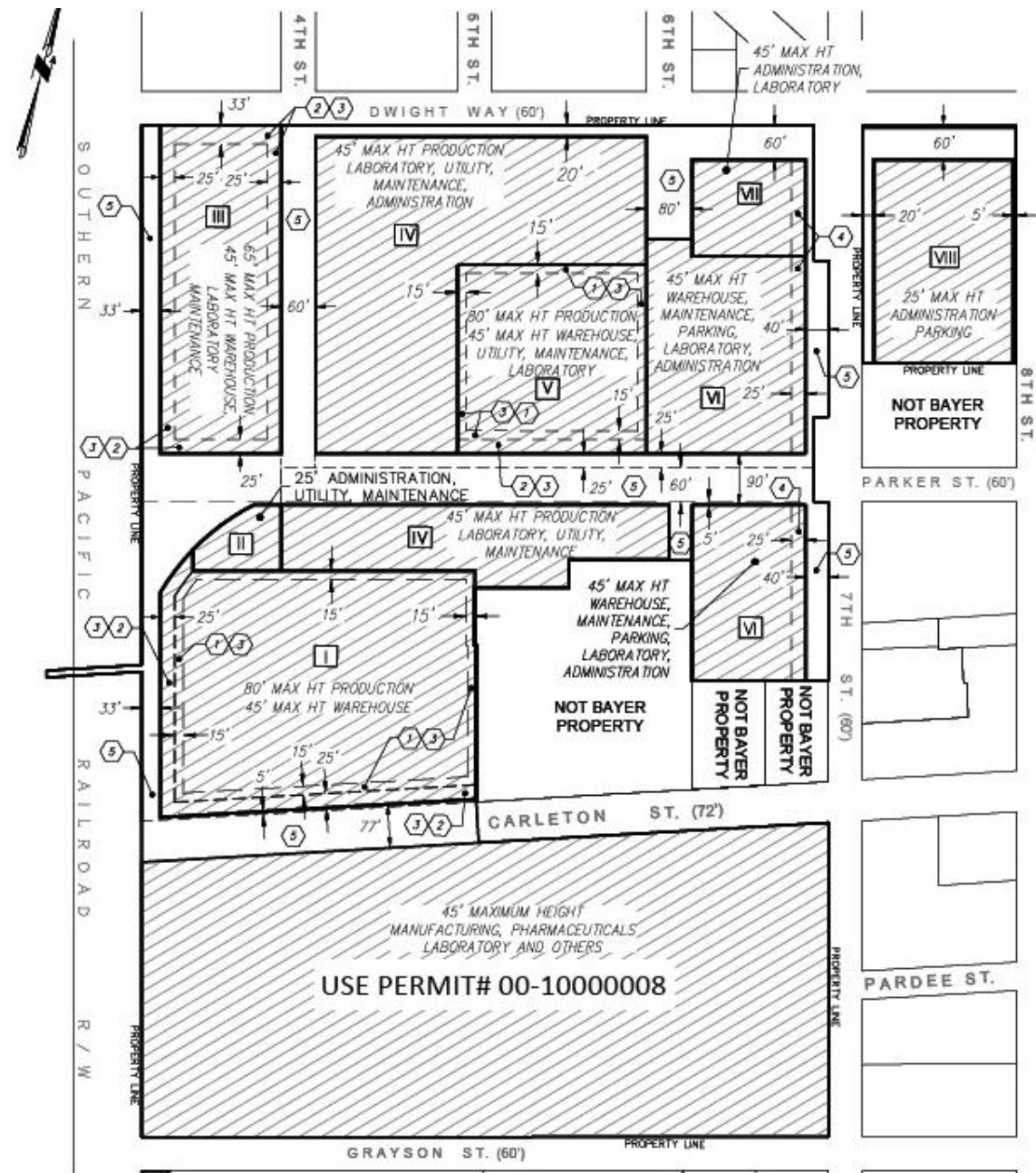
Under the existing DA, the North Properties were divided into eight different blocks with defined usage requirements and height maximums for each block. The South Properties are subject to Mixed Manufacturing zoning. The DA amendment would reduce the number and configuration of the blocks, as well as revise the development standards by block, as summarized in Table 2 and illustrated in Figures 1 and 2 below. A conceptual development is illustrated in Figure 3.



**Table 2: Development Standards**

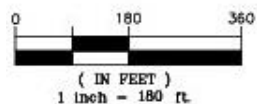
<b>Development Standard</b>	<b>South Campus / MM Zoning BMC 23E.76.070</b>	<b>Existing DA</b>	<b>Proposed DA Amendment</b>
Max. Height	<b>45'</b>	<b>80'</b> for Production <b>45'</b> for Other Uses	<b>80'</b> for Production <b>65'</b> for Other Uses
Max. FAR	<b>2.00</b>	<b>0.27</b> (Block VIII) to <b>2.00</b> (Block V)	<b>0.27</b> (Block D) to <b>1.37</b> (Block B)
Setbacks: Zero-Foot Height Zones	None	There are four main “zero ft. height zones” which generally follow street alignments on the project site: West end of Parker St. 90’ wide corridor on Parker St. from Seventh St. to Fourth St 60’ wide corridor on Fourth St from Parker St. to Dwight Way 80’ wide corridor on Sixth St. from Dwight Way to 200 ft. south	Approximately 500,000 sq. ft. of “zero ft. height zones” for combined north and south properties, providing enhanced buffers along Seventh Street and other site boundaries. The main zones include: 33’ setback on the western boundary, from Dwight Way to Grayson St. 60’ wide corridor on Fourth St. from Dwight Way to Carleton St. 80’ setback on Seventh St., from Dwight Way to Grayson St. 60’ setback on Dwight Way, from the western boundary to Seventh St. 90’ wide corridor on Parker St, from western boundary to Seventh St. 90’ wide corridor on Carleton St. from western to eastern boundary. 10’ setback on Grayson St. from western boundary to Seventh St.
Automobile Parking: Production / Warehousing	<b>1:1,000</b> sq. ft. (< 10k sq. ft.) <b>1:1,500</b> sq. ft. (> 10k sq. ft.)	Production: <b>1:1,000</b> sq. ft. Warehouse: <b>1:5,000</b> sq. ft.	No Change
Automobile Parking: Other Uses	<b>1:500</b> sq. ft.	Laboratory: <b>1.5:1,000</b> sq. ft. Admin: <b>1:500</b> sq. ft.	Laboratory: <b>1:1,000</b> sq. ft. Admin: No Change
Bicycle Parking	<b>1:2,000</b> sq. ft.	none	<b>1:2,000</b> sq. ft.

**Figure 1: Existing Development Standards**



**LEGEND**

- BAYER HEALTHCARE PROPERTY
- ADJACENT PROPERTY LINE
- 1992/1999 D.A. BLOCKS
- MAX HT
- MAXIMUM HEIGHT



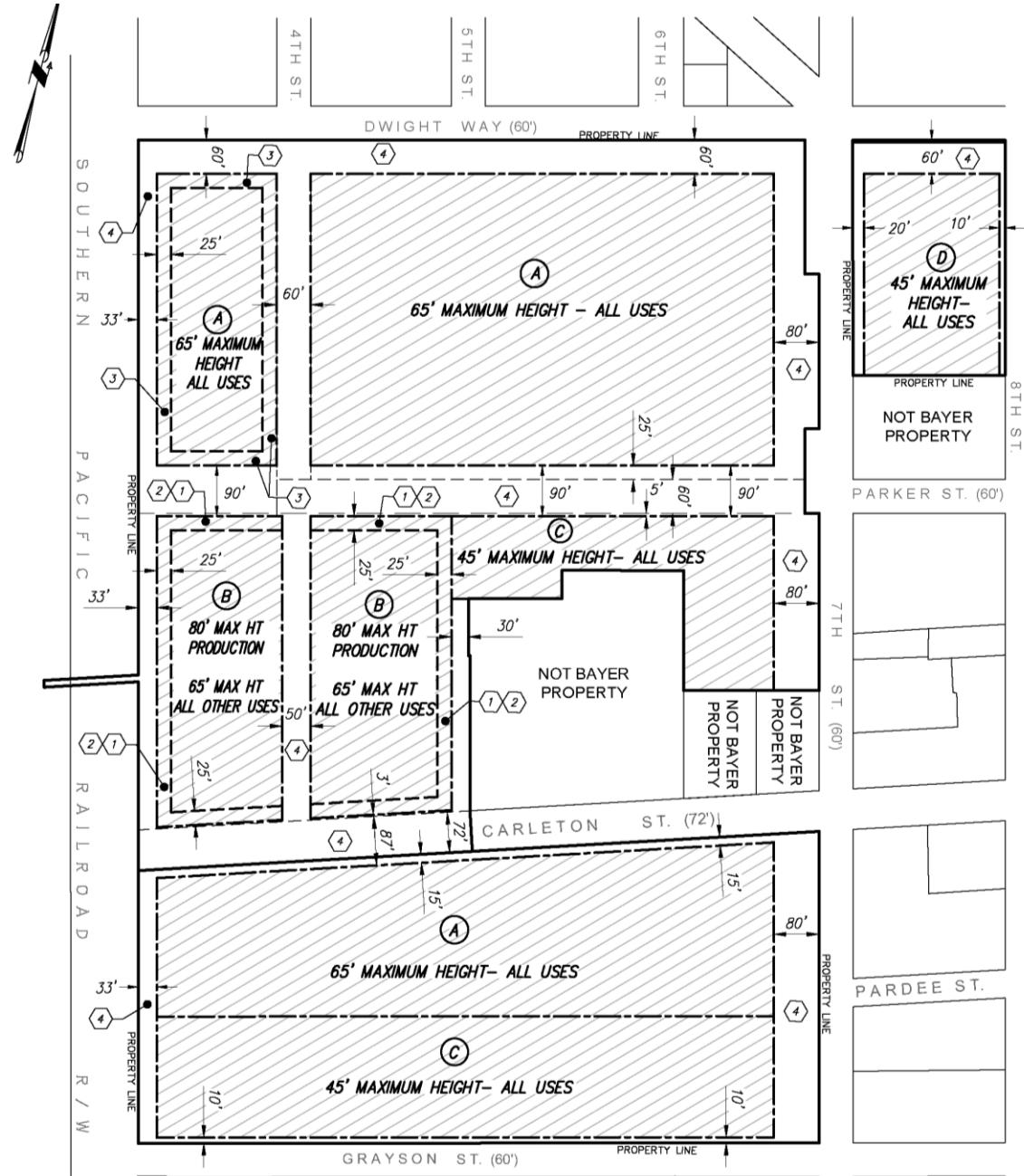
**NOTE LEGEND**

- ① 65' MAXIMUM HEIGHT FOR PRODUCTION
- ② 45' MAXIMUM HEIGHT FOR PRODUCTION
- ③ 45' MAXIMUM HEIGHT FOR WAREHOUSE
- ④ 35' MAXIMUM HEIGHT PERMITTED (OR EXISTING BUILDING)
- ⑤ 0' HEIGHT

**BLOCK LEGEND**

- IV V PERMITTED BUILDING HEIGHT 80 FEET (TOP FLOOR MAY NOT EXCEED 50% OF BUILDING FOOTPRINT AND HAS TO STE BACK +-15 FT.)
- III PERMITTED BUILDING HEIGHT 65 FEET (TOP FLOOR MAY NOT EXCEED 50% OF BUILDING FOOTPRINT AND HAS TO STE BACK +-15 FT.)
- IV VI VII PERMITTED BUILDING HEIGHT 45 FEET (OR EXISTING BUILDING)
- III VIII PERMITTED BUILDING HEIGHT 25 FEET (OR EXISTING BUILDING)

**Figure 2: Proposed Development Standards**



**LEGEND**

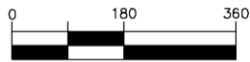
- BAYER HEALTHCARE PROPERTY
- ADJACENT PROPERTY LINE
- - - SITE DEVELOPMENT BOUNDARY
- - - BUILDING HEIGHT STEPDOWN

**NOTE LEGEND**

- ① 65' MAXIMUM HEIGHT FOR PRODUCTION
- ② 50' MAXIMUM HEIGHT FOR OTHER USES
- ③ 50' MAXIMUM HEIGHT FOR ALL USES
- ④ 0' HEIGHT

**BLOCK LEGEND**

- Ⓐ 65' ALL USES
- Ⓑ 80' PRODUCTION, 65' OTHER USES
- Ⓒ 45' ALL USES
- Ⓓ 45' ALL USES

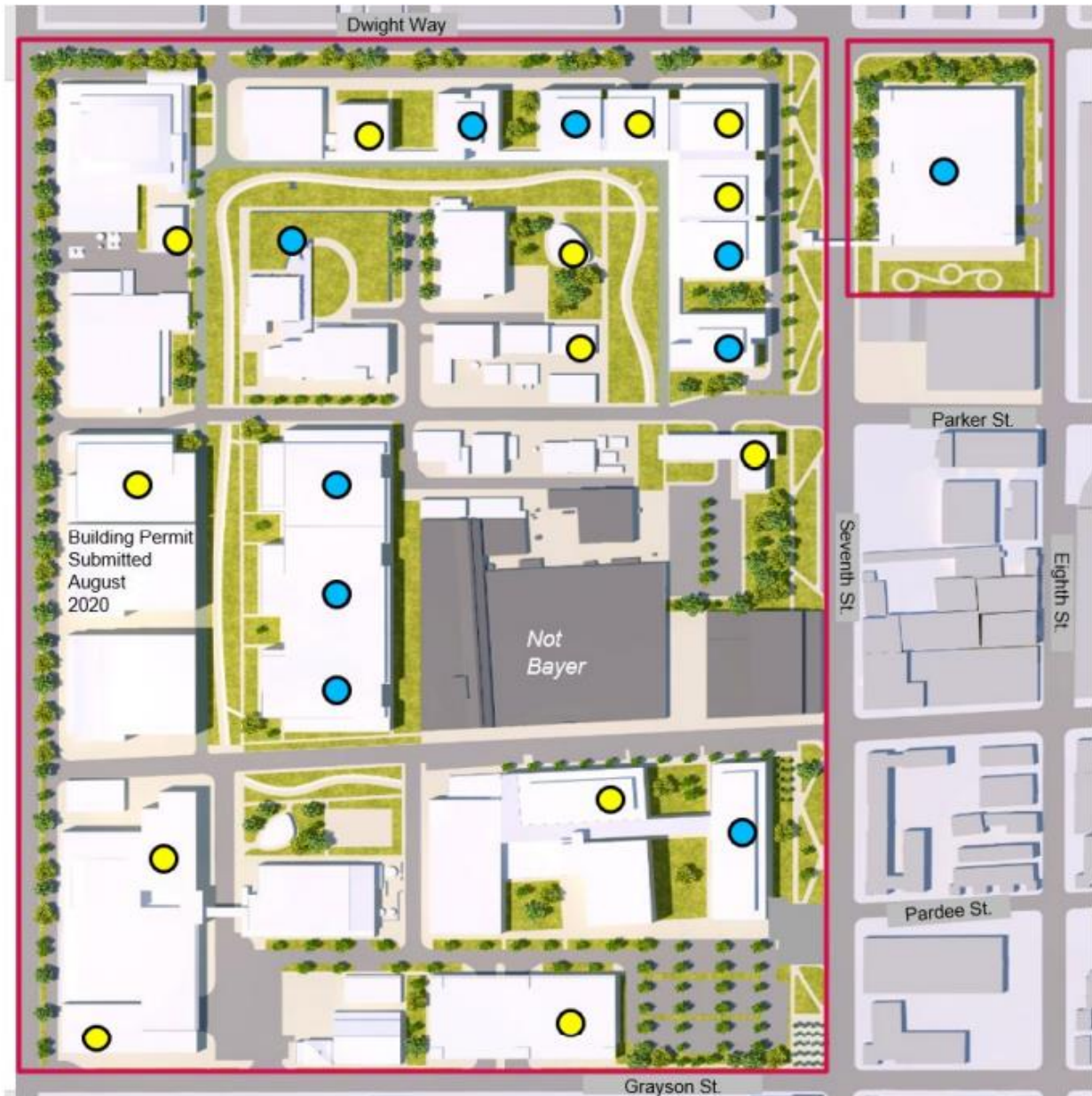


CITY OF BERKELEY

ALAMEDA COUNTY

CALIFORNIA

**Figure 3: Conceptual Development**



Existing buildings do not have circles.

- New at Year 30
- New at Year 10

## **Draft SEIR**

The Draft SEIR analyzed impacts associated with the proposed amended DA, taking into account changes to the conditions of the site and surroundings and changes to the regulatory environment since certification of the 1991 EIR.

Pursuant to Section 15126.4(a)(1) of the CEQA Guidelines, an EIR must describe feasible measures which could minimize significant adverse impacts. The Draft SEIR identifies several mitigation measures that would reduce impacts associated with the project related to aesthetics, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, noise, transportation, public services, recreation, and tribal cultural resources. Some of the measures are carried over directly from the 1991 EIR (with modifications and updates) and some are new mitigation measures. Table ES-1 in the Executive Summary Section of the Draft SEIR provides the full impact statements and mitigation measures. The Draft SEIR did not identify unavoidable significant environmental impacts that would result from the proposed amended DA.

As required by Section 15126.6 of the CEQA Guidelines, the Alternatives section of the Draft Subsequent EIR examines a range of reasonable alternatives to the proposed project that would feasibly obtain most of the project objectives and avoid or substantially lessen many of the project's significant environmental impacts. The following alternatives are evaluated in the Subsequent EIR:

- Alternative 1: No Project/No Construction Alternative.
- Alternative 2: No Project/Zoning Conformance Alternative.
- Alternative 3: Reduced Parking Alternative.

Other than the No Project/No Construction Alternative, Alternative 3 would be environmentally superior because it would result in fewer vehicle trips, which would incrementally reduce impacts related to air quality, GHG emissions, noise, and transportation. These impacts would remain less than significant with mitigation incorporated under this alternative. Nonetheless, because the proposed project would not have any significant and unavoidable impacts, the alternative would not avoid such impacts. Chapter 6 Alternatives of the Draft SEIR includes a complete discussion of these alternatives and of alternatives that were rejected for various reasons.

## **Final SEIR and Response to Comments**

The Final SEIR consists of the Draft SEIR and the Response to Comments (RTC) document. The 45-day public comment period on the Draft SEIR ended on July 6, 2021. The City received 13 written comments. In addition to the written letters, members of the public and Planning Commissioners provided verbal comments on the Draft SEIR at the June 2, 2021 PC meeting.

The RTC includes a list of the agencies, organizations, and individuals that submitted written comments, and notes the verbal comments received at the public meeting on the Draft SEIR; reproductions of written comments and summaries of verbal comments, and responses to CEQA-related comments received; and revisions to the Draft SEIR in light of public comments received and responses provided.

The following issues were of particular concern to interested members of the public and board/commission members during the environmental review process (see the RTC for full responses to comments received):

- Impacts related to biohazards and bioethics
- Impacts related to bird strikes
- Impacts to Aquatic Park
- Impacts related to transportation and bicycle and pedestrian safety.

### **Revisions to the Draft SEIR**

As described in the RTC, several revisions were made to the Draft SEIR in response to comments received and to make corrections or clarifications. None of the revisions constitute significant new information as defined in CEQA Guidelines Section 15088.5 or change the conclusions of the analysis; therefore, the SEIR does not need to be recirculated.

### **CEQA Findings**

Section 15091 of the CEQA Guidelines provides that the City may not approve the project unless it makes written findings related to significant effects identified in the SEIR. The Planning Commission is being provided with draft findings that would be presented to Council, including the following:

Less than Significant Effects: Impacts that were determined to not require mitigation.

Effects Determined to be Mitigated to Less than Significant Levels: Effects that could be potentially significant, but can be mitigated to less than significant levels.

Feasibility of Project Alternatives: Alternatives and whether they would be more or less impactful than the project and why they may be infeasible for the specific economic, social, or other considerations.

These findings will be considered for adoption by the City Council at the time they review the Final SEIR and the DA Amendment. Please see Attachment 2.

### **MMRP**

CEQA requires that, when mitigation measures are adopted, that they be monitored. A Mitigation Monitoring and Reporting Program (MMRP) is included in the Final SEIR to illustrate how and when mitigation measures would be implemented and monitored, and by whom. The MMRP is an exhibit included in the draft amended Development Agreement.

### **Community Benefits**

The amended DA, by establishing a shortened land use entitlement timeline and predictability via its vested rights, would confer monetary value to Bayer. In early 2021, Bayer submitted to city staff an analysis of the economic value of the amended DA to Bayer, and an estimate of the value of community benefits that Bayer could provide as part of the DA amendment. To assist in its negotiations with Bayer, the City engaged the consulting firm Economic & Planning Systems (EPS) to conduct a review of Bayer's economic analysis. In addition, in spring 2021 Mayor Jesse Arreguin and Councilmember Terry Taplin convened a panel of community members and

stakeholders to provide input and feedback on community benefits associated with the DA amendment.

In response to the EPS peer review and feedback from City staff and community members, in June 2021 Bayer submitted a revised analysis of the economic value of the DA amendment to Bayer and a proposal for community benefits associated with the DA amendment. The June proposal included a total annual contribution of \$720,000 per year through the extended 30-year term, inclusive of all development impact fees and required public art contributions, to be increased annually by 2%. That contribution would be allocated towards Science, Technology, Engineering & Math (STEM) and career technical education, affordable housing, and community infrastructure investments and resiliency programs. The June proposal was presented at a series of workshops at the Zoning Adjustments Board (July 8, 2021), Planning Commission (July 14, 2021), and City Council (July 20, 2021). Elected officials, commissioners, and community members provided a broad range of feedback regarding the total value of the community benefits package, the types of investments, potential in-kind and non-monetary contributions and that could be incorporated into the agreement, and Bayer's overall role as part of the West Berkeley community.

In September 2021, Bayer submitted a revised proposal, outlined in Exhibit D of the amended Development Agreement (attached). It includes a total annual contribution of \$800,000 per year through the extended 30-year term to be increased annually by 4.04% in year 2, 2% in years 3 through 29, and 2.88% in year 30. The contributions would be allocated towards Science, Technology, Engineering, Arts & Math (STEAM) and career technical education, the West Berkeley Fund for community infrastructure and resiliency, the City of Berkeley's affordable housing trust fund, the City of Berkeley's affordable childcare trust fund, and the City of Berkeley's private percent for art fund. The proposed allocation of community benefits by category and payment schedule over the 30-year extended term is illustrated in Table 3 below. The annual contribution in year 30 of the extended term would be \$1,461,537, and the monetary payments for the entirety of the extended 30-year term would total \$33.1 million.

**Table 3: Proposed Community Benefits Allocations and Payment Schedule**

Year	Investment No.	Total Annual Investment Amount	STEAM & Career Technical Education Investment	West Berkeley Fund Investment	Affordable Housing Investment	Affordable Childcare Investment	Private Percent for Art Investment
2022	1	\$800,000	\$388,000	\$160,000	\$160,000	\$32,000	\$60,000
2023	2	\$832,320	\$403,675	\$166,464	\$166,464	\$33,293	\$62,424
2024	3	\$848,966	\$411,749	\$169,793	\$169,793	\$33,959	\$63,672
2025	4	\$865,946	\$419,984	\$173,189	\$173,189	\$34,638	\$64,946
2026	5	\$883,265	\$428,384	\$176,653	\$176,653	\$35,331	\$66,245
2027	6	\$900,930	\$436,951	\$180,186	\$180,186	\$36,037	\$67,570
2028	7	\$918,949	\$445,690	\$183,790	\$183,790	\$36,758	\$68,921
2029	8	\$937,328	\$454,604	\$187,466	\$187,466	\$37,493	\$70,300
2030	9	\$956,074	\$463,696	\$191,215	\$191,215	\$38,243	\$71,706
2031	10	\$975,196	\$472,970	\$195,039	\$195,039	\$39,008	\$73,140
2032	11	\$994,699	\$482,429	\$198,940	\$198,940	\$39,788	\$74,602
2033	12	\$1,014,593	\$492,078	\$202,919	\$202,919	\$40,584	\$76,094
2034	13	\$1,034,885	\$501,919	\$206,977	\$206,977	\$41,395	\$77,616
2035	14	\$1,055,583	\$511,958	\$211,117	\$211,117	\$42,223	\$79,169
2036	15	\$1,076,695	\$522,197	\$215,339	\$215,339	\$43,068	\$80,752
2037	16	\$1,098,229	\$532,641	\$219,646	\$219,646	\$43,929	\$82,367
2038	17	\$1,120,193	\$543,294	\$224,039	\$224,039	\$44,808	\$84,014
2039	18	\$1,142,597	\$554,160	\$228,519	\$228,519	\$45,704	\$85,695
2040	19	\$1,165,449	\$565,243	\$233,090	\$233,090	\$46,618	\$87,409
2041	20	\$1,188,758	\$576,548	\$237,752	\$237,752	\$47,550	\$89,157
2042	21	\$1,212,533	\$588,079	\$242,507	\$242,507	\$48,501	\$90,940
2043	22	\$1,236,784	\$599,840	\$247,357	\$247,357	\$49,471	\$92,759
2044	23	\$1,261,519	\$611,837	\$252,304	\$252,304	\$50,461	\$94,614
2045	24	\$1,286,750	\$624,074	\$257,350	\$257,350	\$51,470	\$96,506
2046	25	\$1,312,485	\$636,555	\$262,497	\$262,497	\$52,499	\$98,436
2047	26	\$1,338,734	\$649,286	\$267,747	\$267,747	\$53,549	\$100,405
2048	27	\$1,365,509	\$662,272	\$273,102	\$273,102	\$54,620	\$102,413
2049	28	\$1,392,819	\$675,517	\$278,564	\$278,564	\$55,713	\$104,461
2050	29	\$1,420,676	\$689,028	\$284,135	\$284,135	\$56,827	\$106,551
2051	30	\$1,461,537	\$708,845	\$292,307	\$292,307	\$58,461	\$109,615
	<b>Total</b>	<b>\$33,100,001</b>	<b>\$16,053,500</b>	<b>\$6,620,000</b>	<b>\$6,620,000</b>	<b>\$1,324,000</b>	<b>\$2,482,500</b>

The parameters governing the investments in STEAM and career technical education, and the investments in the West Berkeley Fund, are established in Exhibit D. The investments to support affordable housing, affordable childcare, and public art would be contributed to the corresponding City of Berkeley municipal funds, administered and disbursed in accordance with



the City's regulations and policies for those funds, and would be applied to satisfy the project's obligations for those fees.

The community benefits agreement outlined in Exhibit D of the amended Development Agreement also includes a list of non-monetary, in-kind contributions including specific commitments related to volunteerism, local hiring outreach and promotion, community building events, and sustainability commitments beyond the required mitigation measures identified through the CEQA process.

## **Conclusion**

This hearing is for the purpose of soliciting comments from the Commission and community regarding the adequacy of the Final SEIR and the proposed DA Amendment, including the proposed community benefits. Following this hearing, the Final SEIR and DA Amendment will advance to City Council for review and consideration of certification and potential adoption.

## **Attachments:**

1. Notice of Availability of the Final Subsequent EIR / Public Hearing Notice
2. Draft CEQA Findings
3. Development Agreement and Exhibits

## **Links:**

- 1- Draft Subsequent EIR:  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/Draft%20Subsequent%20EIR%20\\_%20Bayer%20HeathCare%20DA%20Amendment.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/Draft%20Subsequent%20EIR%20_%20Bayer%20HeathCare%20DA%20Amendment.pdf)
- 2- DSEIR Appendices A-J available:  
[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)
- 3- Responses to Comments / Final SEIR:  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2021-10-20\\_Bayer%20DA%20Amendment\\_Responses%20to%20Comments.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2021-10-20_Bayer%20DA%20Amendment_Responses%20to%20Comments.pdf)
- 4- Staff Report, July 14, 2021 Planning Commission Workshop Regarding the Proposed Community Benefits Package:  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2021-07-14\\_PC\\_Item%2011.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-07-14_PC_Item%2011.pdf)





**PUBLIC HEARING NOTICE  
AND  
NOTICE OF AVAILABILITY OF A  
FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**

Bayer Healthcare LLC Development Agreement Amendment

Notice is hereby given that the City of Berkeley has prepared a Final Subsequent Environmental Impact Report (Final SEIR), pursuant to the California Environmental Quality Act (CEQA), for the proposed amendment to Bayer HealthCare LLC's Development Agreement ("proposed project"), which will be available for public review for a period of at least 10 days prior to certification by the City Council.

This notice also contains information about a public hearing that will be conducted by the Planning Commission of the City of Berkeley for the purpose of making a recommendation to the City Council regarding the Final SEIR and the proposed project. That hearing will take place at a special meeting on **Wednesday, October 20, 2021, beginning at 7:00 PM.**

Further information will be available at the Planning Commission agenda webpage: <https://www.cityofberkeley.info/PC/>.

(No date has yet been set for a hearing by the City Council, which is the final decision-making body for the project and the EIR. Separate notice will be provided in advance of that meeting.)

**BACKGROUND:** The City previously published a Draft SEIR for public review and comment in May 2021. All comments that were received have been compiled and responded to in the Response to Comment document/Final SEIR, along with changes and clarifications to the Draft SEIR. Together, the Draft and Final SEIR comprise the Final Environmental Impact Report for this project. Copies of the Final SEIR will be available at the City's website as part of the agenda packet for the Planning Commission.

**PROJECT LOCATION:** The project site is the Bayer HealthCare campus (generally known as the "Bayer Campus") in West Berkeley. The Bayer Campus consists of approximately 46 acres generally bounded by railroad right-of-way and tracks to the west, Dwight Way to the north, Seventh Street to the east, and Grayson Street to the south. In addition, the project site includes a surface parking lot on a property between Dwight Way, Seventh Street, Parker Street, and Eighth Street. The project site comprises two primary areas divided by Carleton Street: 1) the North Properties at 800 Dwight Way, which includes 31.9 acres north of Carleton Street; and, 2) the South Properties at 801 Grayson Street, which includes 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 APPLICANT:** Bayer HealthCare LLC

**PROJECT DESCRIPTION:** 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#00-10000008) for the South Properties and adopted a Mitigated Negative Declaration on July 21, 2000.

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.

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. To the extent that building heights exceed the standard height limits allowed by the Zoning Ordinance, the need for these heights has been substantiated. No building shall exceed 80 feet, which is the maximum height allowed by the existing Development Agreement. The project 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.

Baseline conditions include maximum allowable development under the existing DA at the North Properties (1,346,000 square feet), in addition to existing development at the South Properties (520,000 square feet), for a total of 1,866,000 square feet. Accounting for all land uses on the project site, the projected buildout of 1,738,000 square feet would represent a net decrease of 128,000 square feet from the baseline buildout of 1,866,000 square feet. The projected buildout does not impose a limit on floor area for individual land uses but does place a limit on overall floor area.

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.

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)

**COMMENTS AND QUESTIONS:** Written comments on the Final SEIR and on the proposed project may be submitted by mail to:

Steven Buckley, Land Use Planning Manager  
City of Berkeley Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Comments may also be submitted by e-mail to [StBuckley@cityofberkeley.info](mailto:StBuckley@cityofberkeley.info).

You may also contact Mr. Buckley at (510) 981-7489.

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, eight (8) days before the meeting date.** Fifteen (15) copies must be submitted of any correspondence that requires color printing or pages larger than 8.5x11 inches.

**PUBLIC ADVISORY:** This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to AB 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, this meeting is being held during a proclaimed state of emergency, and state and local officials have imposed or recommended measures to promote social distancing. In order to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available. Details of how to join the meeting will be posted to the City website as part of the Planning Commission agenda: <https://www.cityofberkeley.info/PC/>.

**COMMUNICATION ACCESS:** To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: [www.ci.berkeley.ca.us](http://www.ci.berkeley.ca.us).



**DRAFT CEQA Findings**  
PLANNING COMMISSION

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**Bayer HealthCare LLC Development Agreement Amendment Project**

**Pursuant to Sections 15091 and 15093 of the  
State CEQA Guidelines and Section 21081 of the Public Resources Code**

The Subsequent Environmental Impact Report (SEIR) prepared by the City of Berkeley (City) for the Bayer Healthcare LLC Development Agreement Amendment Project (project) consists of the Draft Subsequent EIR (Draft SEIR) and Final SEIR / Responses to Comments on the Draft SEIR. The City finds that the inclusion of certain mitigation measures as part of project approval will reduce all impacts to a less than significant level. As a result, there are no unavoidable significant impacts requiring overriding considerations; therefore, these CEQA Findings do not contain a Statement of Overriding Considerations.

As required by CEQA, the City, in adopting these CEQA Findings, also adopts a Mitigation Monitoring and Reporting Program (MMRP) for the project. The City finds that the MMRP, which is incorporated by reference, meets the requirements of Public Resources Code Section 21081.6 by providing for the implementation and monitoring of measures intended to mitigate potentially significant effects of the project. In accordance with CEQA and the *CEQA Guidelines*, the City adopts these findings as part of the project approval. Pursuant to Public Resources Code Section 21082.1(c)(3), the City also finds that the Subsequent EIR reflects the City's independent judgment as the lead agency for the project.

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**DRAFT CEQA FINDINGS  
PLANNING COMMISSION**

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**SECTION 1: INTRODUCTION**

**1.1 Statutory Requirements for Findings**

Section 15091 of the *CEQA Guidelines* states that:

*(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:*

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.*
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.*

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or mitigate significant environmental impacts that will otherwise occur with implementation of the project. Project mitigation or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with another agency.<sup>1</sup>

For those significant effects that cannot be mitigated to a less-than-significant level, the public agency is required to find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.<sup>2</sup> The *CEQA Guidelines* state in section 15093 that:

*“If the specific economic, legal, social, technological, or other benefits of a propos[ed] project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered ‘acceptable.’”*

**1.2 Record of Proceedings**

For purposes of CEQA and the findings set forth herein, the record of proceedings for the City’s decision on the project consists of: a) matters of common knowledge to the City, including, but not limited to, federal, State and local laws and regulations; and b) the following documents which are in the custody of the City:

- Notice of Preparation and other public notices issued by the City in conjunction with the project dated October 29, 2020 (see Appendix NOP of the Draft SEIR for the Notice of Preparation);
- The Draft SEIR, which was made available for public review on May 21, 2021;
- All written and verbal comments submitted by agencies, organizations and members of the public during the public comment period and responses to those comments (see Responses to Comments on the Draft SEIR, dated October 2021);
- The Mitigation Monitoring and Reporting Program;

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<sup>1</sup> *CEQA Guidelines*, 2019. Section 15091 (a), (b).

<sup>2</sup> Public Resources Code Section 21081(b).

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**DRAFT CEQA FINDINGS**  
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- All findings and resolutions adopted by the City in connection with the project, and all documents cited or referred therein;
- All final reports, studies, memoranda, maps, correspondence, and all planning documents prepared by the City or consultants, or responsible or trustee agencies with respect to: a) the City's compliance with CEQA; b) development of the project site; or c) the City's action on the project;
- All documents submitted to the City by agencies or members of the public in connection with the project; and
- The June 1991 Draft Environmental Impact Report and Final EIR for the Miles Inc./Cutter Biological Long Range Plan and associated technical appendices.

**1.3 Organization / Format of Findings**

Section 2 of these findings sets forth the objectives of the project and contains a summary description of the project and project alternatives. Section 3 identifies the potentially significant effects of the project which were determined to be mitigated to a less-than-significant level. All numbered references identifying specific mitigation measures refer to numbered mitigation measures found in the Initial Study or Draft SEIR and Responses to Comments document. Section 4 identifies the project's potential environmental effects that were determined not to be significant and do not require mitigation. (The SEIR did not identify any unavoidable significant impacts.) Section 5 discusses the feasibility of project alternatives.

**DRAFT CEQA FINDINGS  
PLANNING COMMISSION**

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**SECTION 2: THE BAYER HEALTHCARE LLC DEVELOPMENT AGREEMENT AMENDMENT PROJECT**

This section lists the objectives of the proposed project, provides a brief description of the project, and lists the project alternatives evaluated in the Draft SEIR.

**2.1 Project Objectives**

The applicant's three objectives for the project are as follows:

- Maximize Bayer's ability to attract and retain top talent and partners by ensuring that the Berkeley campus facilities are at the forefront of scientific innovation, and that the campus' physical configuration and design support this goal and facilitate and enhance the site's existing and future ability to support the biotech development and manufacture of medicines that improve patient outcomes.
- Promote health of employees through wellness features, such as open green space, pedestrian and bicycle circulation, and other amenities, and create a unified campus with consistent design principles that creates a sense of place within the campus and that integrates with the surrounding community.
- Maximize the productive utilization of the land areas and current buildings to take new treatments through biotech development and manufacturing, with a priority on commercializing new therapies using new and innovative technologies, and ensure that: (1) there is sufficient biotech development space to develop advanced therapies that are tailored to individual patients, with development proceeding at a rate that maximizes the ability to deliver successful therapies to patients in a timely manner; (2) there is sufficient biological research and manufacturing capacity to support the production of sufficient quantities of medicine through the numerous phases of clinical trials that are required to prove safety, purity, and efficacy for human use; (3) there is sufficient space to scale up proven medicines for commercial launch in quantities sufficient to meet worldwide demand; (4) the development plan retains flexibility to take advantage of unforeseen opportunities and challenges; and (5) there is an efficient site configuration that maximizes open space needs and other amenities benefiting employees and the community.

The City's objectives for the project are as follows:

- Grant certain development and use rights in the project site to Bayer and obligate Bayer to limit its scope of development to development in accordance with the Development Agreement, which governs permitted uses, density and intensity, height, and requirements for subsequent discretionary actions, and provide additional public benefits in the form of environmental mitigations, community benefits, fees, property dedications, and public improvements.
- Create employment opportunities for Berkeley residents, encourage appropriate economic and business development, and promote the development of manufacturing and life sciences activities, in accordance with the goals and strategies established in the City of Berkeley General Plan and West Berkeley Plan.

**2.2 Project Description**

The Bayer Campus (project site) consists of 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. The site comprises two primary areas: the North Properties at 800 Dwight Way, which includes 31.9 acres north of Carleton Street; and the South Properties at 801 Grayson Street, which includes 14.4 acres south of Carleton Street. The Bayer campus currently develops and produces commercial biopharmaceuticals that are distributed globally. 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. 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 proposed project would include the following amendments to the existing DA:

- Extend the DA duration an additional 30 years until February 2052

**DRAFT CEQA FINDINGS**  
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- Add the South Properties to be covered by the DA
- Allow buildout of a conceptual development plan, which 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.

More detail about the proposed project is included in Section 2, *Project Description*, of the Draft SEIR.

### 2.3 Alternatives

Based on the project objectives and anticipated environmental consequences, and pursuant to Section 15126.6 of the *CEQA Guidelines*, the following project alternatives were selected for analysis:

- **Alternative 1: No Project / No Construction Alternative.** The No Project/No Construction Alternative assumes that, upon the existing DA's expiration in February 2022, the proposed amended DA would not be adopted and there would be no change to the existing configuration of the Bayer Campus. The total floor area of existing buildings is approximately 1,087,000 square feet, including 567,000 square feet on the North Properties and 520,000 square feet on the South Properties. Existing development on the project site accommodates six land uses: production, laboratories, warehouses, administration, utilities, and maintenance. Eight surface parking lots with a total of approximately 1,082 spaces are dispersed around the project site.
- **Alternative 2: No Project / Zoning Conformance Alternative.** The No Project/Zoning Conformance Alternative assumes that the proposed amended DA is not approved, in which case the existing DA would expire in February 2022 while the Use Permit for the South Properties would remain in effect. Upon expiration of the DA, future development on the Bayer Campus would be required to conform to applicable standards in the Berkeley Municipal Code for underlying zoning on the project site. The main body of the project site to the west of Seventh Street would be subject to Mixed Manufacturing (MM) zoning standards, while the remainder of the site to the east of Seventh Street (an existing parking lot) would be subject to Mixed Use-Light Industrial (MU-LI) zoning standards. This alternative does not specify an exact amount of buildout that could occur because it would depend on the number and size of individual projects that are proposed and approved. However, it is likely that, because development would occur intermittently as reviewed and approved by the City, buildout would be reduced compared to what is analyzed in the SEIR for the proposed amended DA. This analysis assumes that buildout would be further reduced under this alternative and that future discretionary projects on the Bayer Campus would be required to undergo CEQA analysis on a project-by-project or Master Use Permit basis when proposed.
- **Alternative 3: Reduced Parking Alternative.** The Reduced Parking Alternative assumes that the parking structure planned on the property between Dwight Way, Seventh Street, Parker Street, and Eighth Street would not be constructed. The planned parking structure east of Seventh Street is expected to accommodate 925 of the 1,825 parking spaces contemplated in the proposed project for the whole Bayer Campus. Under this alternative, the property east of Seventh Street would remain a surface parking lot with 250 parking spaces. This alternative would not add more parking spaces than proposed on the rest of the Bayer Campus. As a result, the Bayer Campus would have 675 fewer parking spaces. Except for the proposed parking garage east of Seventh Street, this alternative would allow for the same buildout of program space as compared to the proposed project.

Refer to Chapter 6, *Alternatives*, of the Draft SEIR for the complete alternatives analysis.

**DRAFT CEQA FINDINGS  
PLANNING COMMISSION**

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**SECTION 3: EFFECTS DETERMINED TO BE MITIGATED TO LESS-THAN-SIGNIFICANT LEVELS**

The Initial Study and Draft SEIR identified certain potentially significant effects that could be mitigated to less-than-significant-levels. The City finds for each of the significant or potentially significant impacts identified in this section (Section 3) that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project which avoid or substantially lessen the significant effects as identified in the Initial Study and Draft SEIR<sup>3</sup> and, thus, that adoption of the mitigation measures set forth below will reduce these significant or potentially significant effects to less-than-significant levels. Adoption of the mitigation measures will effectively make the mitigation measures part of the project. In addition, City Conditions of Approval and compliance with City and other regulations will further reduce project impacts. Therefore, the City finds that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project which avoid or substantially lessen the significant effects as identified in the Initial Study and Draft SEIR<sup>4</sup>.

**3.1 Aesthetics (Initial Study)**

The proposed amended DA includes a proposed parking structure to the south of Dwight Way between Seventh Street and Eighth Street which could present a massive and unvaried façade to the land uses on the east side of Eighth Street. Therefore, this component of the proposed amended DA would have a potentially significant impact on visual quality. However, Mitigation Measure AES-1 would reduce impacts on visual quality to a less than significant level.

**Mitigation Measure AES-1: Parking Structure Design (Updated 1991 EIR MM).**

The proposed parking structure between Dwight Way, Seventh Street, Eighth Street, and Parker Street shall be designed to maximize visual compatibility with the low-rise, low intensity uses to the north and east, in terms of the parking structure's massing, color, and adjacent landscaping. The Eighth Street façade of the garage shall be articulated to add texture and depth to the structure. A setback as well as landscape and streetscape amenities shall be provided on the perimeter of the parking structure. Stepbacks shall also be provided along Eighth Street.

Pages 5C-14 and 5C-22 of the 1991 EIR find that glass windows on new buildings along the western property line could generate glare that is hazardous to motorists on I-80 and annoying to users of Aquatic Park. While the project would largely maintain existing buildings along the western property line, it would still involve the construction of new or renovated buildings in this area. Therefore, it could introduce significant new sources of glare near the western property line and result in potentially significant impacts related to glare. However, Mitigation measure AES-2 would reduce impacts on glare to a less than significant level.

**Mitigation Measure AES-1: Glare Reduction (Updated 1991 EIR MM).**

For new and renovated buildings along and visible from the western property line, the use of reflective glass or other glazing or highly reflective exterior materials that would cause glare as the sun sets shall be prohibited.

**3.2 Air Quality (Subsequent EIR)**

Construction activities under the proposed amended DA would result in the temporary generation of criteria air pollutants, which would affect local air quality. However, Mitigation Measures AQ-1 and AQ-2 would ensure construction emissions would not exceed applicable BAAQMD thresholds and reduce impacts on air quality to a less than significant level.

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<sup>3</sup> CEQA Guidelines, 2012. Section 15091.

<sup>4</sup> CEQA Guidelines, 2019. Section 15091.

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**Mitigation Measure AQ-1: Construction Emissions Measures.**

Demolition, grading and construction activities shall comply with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines or equivalent as updated by BAAQMD).

**Mitigation Measure AQ-2: Tier 4 Construction Equipment.**

Demolition, grading and construction activities shall utilize at least 90 percent Tier 4 equipment (or better) through 2032 and all Tier 4 equipment (or better) after 2032. If the use of such equipment is not commercially available, the applicant shall prepare a project-specific air quality assessment to evaluate construction-related criteria air pollutants. If the project-specific air quality assessment finds that construction emissions would exceed any of the applicable BAAQMD thresholds, the air quality assessment shall identify emission reduction measures to reduce emissions below the thresholds and the applicant shall implement the measures. Measures may include, but would not be limited to, some or all of the following, as necessary:

- Equip construction equipment with Tier 3 or Tier 4 certified engines or CARB-certified Level 3 diesel particulate filters. All diesel particulate filters shall be kept in working order and maintained in operable condition according to manufacturer's specifications.
- Minimize the idling time of diesel-powered construction equipment to two minutes.
- Use late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
- Use low-sulfur fuel or other non-diesel for stationary construction equipment.
- Use low-emission on-site stationary equipment.
- Use alternatively-fueled construction equipment (e.g., natural gas, electric).
- Schedule soil import and/or export to reduce the number of daily haul truck trips.
- Phase construction activities to reduce daily equipment use.
- Limit the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time to reduce the amount of disturbed ground surfaces at any one time.

### **3.3 Biological Resources (Initial Study)**

The project site is located in an urbanized part of Berkeley. However, the Bayer Campus includes some trees in landscaped strips around buildings and parking lots that could potentially provide habitat for migratory birds protected by the California Fish and Game Code, serving as nesting sites. Buildout under the proposed amended DA would involve vegetation removal as part of redevelopment of the Bayer Campus over the 30-year period of the amended DA. Impacts to protected nesting birds could occur if active nests are present in vegetation to be removed, or if birds in the vicinity are disturbed. However, Mitigation Measure BIO-1 would reduce impacts on nesting birds to a less than significant level.

**Mitigation Measure BIO-1: Nesting Bird Surveys and Avoidance.**

Demolition, grading, construction and tree removal activities shall be conducted outside of the migratory bird nesting season (February 1 through August 31) to reduce any potentially significant impact to birds that may be nesting in the project site. If construction and tree removal activities must occur during the migratory bird nesting season, an avian nesting survey of the project site shall be conducted for active nests of protected migratory birds. The avian nesting survey of areas that would be affected by construction and tree removal activities shall be performed by a qualified wildlife biologist within seven days prior to the start of ground or vegetation disturbance or building demolition activities. If an active bird nest is found, the nest shall be flagged and mapped on the construction plans, along with an appropriate

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no disturbance or protection buffer based on site conditions, which shall be determined by the biologist based on the species sensitivity to disturbance (generally, standard buffers can be 50-250 feet for passerines and 250-500 feet for raptors and special-status species, but site- and species-specific adjustments can be made within the discretion of the biologist, with different buffers established with respect to different levels of disturbance). Work within the nest avoidance buffer shall be prohibited or otherwise restricted per requirements determined by the biologist until the juveniles have fledged. The nest buffer shall be demarcated in the field with flagging and stakes or construction fencing.

Potential buildout under the proposed amended DA would also allow the construction of new multi-story buildings that can cause injury or mortality in birds. Although the project would maintain the existing DA's overall height limit of 80 feet, new multi-story buildings allowed under this height limit could cause "bird strikes." This refers to birds in flight mistaking reflective glass for open air and colliding with windows, resulting in injury or death. Furthermore, the project site's proximity to important bird habitats like the Eastshore Wetlands (100 feet east of site) increases the likelihood of bird strikes. However, Mitigation Measure BIO-2 would reduce impacts of bird strikes to a less than significant level.

**Mitigation Measure BIO-2: Bird Strike Avoidance.**

New structures or structures undergoing exterior renovations shall include the following:

- One hundred (100) percent of the window area of the west-facing façades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park shall consist of verified bird-safe glazing products, e.g., American Bird Conservancy-endorsed products such as Arnold Glass Orniflux Mikado, Acopian Birdsavers, Bendheim Channel Glass, GlasPro Bird Safe Glass, Guardian Glass SunGuard SN68, Viracon, or others. Alternatively, the reflective or transparent surface area visible to the west-facing frontage of the property shall employ bird-safe glazing treatments, including fritting, netting, permanent stencils, frosted glass, exterior screens, physical grids placed on the exterior of glazing or UV patterns visible to birds. To qualify as bird-safe glazing treatment, vertical elements of the window patterns shall be at least 1/4-inch wide at a maximum spacing of 4 inches, or have horizontal elements at least 1/8-inch wide at a maximum spacing of 2 inches.
- Automatic shades shall be installed on windows and shall be programmed to operate between 10:00 p.m. and sunrise on new building facades facing the western boundary of the project site. Non-emergency exterior lighting shall be shielded to minimize light emission.
- Transparent glass shall not be allowed on rooftops of new, expanded, and renovated buildings, including in conjunction with green roofs.
- The cumulative area of glass façades for newly constructed or expanded buildings facing the project site's westerly boundary shall not exceed 2,250 square feet.

Prior to issuance of a building permit, Bayer shall provide to the City site plans or specifications demonstrating compliance with the above bird-safe construction requirements.

### **3.4 Cultural Resources (Subsequent EIR)**

The proposed amended DA would involve renovation of Building B83, which is a historical resource under CEQA. Moreover, there is potential for additional properties which are older than 40 years old to be altered and demolished under the terms of the 30-year DA. However, Mitigation Measures CR-1 and CR-2 would identify historical resources and avoid impacts to the greatest extent feasible, resulting in a less than significant impact to historical resources.

**Mitigation Measure CR-1: Architectural History Evaluation.**

Demolition or alteration of a building or structure that is at least 40 years old at the time of permit application and has not previously been evaluated for demolition or renovation within the last five years from the time demolition or alternation is proposed shall be subject to review at the request of the City by a qualified architectural historian who meets the Secretary of the Interior's Professional Qualifications Standards (PQS) in architectural history or history. The qualified architectural historian or historian shall

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conduct an intensive-level evaluation in accordance with the guidelines and best practices recommended by the State Office of Historic Preservation to identify if the building or structure proposed for demolition or alteration qualifies as a historical resource under CEQA guidelines. Buildings and structures shall be evaluated within their historic context and documented in a technical report and on Department of Parks and Recreation Series 523 forms. The report shall be submitted to the City for review and approval prior to the issuance of a building permit. If no historic resources are identified, no further analysis is warranted. If historic resources are identified, the applicant shall be required to implement Mitigation Measure CR-2.

**Mitigation Measure CR-2: Architectural History Evaluation.**

For renovations involving Building B83 or historical resources identified through the process described in the architectural history evaluation mitigation measure (CR-1), project activities shall comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Standards). During the project planning phase (prior to any construction activities), input shall be sought from a qualified architectural historian or historic architect meeting the *Secretary of the Interior's Professional Qualifications Standards* to ensure project compliance with the Standards for Rehabilitation. This input will ensure the avoidance of any direct/indirect physical changes to historical resources. The findings and recommendations of the architectural historian or historic architect shall be documented in a Standards Project Review Memorandum at the schematic design phase. This memorandum shall analyze all project components for compliance with the Standards for Rehabilitation. The memorandum should recommend design modifications necessary to bring projects into compliance with the Standards for Rehabilitation, which shall be incorporated into project designs to ensure compliance with the Standards. The memorandum shall be submitted to the City for review and approval prior to the issuance of a building permit.

Cultural resources records search identified twelve previously recorded cultural resources within a 0.25-mile radius of the project site, indicating that the area is archaeologically sensitive. Buried archaeological resources may exist on the project site, and ground disturbance within the site has the potential to impact archaeological resources. However, Mitigation Measures CR-3 to CR-11 would reduce impacts to archaeological resources to a less than significant impact.

**Mitigation Measure CR-3: Cultural Resources Desktop Analysis.**

Prior to demolition, grading, new construction, or underground work such as utility installation, a cultural resources Desktop Analysis, consisting of a review of existing information regarding cultural resources on a given project site, shall be conducted. The Desktop Analysis shall include, but not be limited to, a review of the project description and extent of proposed ground disturbance, a review of recent cultural resources records on file at the California Historical Resources Information System, and a review of available historic maps and aerial photography. If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. If no resource impacts are identified, no further analysis is warranted. If potential impacts to resources are identified, the applicant shall be required to implement Mitigation Measure CR-4. If the desktop analysis identifies that an area has been subject to a Phase I cultural resources study in the previous five years, Measure CR-4 would not be required. If the Desktop Analysis identifies that no further analysis is warranted, the results will be documented in a memorandum for review and approval by the City prior to issuance of a building permit.

**Mitigation Measure CR-4: Phase I Archaeological Resources Study.**

If the desktop analysis described in Mitigation Measure CR-3 identifies the potential to encounter cultural resources, a Phase I cultural resources study shall be performed by a qualified professional meeting the Secretary of the Interior's (SOI) Professional Qualifications Standards (PQS) for archaeology (National Park Service 1983). The Phase I cultural resources study shall include a pedestrian survey of the project site and sufficient background research and fieldwork to determine whether archaeological resources may be present. Archival research shall include a records search of the California Historical Resources

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Information System and a Sacred Lands File search with the Native American Heritage Commission. The report will be submitted to the City for review and approval prior to the issuance of a building permit. Recommendations in the Phase I Report must be implemented prior to and/or during construction to avoid or reduce impacts on archaeological resources. Adherence to recommendations included in the Phase I report shall be documented as appropriate for verification by the City. If the Phase I identifies an archaeological site and/or a high likelihood of subsurface deposits, Measure CR-5 shall be implemented.

**Mitigation Measure CR-5: Extended Phase I Testing.**

For any projects proposed within 100 feet of a known archaeological site or in areas that have not been subject to previous archaeological testing, monitoring, or other subsurface investigation, as determined by the Desktop Analysis (Mitigation Measure CR-3) or Phase I Report (Mitigation Measure CR-4), the project applicant shall retain a qualified archaeologist to conduct an Extended Phase I (XPI) study to determine the presence/absence and extent of archaeological resources on the project site. If the boundaries of the archaeological site are already well understood based on previous work and are clearly interpretable as such by a qualified cultural resource professional, or if there is documentation that fill is already present to the depth of the current project, XPI testing will not be required. XPI testing shall include a series of shovel test pits and/or hand augured units and/or mechanical trenching to establish the boundaries of archaeological site(s) on the project site. All archaeological excavation shall be conducted by a qualified archaeologist(s) under the direction of a principal investigator meeting the SOI's PQS for archaeology (National Park Service 1983). The results of the XPI will be documented in a technical report and submitted to the City for review and approval prior to the issuance of a building permit. If the archaeological resource(s) of concern are Native American in origin, the qualified archaeologist shall confer with local California Native American Tribe(s) and, if applicable, a Native American monitor shall be present in accordance with Mitigation Measure TCR-2. Recommendations in the XPI Report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.

**Mitigation Measure CR-6: Archaeological Site Avoidance.**

Avoidance will be the preferred treatment measure for an archaeological site identified on the Bayer campus. Any identified archaeological sites will be avoided by project-related construction activities, to the maximum extent feasible to still be able to fulfill the project objectives as determined by Bayer and confirmed by the City. The determination of feasibility will include an assessment of project redesign options, including but not limited to relocation of a proposed building, realignment of utilities, redesign of building plans to build above the existing ground surface and/or to minimize the proposed depth of disturbance, or other options as appropriate for a given project. A barrier (temporary fencing) and flagging will be placed between the work location and any resources within 60 feet of a work location to minimize the potential for inadvertent impacts. The 60-foot avoidance buffer may be reduced as appropriate if recommended by the qualified archaeologist. If the feasibility of avoidance of an archaeological resource of Native American origin is not immediately apparent, Bayer and the City of Berkeley shall contact consulting Tribes to discuss appropriate treatment of the resource, including the implementation of MM CR-7 and CR-8. If, after a good faith effort at resolution, the City, Bayer, and consulting Tribe conclude that agreement is not possible, MM CR-7 shall be implemented.

**Mitigation Measure CR-7: Phase II Site Evaluation.**

If the results of the Phase I Report and/or XPI indicate the presence of archaeological resources that cannot be avoided by the project and that have not been adequately evaluated for CRHR listing at the project site, the project applicant shall retain a qualified archaeologist to conduct a Phase II investigation to determine if intact deposits are present and if they may be eligible for the CRHR or qualify as unique archaeological resources. A Phase II evaluation shall include necessary archival research to identify significant historical associations and mapping of surface artifacts, collection of functionally or temporally diagnostic tools and debris, and excavation of a sample of the cultural deposit. The sample excavation will characterize the nature of the site, define the artifact and feature contents, determine horizontal and vertical boundaries, and retrieve representative samples of artifacts and other remains.



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If the archeologist and, if applicable, a Native American monitor or other interested tribal representative from a locally affiliated Tribe as listed by the Native American Heritage Commission determine it is appropriate, cultural materials collected from the site shall be processed and analyzed in a laboratory according to standard archaeological procedures. The age of the materials shall be determined using radiocarbon dating and/or other appropriate procedures; lithic artifacts, faunal remains, and other cultural materials shall be identified and analyzed according to current professional standards. The significance of the sites shall be evaluated according to the criteria of the CRHR. The results of the investigations shall be presented in a technical report following the standards of the California Office of Historic Preservation publication "Archaeological Resource Management Reports: Recommended Content and Format (1990 or latest edition)." The report shall be submitted to the City for review and approval prior to the issuance of any building or engineering permits that could disturb identified resources. Recommendations in the Phase II report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.

**Mitigation Measure CR-8: Phase III Data Recovery.**

If the Phase II site evaluation identifies resources that meet CRHR significance standards and if the resources cannot be avoided, the project applicant shall incorporate recommendations for mitigation of archaeological impacts into the final design as per CR-7 above prior to construction. If the resource is significant for its data potential and if recommended by the archaeologist and approved by consulting Tribes if appropriate, Phase III data recovery may be required, including excavation, to exhaust the data potential of significant archaeological sites, and shall be carried out by a qualified archaeologist meeting the SOI standards for archaeology according to a research design reviewed and approved by the City and prepared in advance of fieldwork and using appropriate archaeological field and laboratory methods consistent with the California Office of Historic Preservation Planning Bulletin 5, Guidelines for Archaeological Research Design (1991 or the latest edition thereof). Methods of artifact disposition may include curation for historic-era archaeological resources and reburial onsite within a tribal cultural resources easement as identified in TCR-3 for tribal cultural resources. Curation is not appropriate for tribal cultural resources unless agreed to and/or requested by consulting tribes.

The final Phase III Data Recovery reports shall be submitted to the City of Berkeley prior to issuance of any building permit for grading or construction. Recommendations contained therein shall be implemented throughout all ground disturbance activities.

**Mitigation Measure CR-9: Worker's Environmental Awareness Program.**

Prior to any ground disturbing activities, the project applicant shall retain an SOI qualified archaeologist to conduct a Worker's Environmental Awareness Program (WEAP) training. The WEAP training shall be focused on archaeological sensitivity and shall be provided to all construction personnel prior to the commencement of any ground-disturbing activities. The WEAP training shall include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find. Attendance at the WEAP training shall be documented with a sign-in sheet to be submitted to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with the training required under TCR-1.

**Mitigation Measure CR-10: Archaeological Monitoring.**

If recommended by the Desktop Analysis, Phase I, XPI, Phase II, or Phase III studies, the project applicant shall retain a qualified archaeologist (Monitor) to observe project-related ground-disturbing activities. The Monitor will have the authority to halt and redirect work if any archaeological resources are identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find must be evaluated for listing in the CRHR. Archaeological monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance activity moves to a new location

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within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.

**Mitigation Measure CR-11: Unanticipated Discovery of Archaeological Resources.**

If archaeological resources are encountered during ground-disturbing activities, whether or not an archaeological monitor is present, work within 60 feet shall be halted. The project applicant shall notify the City and retain an archaeologist meeting the SOI's Professional Qualification Standards for archaeology (National Park Service 1983) to evaluate the find. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for CRHR eligibility. If the discovery proves to be eligible for the CRHR and impacts cannot be avoided, data recovery excavation may be required. Reports prepared to document and/or evaluate unanticipated discoveries and their treatment shall be submitted to the City of Berkeley for review and approval. Recommendations contained therein shall be implemented throughout the remainder of ground disturbance activities.

### **3.5 Geology and Soils (Initial Study)**

The West Berkeley Project EIR found that no paleontological resources are known to exist in West Berkeley, and no documentation suggests that they occur on the South or North Properties. It is anticipated that most ground disturbance on the North and South Properties during buildout of the amended DA would occur in already disturbed areas that were graded for earlier development on the Bayer Campus or for historic industrial uses, where it is unlikely that intact fossil resources would be encountered. However, construction activities could potentially uncover and disturb paleontological resources beneath the surface. Therefore, Mitigation measure GEO-1 would ensure the protection of fossil discoveries if unearthed during ground-disturbing activities, and reduce impacts to geology and soils to a less than significant level.

**Mitigation Measure GEO-1: Discovery of Paleontological Resources.**

If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. Prior to ground-disturbing activities, the project applicant shall retain a qualified paleontologist to provide on-call services in the event of an unanticipated discovery. A qualified paleontologist is defined by the Society of Vertebrate Paleontology (SVP) standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010). Prior to the start of construction, the qualified paleontologist shall conduct a Paleontological Worker Environmental Awareness Program (WEAP), a training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The WEAP shall be fulfilled at the time of a preconstruction meeting at which a Qualified Paleontologist shall attend.

In accordance with SVP (2010) guidelines, all work shall halt in the immediate vicinity of a find and the qualified paleontologist shall evaluate the discovery. The qualified paleontologist shall determine the significance of the discovery and identify whether additional mitigation or treatment is warranted. Measures may include testing, data recovery, reburial, archival review and/or transfer to the appropriate museum or educational institution, such as the University of California Museum of Paleontology. All testing, data recovery, reburial, archival review or transfer to research institutions related to monitoring discoveries shall be determined by the qualified paleontologist and shall be reported to the City. Work in the area of the discovery may resume after the find is properly documented and authorization is given to resume construction work.

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### **3.6 Greenhouse Gases (Subsequent EIR)**

The project's construction and operation would generate temporary and long-term increases in GHG emissions. Construction GHG emissions mainly derive from site preparation and grading; Operational GHG emissions associated with land use development mainly derive from electricity and natural gas usage, mobile sources, solid waste disposal, water usage, wastewater generation, and landscaping equipment; Operational GHG emissions associated with stationary sources mainly derive from emergency generators and boilers. The project's use of 100 percent carbon-free electricity is consistent with Bayer's 2030 Sustainability Initiative and natural gas usage is expected to decrease due to BMC Chapter 12.80, which would prohibit the installation of natural gas infrastructure in the new administration, production, maintenance, and warehouse buildings. Implementation of Mitigation Measure GHG-1 would reduce GHG emissions associated with the land use development component of the project below existing conditions, thus not exceeding the de minimis threshold of 0 MT of CO<sub>2e</sub> per year, resulting in less than significant impacts.

**Mitigation Measure GHG-1: Renewable Electricity Sources.**

Electricity used at the site shall be sourced from 100 percent renewable energy resources by 2030. Bayer shall submit documentation showing as such to the City every five years, or at intervals required by the City, to ensure compliance.

### **3.7 Hazards and Hazardous Materials (Subsequent EIR)**

There are known releases of hazardous substances within and adjacent to the project site with potentially localized contamination or concentrations of hazardous substances. Additionally, there are several historical uses of the property and adjacent properties that may have resulted in the presence of hazardous materials or wastes in onsite soil, soil vapor, and/or groundwater. Although the project would be required to comply with existing regulations related to known hazardous materials and wastes, unanticipated hazardous materials and wastes could be disturbed during demolition, grading, and other soil or groundwater disturbance under the proposed amended DA, and expose workers to hazardous materials during construction activities. However, Mitigation Measures HAZ-1 to HAZ-4 would ensure identification of potential hazards associated with demolition, grading (soil and groundwater disturbance), and construction; access of potential or known presence of contaminants; involvement of regulatory agency for oversight of UST or underground feature removal, soil, soil vapor and groundwater assessment, and remediation; identification and management of potential safety issues during demolition, grading and construction. Implementation of these Mitigation Measures would reduce impacts on hazards and hazardous materials to a less than significant level.

**Mitigation Measure HAZ-1: Property Assessment – Phase I and Phase II Environmental Site Assessments (ESA).**

The project applicant shall prepare a site-specific Phase I ESA for each development area / Block, in accordance with standard ASTM methodologies, to assess the land use history of the project site. Phase II ESAs (i.e., soil, groundwater, soil vapor subsurface investigations) shall be completed where a building is proposed south of Carleton Street or based on the results of the Phase I ESAs. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas, a Phase II ESA would be conducted to determine whether the soil, groundwater, and/or soil vapor has concentrations exceeding regulatory screening levels for commercial/industrial land uses.

If the Phase II ESA concludes that the site is or may be impacted and could affect the planned development, then an assessment, remediation, or corrective action (e.g., removal of contaminated soil, in-situ treatment, capping, engineering controls) shall be conducted prior to or during construction under the oversight of federal, state, and/or local agencies (e.g., USEPA, DTSC, SFB RWQCB, City of Berkeley TMD, Alameda County DEH) and in full compliance with current and applicable federal and state laws and regulations. Additionally, Voluntary Cleanup Agreements may be used for parcels where remediation or long-term monitoring is necessary.

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**Mitigation Measure HAZ-2: Regulatory Agency UST Involvement – City of Berkeley TMD and SFB RWQCB.**

Because the project site and immediately adjacent properties are associated with open and closed LUST and Cleanup Program cases overseen by the SFB RWQCB, the project applicant shall notify the SFB RWQCB of the following:

- Development plans for each Block located south of Carleton Street and for Block B North east of Fourth Street
- Completion of subsequent Phase I ESAs
- Identification of unanticipated stained or odorous soils during demolition, grading, and/or construction activity
- Identification of additional underground tanks and associated piping, or other underground features such as railroad spurs or ties, unknown piping, cisterns, wells, waste/burn pits, etc., if encountered

Additionally, all onsite UST removals and associated assessment work shall be completed under the direction of the City of Berkeley TMD and/or the SFB RWQCB. To the extent there are any pending LUST and Cleanup Program cases on the project site, the UST closure and agency approval documents shall be reviewed and approved by the City of Berkeley TMD and/or the SFB RWQCB prior to issuance of building permits for grading or any other ground disturbance.

Upon identification of stained soil, odorous soil, USTs, or other underground features onsite, City of Berkeley TMD and/or SFB RWQCB could require actions such as: preparation of removal action workplans; obtaining permits for removal of USTs or other underground features; excavation and offsite disposal of soil; assessment of soil and/or groundwater beneath the excavation; and/or completion of UST removal reports or case closure documents.

**Mitigation Measure HAZ-3: Regulatory Agency Subsurface Involvement – ACPWA, SFB RWQCB and City of Berkeley.**

The City of Berkeley TMD and the SFB RWQCB shall continue to provide agency oversight of assessment and remediation of the open Cleanup Program case (case #01S0045) on the project site. Additionally, the applicant shall notify the City of Berkeley and SFB RWQCB Cleanup Program project manager of the following:

- Development plans for Block B North east of Fourth Street and development south of Carleton Street
- Onsite use of 14 hydraulic elevators that may have contained oils containing PCBs (Farallon, 2020)
- Onsite use of above-ground storage tanks used to store diesel for generators (Farallon, 2020)
- Other regulatory UST case listings (City of Berkeley and SFB RWQCB) and assessment work that will be completed under the direction of other regulatory agencies
- All former environmental documents completed for the site of development disturbance, including this SEIR

Upon notification of the information listed above, the City of Berkeley and the SFB RWQCB could require actions such as: preparation of subsurface investigation workplans; completion of soil, soil vapor, and/or groundwater subsurface investigations; installation of soil vapor or groundwater monitoring wells; excavation and offsite disposal of soil; completion of human health risk assessments; and/or completion of remediation reports or case closure documents.

If groundwater wells or soil vapor monitoring probes are identified within the construction area during demolition, subsurface demolition, or construction at the project site, they will be abandoned/destroyed under permit from the Alameda County Public Works Agency (ACPWA). Demolition activities will be documented in a letter report submitted to the ACPWA and SFB RWQCB within 60 days of the

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completion of abandonment activities. Abandonment of sub-slab vapor points will be completed with SFB RWQCB approval and demolition activities will be documented in a letter report to SFB RWQCB. The SFB RWQCB non-objection, concurrence, no further action, closure, and/or agency approval documents shall be delivered to and reviewed by the City of Berkeley prior to issuance of any building permit authorizing grading or construction on the site. The SFB RWQCB may determine that City of Berkeley TMD or DTSC may be best suited to perform the lead agency duties for assessment and/or remediation at the project site, in which case this and other mitigation measures will still apply.

**Mitigation Measure HAZ-4: Soil and Groundwater Management Plan.**

The project applicant shall implement the recommendations of the Soil and Groundwater Management Plan (SGMP) prepared by Farallon Consulting LLC dated December 28, 2020. The SGMP shall be reviewed by the City of Berkeley Toxics Management Division prior to issuance of permits for grading or other ground disturbance and the report shall be updated if needed. The SGMP recommendations are related to:

- Management of Unanticipated Subsurface Conditions
- Health and Safety Requirements
- Onsite Soil Management
- Groundwater Management
- Stormwater Management
- Soil and Groundwater Management Plan Reporting Requirements

Construction workers shall be informed about environmental conditions and measures to mitigate potential risks to the environment, construction workers, and other nearby receptors from potential exposure to hazardous substances that may be associated with unknown conditions or unexpected underground structures, and known contaminated soil or groundwater encountered during construction activities.

The SGMP shall be updated and the updated recommendations shall be implemented in the following cases:

- A change in project site uses;
- Receipt of additional information pertaining to project site environmental conditions;
- Updated chemical toxicity information for contaminants detected at the project site based on revised regulatory screening levels; or,
- New legal or regulatory soil or groundwater management requirements applicable to the project site.

Implementation of the proposed amended DA would include operation of Laboratory, Production, Storage, and manufacturing buildings that could involve the use, storage, disposal, or transportation of hazardous materials, including biohazardous and chemical materials. Upset or accident conditions at the project site could involve the release of hazardous materials into the environment. However, adherence to existing regulations and implementation of Mitigation Measure HAZ-5 would reduce impacts concerning hazardous materials during construction activities to a less than significant level.

**Mitigation Measure HAZ-5: Hazards Materials Safety Plan (Updated 1991 EIR MM).**

The project applicant shall prepare a Hazardous Materials Safety Plan to address potential issues that may be encountered during project operation involving the use, storage, transport, and disposal of biohazardous and chemical materials. The Hazardous Materials Safety Plan shall be updated annually and reviewed by Berkeley's Toxics Management Division. The Plan shall include, but not be limited to, the following information and measures:

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- Documentation of ongoing compliance with all applicable federal, state, and local regulations related to biohazardous safety, storage, transport, and disposal procedures, and emergency response preparedness, including biosafety guidelines published by the NIH and CDC.
- Documentation that current and future operations would prohibit the use of biohazardous agents within Risk Groups 3 and 4.
- Documentation of ongoing coordination for emergency preparedness with the City of Berkeley, including preparation of an emergency response plan and an emergency disaster procedures manual for release of hazardous biological materials. The disaster preparedness plan shall include annual training for and coordination with City of Berkeley emergency responders as to the nature of hazards on site, types of organisms likely to be encountered, where to take exposed persons to receive appropriate treatment, and staging semi-annual mock disaster drills.
- Updates to and continued compliance with the site's Risk Management Prevention Plan (RMPP) for the use of ammonia. The RMPP shall be subject to review and approval by the USEPA.
- Updates to and continued compliance with the Hazardous Materials Release Response Plan and inventory and Risk Management and Prevention program required by CalEPA.

### **3.8 Hydrology and Water Quality (Initial Study)**

The proposed amended DA would allow for construction activities on the Bayer Campus that have the potential to cause soil erosion from exposed soil, an accidental release of hazardous materials used for equipment such as vehicle fuels and lubricant, or temporary siltation from storm water runoff. Soil disturbance would occur during excavation for proposed building foundations, demolition of existing buildings, and grading activity. If uncontrolled during construction, soil erosion and water pollutants could have adverse offsite effects on water quality, for instance at nearby wetlands in Aquatic Park. However, future development on the project site would be required to comply with state and local water quality regulations designed to control erosion and protect water quality during construction. This includes compliance with the requirements of the State Water Resources Control Board (SWRCB) Construction General Permit, which requires preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) and Best Management Practices (BMPs) for projects that disturb one acre or more of land. Construction activity therefore would not result in the degradation of water quality in receiving waters, resulting in less than significant impacts on construction-related water quality.

New development under buildout of the project would be subject to continuing water quality requirements included in the proposed amended DA, which establish a Surface Water Run-off Program that requires quarterly sampling of surface water discharge prior to entering the City's storm drain system, to ensure that waste from the Bayer Campus does not discharge into the system. In addition, it requires that Bayer use BMPs in accordance with NPDES guidelines to reduce contamination of surface waters. Sampling of surface water discharge must demonstrate no contribution to degradation of surface waters at Aquatic Park. New development on the project site also would be subject to the requirements of the currently applicable Municipal Regional Stormwater NPDES Permit issued by the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB). This permit regulates the City of Berkeley's stormwater discharges to San Francisco Bay.

Water quality in stormwater runoff is also regulated locally by the City. Provision C.3 of MRP2 or similar provisions in the applicable NPDES Permit addresses post-construction stormwater requirements for new development and redevelopment projects that add and/or replace 10,000 square feet or more of impervious area or special land use categories that create and/or replace 5,000 square feet of impervious surfaces. These "regulated" projects are required to meet certain criteria: 1) incorporate site design, source control, and stormwater treatment measures into the project design; 2) minimize the discharge of pollutants in stormwater runoff and non-stormwater discharge; and 3) minimize increases in runoff flows as compared to pre-development conditions. Additionally, projects in Berkeley that drain to a natural water body must also construct and maintain hydromodification measures to ensure that estimated post-project runoff peaks and durations do not exceed estimated pre-project peaks and duration. Compliance with the applicable state, local,

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and DA requirements described above would increase infiltration of stormwater, decrease stormwater runoff, promote capture and use, and would reduce the risk of water contamination within the project site from operation of new and existing activities on the site to the maximum extent practicable. However, Mitigation Measures from the 1991 EIR would continue to apply to the proposed project to avoid adverse impacts on surface water quality from stormwater runoff.

**Mitigation Measure HWQ-1: Best Management Practices (Updated 1991 EIR MM).**

The project applicant shall prepare documentation of Best Management Practices to minimize the potential for water pollution. Typical elements of such a document would include addressing the possibility of substituting less toxic compounds in manufacturing and research and development and proper handling of those toxic compounds used.

**Mitigation Measure HWQ-2: Source Control (Updated 1991 EIR MM).**

The project applicant shall manage pollutants on the project site such that they are not easily mobilized and discharged into stormwater runoff. This shall involve configuring fuel storage under roofed areas and preventing on-site runoff from flowing through these areas. Hazardous materials stored in uncovered areas shall be fully contained or covered such that they do not come into contact with rainfall.

**Mitigation Measure HWQ-3: Water Quality Monitoring (Updated 1991 EIR MM).**

The project applicant shall perform sampling and testing of stormwater runoff from the project site four times per year. The extent and location of this monitoring will be based upon the degree of source runoff controls implemented. Monitoring shall be used primarily to ensure source controls are working and to detect any additional or accidental pollutants in stormwater runoff.

**Mitigation Measure HWQ-4: Pollutant Removal (Updated 1991 EIR MM).**

The project applicant shall install systems to remove pollutants before stormwater runoff leaves the project site. This may involve physical removal or chemical or biological treatment depending on the type of pollutants that would be present. Uncovered parking areas shall receive street sweeping monthly to remove pollutants, oils, and greases before they are mobilized by runoff. Storm drains downstream of hazardous materials storage areas shall be equipped with manual shut-off valves. In the event of a spill, these valves shall be immediately closed, and shall remain closed until clean-up has been completed.

**Mitigation Measure HWQ-5: Management of Underground Tanks (Updated 1991 EIR MM).**

The project applicant shall protect from damage existing wells that monitor potential releases of pollutants from underground tanks and may be required to relocate them if they would be affected by construction. Remediation or excavation of soil contaminated by underground tank releases, if necessary, shall be completed before construction of permanent foundations.

**Mitigation Measure HWQ-6: Monitoring and Remediation of Seepage into Aquatic Park (Updated 1991 EIR MM).**

The project applicant shall contribute to the funding of (as determined by the City) or perform periodic groundwater sampling and monitoring where groundwater seeps from the 10- to 12-foot-high embankment along the western edge of the Southern Pacific Railroad. If the City determines that the Bayer Campus' use of hazardous material has contributed to contamination of groundwater seepage which supports the narrow freshwater wetland between the main lagoon at Aquatic Park and the railroad, Bayer shall contribute to the funding of such remediation, if necessary. If the City determines that contamination of groundwater seepage originates from properties outside the Bayer Campus, then the project applicant shall not be responsible for funding remediation of such contamination.

**Mitigation Measure HWQ-7: Source Control for Groundwater Contamination (Updated 1991 EIR MM).**

The project applicant shall implement standard safeguards, monitoring, and contingency measures to minimize the potential for future contamination of the local groundwater. Such measures include roofing

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and/or berming of storage areas, lining storage areas to prevent infiltration, and/or installing shutoff valves in downslope storm drain lines.

### **3.9 Noise (Subsequent EIR)**

During implementation of the proposed amended DA, residences and businesses located adjacent and nearby to new development would be exposed to temporary construction and demolition noise during phased development implementation of the North and South Properties. Demolition of existing buildings and construction of new buildings under the amended DA would be expected to require the use of heavy construction equipment, such as scrapers, bulldozers, water trucks, haul trucks, and pickup trucks. Noise levels during construction and demolition was modelled for closest noise sensitive receptors situated north, east, south, and west of the North and South Properties. The modelled noise levels would exceed the City's most conservative weekday and weekend thresholds of 60 dBA and 50 dBA  $L_{eq(h)}$  for R-1 residential zone receivers and exceed the City's thresholds of 70 dBA and 60 dBA  $L_{eq(h)}$  for receiving commercial/industrial zone receivers. Modeled construction and demolition noise would also exceed the City's daytime interior noise level standard of 45 dBA  $L_{eq}$  at noise sensitive receivers adjacent to Bayer Campus. In addition, maximum and hourly average construction noise levels would result in temporary increases in ambient noise levels in the project vicinity. However, Mitigation Measure N-1 would reduce construction-related noise impacts to a less than significant level and ensure compliance with the City's exterior and interior noise thresholds.

**Mitigation Measure N-1: Construction-Related Noise Reduction Measures (Updated 1991 EIR MM).**

The following measures shall be implemented during construction for the purpose of reducing construction-related noise impacts:

- **Neighbor Notification.** At least two weeks prior to initiating construction activities requiring the use of two or more pieces of heavy construction equipment at the project site, the applicant shall provide an ongoing website of on-site construction activities and written notice to businesses and residents within 500 feet of the project site construction areas, including: (1) a description of the Project; (2) a description of construction activities; (3) a daily construction schedule (i.e., time of day) and expected duration (number of weeks or months); (4) the name and phone number of the "Noise Management Individual" for the Project; (5) a commitment to notify neighbors at least four days in advance of any authorized extended work hours and the reason for extended hours; (6) notice that construction work is about to commence; and (7) the designated "Disturbance Coordinator" responsible for responding to any local complaints about construction noise. The noise manager would determine the cause of the noise complaints (e.g., starting too early, bad muffler) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval prior to issuance of a building permit.
- **Disturbance Coordinator.** The applicant shall designate a disturbance coordinator who shall be responsible for responding to any local complaints about construction noise. The noise disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall require that reasonable measures warranted to correct the problem be implemented. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site outside the gate visible to passersby (the campus is closed).
- **Noise Reduction Program.** The applicant shall develop a site-specific construction noise reduction program prepared by a qualified acoustical consultant to reduce construction related noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer or a delegate prior to issuance of a building permit. The noise reduction program shall include time limits for construction and all technically and economically feasible measures to ensure that construction complies with the City of Berkeley Municipal Code Section 13.40.070. The program shall include, but is not limited to the following available controls to reduce construction noise levels to as low as practical:
  - **Temporary Noise Barrier.** The applicant shall construct eight-foot high solid plywood fences along construction site boundaries adjacent to off-site noise sensitive residences or other noise-



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sensitive land uses (e.g., school uses) to meet applicable thresholds. These fences shall be outfitted with noise control blanket barriers where necessary to effect reductions that result in compliance with the City's quantified noise construction thresholds, as determined by the noise control plan.

- **Mufflers.** Construction equipment shall be properly maintained and all internal combustion engine driven machinery with intake and exhaust mufflers and engine shrouds, as applicable, shall be in good condition and appropriate for the equipment. During construction, all equipment, fixed or mobile, shall be operated with closed engine doors and shall be equipped with properly operating and maintained mufflers, consistent with manufacturers' standards.
- **Electrical Power.** The applicant shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists. The applicant shall select hydraulically or electrically powered equipment where feasible and avoid pneumatically powered equipment where feasible.
- **Equipment Staging.** All stationary noise-generating equipment shall be located as far as possible from sensitive receivers when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- **Equipment Idling.** Unnecessary idling of internal combustion engines shall be prohibited. Construction equipment that would not be used for more than five minutes should be turned off completely.
- **Construction Vehicles.** Construction-related traffic shall be routed along major roadways and away from sensitive receivers, where feasible.
- **Workers' Radios.** All noise from workers' radios shall be controlled such that radios are not audible at sensitive receivers near construction activity.
- **Smart Back-up Alarms.** Mobile construction equipment shall have smart back-up alarms that automatically adjust the sound level of the alarm in response to ambient noise levels. Alternatively, back-up alarms shall be disabled and replaced with human spotters to ensure safety when mobile construction equipment is moving in the reverse direction.
- **Additional Noise Attenuation Techniques.** For development on the portion of the site east of Seventh Street, implement the measures set forth in the Noise Reduction Program and either: (1) erect temporary noise control blanket barriers, where necessary, along building facades facing construction sites; (2) restrict construction to weekdays; or (3) implement other noise reductions alternatives that could feasibly reduce noise to achieve the City's quantified noise construction thresholds.

### **3.10 Public Services (Initial Study)**

Buildout of the Bayer Campus under baseline conditions would total 1,866,000 square feet. The project would involve a net reduction of 128,000 square feet in buildout relative to baseline conditions. Because the project would not allow for an increase in development potential, the 1991 EIR's finding that buildout of the existing DA would not necessitate additional employees and equipment, with adherence to proper security precautions, would continue to apply. However, Mitigation Measure PS-1 in the 1991 EIR would still be necessary to reduce the risk of on-site crime that requires police protection services, and reduce impacts on police protection to a less than significant level.

**Mitigation Measure PS-1: Security Measures (Updated 1991 EIR MM).**

The project applicant shall continue implementing the following measures recommended by the Berkeley Police Department including but not limited to:

- Prepare a Crime Prevention Evaluation Analysis Report in coordination with the Police Department;
- Employ a highly visible security guard;

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- Provide adequate lighting in parking areas and around buildings in use in the evenings; and
- Utilize solid walls, burglar alarms, and/or safety glazing on the windows for buildings containing pharmaceuticals.

### **3.11 Recreation (Initial Study)**

The proposed project would result in an estimated 2,000 employees by 2052. This represents a net increase of 108 employees beyond baseline conditions, or 5.7 percent more employees on the Bayer Campus. By increasing the number of employees on-site, the project would increase demand for recreational facilities in Berkeley. Additional employees who reside in the Berkeley area could use City parks outside of work hours. However, park use by 108 additional employees would have a marginal effect on overall use of City parks and would not substantially contribute to physical deterioration of park facilities. Furthermore, the project would add at least nine acres of open space in the form of fields, sports courts, pedestrian trails, bicycle trails, outdoor eating areas, and landscaping only open to Bayer employees. The proposed expansion of recreational space serving employees on the Bayer Campus would reduce demand for off-site parks including Aquatic Park during work hours. However, it is expected that some Bayer employees would continue to use Aquatic Park, resulting in the physical deterioration of the park. Implementation of Mitigation Measure REC-1 would ensure continued funding for park maintenance and improvements, which would reduce impacts on existing parks and facilities to a less than significant level.

**Mitigation Measure REC-1: Aquatic Park Funding (Updated 1991 EIR MM).**

The project applicant shall contribute to park maintenance and improvements related to Aquatic Park through an upfront payment of \$385,000. The contribution shall be paid to the City of Berkeley Parks, Recreation, and Waterfront Department by February 25, 2022.

### **3.12 Transportation (Subsequent EIR)**

The proposed amended DA would not conflict with applicable policies addressing transit, bicycle and pedestrian facilities. The proposed project would be consistent with the City's General Plan and West Berkeley Plan goals and policies, which generally promote non-automobile trips over automobile trips. Under the existing entitlement, Bayer is required to implement a Transportation Demand Management (TDM) Program to reduce single-occupant automobile trips generated by the project site. As part of the TDM Program, Bayer is required to continue to provide funding for the West Berkeley Shuttle, which provides free shuttle service between the project site and the Ashby BART station. Without continued implementation of the TDM Program, operation under the amended DA may conflict with General Plan and West Berkeley Plan policies that encourage vehicle trip reduction and increased transit use, including General Plan Policies T-7 and T-10 and West Berkeley Plan Policy 1.7, and General Plan Policy T-2, which calls for local efforts to maintain and enhance public transportation services. However, Mitigation Measure T-1 would require the continued implementation of the TDM Program which would ensure consistencies with programs, plans, ordinances or policies addressing the circulation system.

**Mitigation Measure T-1: Transportation Demand Management Program (Updated 1991 EIR MM).**

The project applicant shall continue to implement and update the Transportation Demand Management (TDM) Program to reduce single-occupant automobile trips generated by the project site. The TDM Program shall be reviewed and approved by the City of Berkeley prior to issuance of building permits for development allowed under the amended DA. In addition, the TDM Program shall be updated by Bayer and approved by the City every five years, or at intervals required by the City, to ensure that services are consistent with best practices to reduce the use of single-occupant automobile trips to and from the project site.

The TDM Program may include, but not be limited to, the following information and measures:

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- Continued funding and implementation of the West Berkeley Shuttle with regular service and expansion to meet demand;
- Pre-tax commuter benefits;
- Travel coordination, via a Transportation Coordinator and regularly disseminated transportation and commute information;
- On-site amenities such as eating and recreation facilities;
- Telecommute program; and,
- Bicycle parking, repair stations and education, as well as employee showers, changing facilities and lockers.

### **3.13 Tribal Cultural Resources (Subsequent EIR)**

Based on the results of AB 52 consultation, there are no known tribal cultural resources located within the project site. However, the project site is considered highly sensitive for archaeological resources that may later be recommended as a tribal cultural resource by tribal organizations. Implementation of TCR-1 to TCR-3 would reduce impacts on tribal cultural resources to a less than significant level.

**Mitigation Measure TCR-1: Worker's Environmental Awareness Program.**

Prior to ground disturbing activities, the project applicant will retain a locally affiliated tribal member who represents a tribal organization that was contacted as part of Assembly Bill 52 outreach to conduct a Worker's Environmental Awareness Program (WEAP) training. The WEAP training shall be provided to all construction personnel (in conjunction with the cultural resources WEAP) prior to the commencement of ground-disturbing activities. The WEAP training shall include a description of the types of materials that may constitute Tribal Cultural Resources, the reasons for their traditional cultural significance and importance to tribal members, the stop work authority of the Native American monitor, and the proper protocol for the respectful treatment of the resource in the event of an unanticipated discovery. Attendance at the WEAP training shall be documented with a sign-in sheet for submittal to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with the training required under CR-9.

**Mitigation Measure TCR-2: Native American Monitoring.**

If recommended by the Desktop Analysis, Phase I, Extended Phase I (XPI), Phase II, or Phase III studies required under Mitigation Measures CR-1 through CR-8, the project applicant shall retain a qualified local Native American monitor to observe all ground disturbance, including archaeological excavation, associated with development facilitated by the project. Native American monitoring shall be provided by a locally affiliated tribal member. Monitors will have the authority to halt and redirect work if tribal cultural resources are identified during monitoring. If tribal cultural resources are encountered during ground-disturbing activities, work within 60 feet must halt and the find must be evaluated. Native American monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.

**Mitigation Measure TCR-3: Cultural Resources Open Space Easement.**

The project applicant will set aside an area that could be used as a Tribal Cultural Resources Open Space Easement in the event that tribal cultural resources are encountered during construction activities and are unable to be avoided. The purpose of the Cultural Resources Open Space Easement will be to provide an onsite location for reinterment of sensitive Native American cultural resources and/or human remains, as well as other associated funerary objects. If said remains are encountered, a Cultural Resource Open Space Easement will be developed and granted by the project applicant in consultation

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with the identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC as applicable. Should an easement be necessary, the following actions would be prohibited on the land subject to said easement, except as required for the reburial of sensitive cultural resources: grading; excavation; placement of soil, sand, rock, gravel or other material; clearing of vegetation with machinery; construction; erection or placement of a building or structure; vehicular activities; trash dumping; installation of wet or dry infrastructure, such as irrigation systems; or for a purpose other than as open space for tribal use only.

Exceptions include the following:

- Placement and reburial of sensitive Native American cultural resources or human remains.
- Access shall be provided for identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC in perpetuity.
- Selective clearing of vegetation by hand if required by fire authorities for the purpose of reducing an identified fire hazard or the removal of vegetation using chemicals for vector control purposes where required by the Department of Environmental Health.
- The installation of a bench, marker, or other amenity if desired by the consulting Tribe(s).

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**SECTION 4: EFFECTS DETERMINED TO BE LESS THAN SIGNIFICANT OR NOT SIGNIFICANT**

The City finds that, based upon substantial evidence in the record, as discussed below, the following impacts associated with the project are not significant or are less than significant. In addition, the City finds there would be no new or substantially more severe impacts to the following issue areas than what was analyzed in the 1991 EIR. The Supplemental Initial Study included as Appendix A of the Draft SEIR provides a detailed analysis of the less-than-significant impacts of the proposed project for all issue areas below.

**4.1 Agricultural and Forest Resources (Initial Study)**

The project site is located in an urban area in the city of Berkeley. There are no agricultural resources, Williamson Act-contracted land, or forest land located on or near the project site. The project would not allow for conversion of agricultural land to non-agricultural uses or result in the loss of forest land or conversion of forest land to non-forest use. Therefore, the project would result in *no impacts* to agricultural for forest resources.

**4.2 Energy (Initial Study)**

Construction activities would result in short-term consumption of energy. However, energy use during construction would be temporary, and construction equipment used would be typical of similar-sized construction projects in the region. In addition, construction contractors would be required to comply with the provisions of California Code of Regulations Title 13 Sections 2449 and 2485 and the U.S. EPA Construction Equipment Fuel Efficiency Standard, which would also minimize inefficient, wasteful, or unnecessary fuel consumption. In addition, per applicable regulatory requirements such as 2019 California Green Building Standards Code, the project would comply with construction waste management practices to divert a minimum of 65 percent of construction and demolition debris. These practices would result in efficient use of energy necessary to construct the project. Therefore, project construction would not result in potentially significant environmental effects due to the wasteful, inefficient, or unnecessary consumption of energy, and impacts would be *less than significant*.

Operation of the proposed project would require energy use in the form of electricity, natural gas, and gasoline and diesel fuel consumption. However, given compliance with existing state and local regulations, including California Building Code (CBC) Title 24, CALGreen (as codified in CCR Title 24, Part 11), and BMC Chapter 19.37, project operation would not result in potentially significant environmental effects due to the wasteful, inefficient, or unnecessary consumption of energy. Furthermore, the proposed amended DA would implement a TDM program that would include continued funding of the West Berkeley Bart Shuttle from Bayer to the Ashby BART station. In the event that demand increases under the proposed DA, Bayer would either increase shuttle capacity, increase service frequency, or both, which would reduce vehicle trips (and related energy consumption) associated with the proposed DA. This would incentivize the use of public transit, active transportation, and fuel-efficient vehicles for accessing the project site. Therefore, energy impacts on operational phase would be *less than significant*.

**4.3 Land Use and Planning (Initial Study)**

The Bayer Campus would be located in an urban area with a fully developed street grid. The project would not include elements that would physically divide established communities in West Berkeley. The North and South Properties would be closed to public access and would remain so. Therefore, no land use impact related to the physical division of an established community would occur as a result of the proposed project.

The project would also be consistent with the Berkeley Municipal Code, the Berkeley General Plan and the West Berkeley Plan, which were adopted to avoid or mitigate environmental effects. Therefore, impacts on land use and planning would be *less than significant*.

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**4.4 Mineral Resources (Initial Study)**

The project site is in a fully urbanized area that is incompatible with mineral resource extraction. The City of Berkeley has no active mineral extraction industry, and therefore the project would not result in the loss of availability of valuable mineral resources or mineral resource recovery sites. There would be *no impacts*.

**4.5 Population and Housing (Initial Study)**

The project would not allow for construction of new residences but would facilitate growth in employees. Currently the Bayer Campus has approximately 1,000 employees. Under baseline conditions, it is estimated that the proposed project would result in an estimated 2,000 employees by 2052. The 1991 EIR assumed that approximately 21 percent of new employees would seek housing in Berkeley, based on an estimate by the City's Office of Economic Development (Berkeley 1991). Applying the same rate, the projected net increase of 108 employees would result in an increase of 23 households in Berkeley. Based on the current average household size of 2.26 in Berkeley, it is estimated that additional employees and their households would increase the citywide population by 52 people. Table 22 in the Initial Study showed that the estimated population increase of 52 people would represent less than 0.1 percent of total citywide population in 2040. Therefore, the project would result in a *less than significant impact* related to population.

The project would involve redevelopment of Bayer's existing campus on the North and South Properties, which lack any housing units. Therefore, the project would not displace existing people or housing. *No impact* would occur.

**4.6 Utilities and Service Systems (Subsequent EIR)**

Buildout of the Bayer Campus under the amended DA would result in a net reduction of 29,594 gallons of wastewater generation per day (0.03 mgd) compared to baseline conditions (existing DA). Furthermore, the project would be required to comply with the City of Berkeley's current Private Sewer Lateral (PSL) Ordinance (BMC Chapter 17.24), which is consistent with the requirements of EBMUD's Regional Private Sewer Lateral Ordinance and includes regulations for the inspection, testing, repair, replacement, and ongoing maintenance of private sewer laterals. Under the PSL Ordinance, the project applicant would be required to upgrade or verify the condition of private sewer laterals within the project site before approval of project building permits. The Ordinance would also require that the project eliminate wet-weather infiltration and inflow to avoid impacts related to significant increases in wastewater flow during storms. Therefore, given compliance with existing regulations, the project would result in *less than significant* impacts related to wastewater treatment capacity and wastewater conveyance systems.

Buildout under the proposed amended DA would demand roughly the same amount of water as existing uses within the project site. With the implementation of Demand Management Measures required by EBMUD, existing and projected water supply would be adequate to serve the proposed project. The proposed amended DA would not require the construction of new or expanded water treatment facilities. Therefore, impacts related to water supply and water infrastructure would be *less than significant*.

Buildout under the proposed DA amendment would result in additional employees within the project site compared to buildout under current entitlements, which would increase the amount of solid waste generated within the project site by 94 tons per year, or 68 cubic yards per year, compared to baseline conditions. This amount would equate to 2,015 cubic yards over the 30-year implementation period of the DA Amendment. The total need for waste disposal would represent approximately 0.003 percent of the current total remaining landfill capacity for the Altamont Landfill. Moreover, continued compliance with applicable regulations listed in the Solid Waste Regulatory Setting would ensure that the development within the site complies with federal, state, and local statutes and regulations related to solid waste and would lead to increased recycling and waste diversion. Therefore, impacts related to solid waste and disposal facilities would be *less than significant*.

Buildout under the proposed DA amendment would not result in the relocation or construction of electricity, natural gas, or telecommunications facilities. Under the full buildout of the proposed DA in Year 30, the project

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would result in a net increase of 3 GWh of electricity and approximately 113,301 MMBtu of natural gas per year compared to baseline conditions. This represents approximately 0.001% of the total 2019 state-wide electricity usage and 0.03% of Alameda County electricity usage, and 0.0086% of state-wide natural gas consumption and 0.29% of Alameda County natural gas consumption. The estimated electricity and natural gas consumption rate is not substantial compared to the 2019 countywide usage as well as Alameda County consumption. Therefore, impacts related to electricity, natural gas, or telecommunications facilities would be *less than significant*.

**4.7 Wildfire (Initial Study)**

The project site is not located near a Very High Fire Hazard Severity Zone (VHFHSZ). It is approximately 2.2 miles away from the nearest such zone, which is in the eastern margins of the city in the Berkeley Hills. It is also outside the City's Wildland-Urban Interface Fire Area. Therefore, the project would not impair an adopted emergency response or evacuation plan related to wildfire; exacerbate wildfire risks; or expose people to post-fire risks related to runoff, flooding, or landslides. *No impact* would occur.

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## **SECTION 5: FEASIBILITY OF PROJECT ALTERNATIVES**

### **5.1 Project Alternatives**

The Subsequent EIR included three alternatives:

- Alternative 1: No Project / No Construction Alternative
- Alternative 2: No Project / Zoning Conformance Alternative
- Alternative 3: Reduced Parking Alternative

The City hereby concludes that the SEIR sets forth a reasonable range of alternatives to the Bayer Healthcare LLC Development Agreement Amendment Project that address the significant impacts of the project, so as to foster informed public participation and informed decision making. The City finds that the alternatives identified and described in the Final EIR were considered and further finds them to be infeasible for the specific economic, social, or other considerations set forth below pursuant to Public Resources Code section 21081(c).

**5.1.1 Alternative 1: No Project / No Construction Alternative.** The No Project/No Construction Alternative assumes that upon the existing DA's expiration in February 2022 the proposed amended DA would not be adopted and there would be no change to the existing configuration of the Bayer Campus. The total floor area of existing buildings is approximately 1,087,000 square feet, including 567,000 square feet on the North Properties and 520,000 square feet on the South Properties. Existing development on the project site accommodates six land uses: production, laboratories, warehouses, administration, utilities, and maintenance. Eight surface parking lots with a total of approximately 1,082 spaces are dispersed around the project site.

Findings: Under Alternative 1, impacts to air quality, cultural resources, GHG emissions, energy, hazards and hazardous materials, noise, transportation, or utilities and service systems may be reduced as construction would not take place, and new mitigation measures in the SEIR would not be required. However, this alternative would maintain existing buildings and mechanical equipment on the Bayer Campus that are less energy-efficient than planned facilities under the proposed project. Furthermore, since no unavoidable significant impacts were identified in the SEIR, Alternative 1 would not avoid a potentially significant impact.

The City rejects the No Project / No Construction Alternative because it would not achieve any of the objectives of the proposed project, as expressed above.

**5.1.2 Alternative 2: No Project / Zoning Conformance Alternative.** The No Project/Zoning Conformance Alternative assumes that the proposed amended DA is not approved, in which case the existing DA would expire in February 2022 while the Use Permit for the South Properties would remain in effect. Upon expiration of the DA, future development on the Bayer Campus would be required to conform to applicable standards in the Berkeley Municipal Code for underlying zoning on the project site. The main body of the project site to the west of Seventh Street would be subject to Mixed Manufacturing (MM) zoning standards, while the remainder of the site to the east of Seventh Street would be subject to Mixed Use-Light Industrial (MU-LI) zoning standards. Under Alternative 2, compliance of future development with the height limit of 45 feet in the MM and MU-LI zoning districts would reduce potential buildout at the Bayer Campus. Buildout under the No Project/Zoning Conformance Alternative would depend on the size of individual projects on the Bayer Campus that conform to zoning standards and are approved by the City. This alternative does not specify an exact amount of buildout that could occur because it would depend on the number and size of individual projects that are proposed and approved. However, it is likely that, because development would occur intermittently as reviewed and approved by the City, buildout would be reduced compared to what is analyzed in the SEIR for the proposed amended DA. The SEIR assumes that buildout would be further reduced under this alternative and that future discretionary projects on the Bayer Campus would be required to undergo CEQA analysis on a project-by-project or Master Use Permit basis when proposed.



**DRAFT CEQA FINDINGS**  
**PLANNING COMMISSION**

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Findings: Under Alternative 2, since buildout would be reduced, there would be less impacts to air quality and toxic air contaminants (TACs) since it would involve less construction activity and there would be fewer vehicle trip and mobile emissions compared to the proposed project, reducing Vehicle Miles Travelled (VMT) and meeting air quality standards.

Impacts to cultural resources would be similar for Alternative 2 and the proposed project as both would involve the renovation of building B83, a historical resource under CEQA. Future projects under Alternative 2 could also disturb archaeologically sensitive resources and would need mitigation measures to ensure impacts remain less than significant.

Impacts to greenhouse gases would remain less than significant for Alternative 2 since future development on the Bayer Campus would be required to attain the latest iteration of green building practices in CALGreen and the California Energy Code and Reach Code.

Impacts to hazards and hazardous materials would be similar to the proposed project, as Alternative 2 would allow for future construction that could result in disturbance of unanticipated hazardous materials during demolition and grading, and existing use of biohazards and chemical hazards for pharmaceutical research and production would continue on the project site. Although both options would be required to comply with the latest biosafety guidelines adopted by the NIH and the Centers for Disease Control and Prevention (CDC) as well as all building, fire, and safety codes, mitigation measures would be needed to ensure impacts remain less than significant.

Similar to the proposed project, future development under Alternative 2 would require the use of heavy construction equipment. Since this alternative would not include the proposed prohibition on the use of pile drivers (which generate the highest noise levels during construction) that is proposed as part of the amended DA, it could result in higher noise levels than the proposed project. The use of pile drivers could also generate stronger vibration levels than anticipated and would require mitigation under this alternative.

Impacts to transportation and traffic would be similar to the proposed project, as Alternative 2 could still conflict with General Plan and West Berkeley Plan policies that encourage vehicle trip reduction and increased transit use, unless Bayer continues to implement its Transportation Demand Management (TDM) Program, and mitigation may be required during CEQA analysis for future projects to ensure Bayer continues to implement and update the TDM program. New development under Alternative 2 would also be located in a Low VMT area, thus impacts related to VMT would remain less than significant. Similar to the proposed project, future roadway modifications would be limited to new driveways and enhancements to pedestrian facilities, and Bayer would also continue to operate its own emergency vehicles and equipment to respond to emergency needs on site, resulting in less than significant impacts to traffic hazards and emergency access.

Similar to the proposed project, future projects involving ground disturbance on the Bayer Campus could encounter tribal cultural resources that may later be recommended as tribal cultural resources by tribal organizations. Mitigation measures would be required to ensure impacts remain less than significant.

Reducing buildout under Alternative 2 would result in less water use, wastewater generation, and solid waste compared to the proposed project, and would not result in the relocation or construction of electricity, natural gas, or telecommunication facilities.

The City rejects Alternative 2 because this alternative would not achieve all the applicant's project objectives to configure and design facilities to attract talent and partners; to promote employee wellness through open green space and pedestrian and bicycle circulation; and to maximize the productive utilization of the site. Further, the lower height limit and discretionary review process could also interfere with achieving the business goals of speedy deployment and flexible development. In addition, Alternative 2 would not meet the City's objective to create employment opportunities, encourage appropriate economic and business development, and promote development of manufacturing and life sciences activities.

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**5.1.2 Alternative 3: Reduced Parking Alternative.** Alternative 3 assumes that the parking structure planned on the property between Dwight Way, Seventh Street, Parker Street, and Eighth Street would not be constructed. The planned parking structure east of Seventh Street is expected to accommodate 925 of the 1,825 parking spaces contemplated in the proposed project for the whole Bayer Campus. Under this alternative, the property east of Seventh Street would remain a surface parking lot with 250 parking spaces. This alternative would not add more parking spaces than proposed on the rest of the Bayer Campus. As a result, the Bayer Campus would have 675 fewer parking spaces. Except for the proposed parking garage east of Seventh Street, this alternative would allow for the same buildout of program space as compared to the proposed project.

Findings: Under Alternative 3, there would be 675 fewer parking spaces than the proposed project, which would lead to fewer new vehicle trips and mobile emissions during the operation phase, and result in less than significant impact to consistency with air quality plans. Since the planned buildout would be the same under this alternative, construction would result in a similar scale of construction-related emissions and TACs, and mitigation measures would be required to reduce construction impacts to a less than significant level.

Similar to the proposed project, Alternative 3 would involve the renovation of building B83, a historical resource under CEQA. Mitigation measures would apply to reduce impacts on historical resources to a less than significant level. By retaining the surface parking lot to the east of Seventh Street, this alternative would involve less ground disturbance than proposed. However, the project site and its vicinity are archaeologically sensitive and buried archaeological resources may exist on-site. Construction under this alternative could also disturb buried resources, and mitigation measures would also be required to study, test, avoid, evaluate, recover, and monitor archaeological resources and human remains and reduce impacts to a less than significant level.

Alternative 3 would not alter the planned buildout of the Bayer Campus, so greenhouse gas emissions from the construction of new facilities would remain the same. However, since the alternative provides 675 fewer parking spaces, it would result in a greater net decrease in greenhouse gas emissions than the proposed project.

Similar to the proposed project, Alternative 3 would allow for construction that could result in the disturbance of unanticipated hazardous materials and wastes during demolition and grading activity. It would also involve the use, storage, disposal, and transportation of similar quantities of hazardous materials relative to the proposed project. Although both options would comply with the latest biosafety guidelines adopted by the NIH and the CDC as well with all building, fire, and safety codes, mitigation measures would still be required to reduce impacts on hazards and hazardous materials to a less than significant level.

Alternative 3 would not alter the planned buildout of the Bayer Campus, and would allow for a similar scale of construction activity relative to the proposed project, resulting in similar construction noise. Because this alternative would not include the planned parking structure east of Seventh Street, noise-sensitive residences along Dwight Way would be exposed to less construction noise. However, construction on Bayer Campus could generate temporary noise levels exceeding the City's thresholds at sensitive receptors near the Bayer Campus, and mitigation measures would still be required to minimize construction noise to the extent feasible. 675 fewer parking spots under Alternative 3 would reduce the number of vehicle trips during operation of the Bayer Campus, which would result in a smaller effect on traffic noise relative to the proposed project. On-site operational noise from stationary equipment would remain the same. Vibration levels would also be similar in both the proposed project and this alternative since pile drivers would be prohibited and both options would result in the similar use of vibration-generating construction equipment.

Alternative 3 would result in fewer vehicle trips and greater transit use than the proposed project since there are fewer parking spaces. The reduction in parking spaces would be consistent with General Plan and West Berkeley Plan policies that encourage vehicle trip reduction and increased transit use. However, mitigation measures would still be required to ensure the continued implementation and update of the TDM Program. Similar to the proposed project, new development under Alternative 3 would be located in a Low VMT Area. By

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limiting on-site supply of parking, this alternative would further reduce vehicle travel resulting in less than significant impacts on VMT. Under Alternative 3, future roadway modifications would be limited to new driveways and enhancements to pedestrian facilities, and Bayer would also continue to operate its own emergency vehicles and equipment to respond to most emergency needs within the project site. Therefore, impacts to traffic hazards and emergency access would be less than significant.

By retaining the surface parking lot to the east of Seventh Street instead of converting it to a parking structure, this alternative would involve less ground disturbance than proposed. However, similar to the proposed project, it is possible that ground disturbance under this alternative would encounter tribal cultural resources that may later be recommended as tribal cultural resources by tribal organizations. Mitigation measures would still be required under Alternative 3 to reduce impacts on tribal cultural resources to a less than significant level.

Alternative 3 would not alter the planned buildout of the Bayer Campus, and would result in less than significant impacts related to water supplies, wastewater facilities, and solid waste. Similar to the proposed project, buildout of this alternative would not result in the relocation or construction of electricity, natural gas, or telecommunication facilities. Therefore, the impact related to relocating or constructing such facilities would remain less than significant.

The City rejects Alternative 3 because although this alternative would generally meet all three project objectives, it would provide fewer parking spaces than planned which could conflict with the project objective to maximize Bayer's ability to attract and retain top talent and partners. This alternative may also conflict with the City's goals to create employment opportunities for Berkeley residents and encourage appropriate economic and business development.

## **5.2 Environmentally Superior Alternative**

Section 15126.6(e)(2) of the CEQA Guidelines requires that an environmentally superior alternative be identified among the selected alternatives. While the No Project Alternative would be the overall environmentally superior alternative since it would avoid all project impacts, the No Project Alternative would not achieve the basic project objectives.

Among the development options, Alternative 3 would be the environmentally superior alternative. The Reduced Parking Alternative would result in fewer vehicle trips, which would reduce the proposed project's impacts related to air quality, GHG emissions, noise, and transportation. These impacts would remain less than significant with mitigation incorporated. Nonetheless, because the proposed project would not have any significant and unavoidable impacts, the alternative would not be required to avoid such impacts. While the alternative would largely meet the project objectives, the limited parking supply with planned buildout could conflict with the objective to maximize Bayer's ability to attract and retain top talent and partners.



**AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF  
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THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Agreement") is entered into this [ ]th day of [month], 2021, between BAYER HEALTHCARE LLC ("Bayer"), and the CITY OF BERKELEY, ("City") pursuant to the authority of Sections 65864 et seq. of the California Government Code, sections 22.16.010 et seq., of the Berkeley Municipal Code<sup>1</sup> establishing Development Agreement Procedures, and the "Large Site Development Process" authorized by the West Berkeley Plan, as incorporated into the Berkeley General Plan.

**RECITALS AND FINDINGS**

This Agreement is based on the following facts, understandings and intentions of the parties:

- A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature enacted the Development Agreement Statute (Government Code, Section 65864 et seq.), which authorizes any city to enter into binding, long-term agreements with persons or entities having legal or equitable interests in real property, for which agreements provide for the development of the property.
  
- B. The City, by Ordinance No. 6033 - N.S., dated March 5, 1991, adopted procedures for the processing, consideration and implementation of development agreements, now set forth in Berkeley Municipal Code sections 22.16.010 et seq. Berkeley Municipal Code section 22.16.040 provides that a development agreement shall set forth the permitted uses of the subject property; the general location and density or intensity of uses; the general location, maximum height and size of proposed buildings; and provisions for reservation or dedication of land for public purposes. A development agreement may also include conditions, terms, restrictions, and requirements for Subsequent discretionary actions.

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<sup>1</sup> All citations to the Berkeley Municipal Code herein shall refer to the version of the Code existing upon the date of execution of this Agreement.

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- C. The current West Berkeley Bayer Campus, and the surrounding Berkeley neighborhood, are subject to the West Berkeley Plan, which was adopted as an amendment to the General Plan in 1993. The principles of the West Berkeley Plan were enshrined in the City's legislatively sanctioned 1991 "Preferred Land Use Concept" for the West Berkeley Area Plan, which preceded formal adoption of the West Berkeley Plan. The purpose of the West Berkeley Plan is to set forth guidelines for a range of land uses in West Berkeley, and to provide important points of reference in making land use decisions on specific projects. (See West Berkeley Plan, Land Use Section, at "Goals and Policies.)
- D. Both the 1991 "Preferred Land Use Concept" for the West Berkeley Area Plan and the West Berkeley Plan set forth a "Large Site Development Process" for sites of at least 5 acres in West Berkeley that propose to use a development agreement as an alternative land use entitlement.
- C. Pursuant to Berkeley Municipal Code sections 22.16.030(E), the City Council, on April 16, 1991, determined that a development agreement was the appropriate form of entitlement for the buildout of a West Berkeley Campus for Miles, Inc., now owned and operated by Bayer, under Berkeley Municipal Code sections 22.16.010 et seq. and the 1991 "Preferred Land Use Concept," which would subsequently become the West Berkeley Plan. Accordingly, on February 25, 1992 City entered into a development agreement with Miles Inc. ("1992 Development Agreement"). Miles Inc. subsequently changed its corporate name to Bayer Corporation. Bayer HealthCare LLC is an affiliate of Bayer Corporation and is a successor in interest to the Project Site as defined herein and to the rights and obligations of the 1992 Development Agreement.
- D. The 1992 Development Agreement recitals stated that the Miles Inc. (now Bayer) campus was a large-site development project, and further concluded that the use of a development agreement for the site was appropriate under the April 9, 1991 version of the Preferred Land Use Concept for the West Berkeley Area Plan, and was consistent with the City's General Plan. The 1992 Development Agreement recitals further stated that the agreement was being entered pursuant to Ordinance No. 6033 (subsequently codified as Berkeley Municipal Code Chapter 22.16).

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- E. In 1993, the City of Berkeley formally amended the Berkeley General Plan to adopt the West Berkeley Plan.
- F. On June 10, 1999, City entered into the First Amendment to Development Agreement between the City of Berkeley and Bayer (A Corporation Formerly Named Miles Inc.) ("1999 Amendment"), which amended the 1992 Development Agreement to reallocate square-footage assigned for production and utilities uses to administration and laboratory uses, change permitted uses within particular blocks of the Bayer Campus, and change planning and architectural design guidelines along public right of ways, in all affecting 230,000 square feet of building space. On July 21, 2000, independent of the 1992 Development Agreement as amended, the City approved Use Permit #00-10000008 for 14.4 acres of property owned by Bayer located west of Seventh Street and south of Carleton Street ("South Properties Use Permit").
- G. Bayer HealthCare LLC is a corporation duly organized under the laws of the State of Delaware, is in good standing thereunder, and is duly qualified to conduct business in the State of California. Bayer represents that on the Effective Date it possesses a legal or equitable interest in Parcels 54-1770-8-1, 54-1773-3-4, 54-1777-1, 54-1777-2, and 54-1748-2-1, within the City of Berkeley, collectively consisting of 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, as well as a parcel located at the southeast corner of the intersection of Dwight Way and Seventh Street (collectively, "Project Site"). The Project Site consists of The North Properties at 800 Dwight Way, which comprises 31.9 acres north of Carleton Street; and The South Properties at 801 Grayson Street, which comprises 14.4 acres south of Carleton Street.
- H. The Project Site is currently home to the Bayer Campus, consisting of 36 buildings developed under the 1992 Development Agreement, the 1999 Amendment, and the South Properties Use Permit.
- I. City and Bayer have reached accord on, and desire to express herein, an Amended and Restated Development Agreement, extending the initial term of the 1992 Development Agreement by 30 years. This accord builds upon the 1992 Development Agreement and

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associated relationship between the City and Bayer and is designed to permit the continued development and operation of the Bayer Campus at the Project Site pursuant to conditions that are in the best interests of the public and the City, and at the same time facilitate an economically feasible development. It is the intent of the City to grant certain development and use rights in the Project Site to Bayer and obligate Bayer to limit its scope of development in accordance with this Agreement, which governs permitted uses, density and intensity, height, and requirements for Subsequent discretionary actions, and to provide additional public benefits in the form of environmental mitigations, community benefits, fees, property dedications, and public improvements.

- J. The Project as defined herein is compatible with the uses authorized in the zoning district governing the Project Site, and with the existing uses of the Bayer Campus. This Agreement provides that development on the Bayer Campus shall be governed by current City land use regulations now in effect, subject to certain alternative height limits, development standards, design guidelines, and development approval procedures set forth in this Agreement, and shall comply with certain future City ordinances as set forth in Article 3 of this Agreement. As provided in the 1992 Development Agreement, to the extent the Project contains buildings which exceed the standard height limits identified in the City's standard Mixed Manufacturing zoning district, the need for these heights has been substantiated by engineering, land use, and environmental analyses that the City has evaluated, which are included as **Exhibit F** to this Agreement. The aesthetic impacts of this development plan have been evaluated in the Bayer HealthCare LLC Development Agreement Amendment Project's Subsequent Environmental Impact Report (SCH# 2020100559) and determined to be less than significant.
- K. Bayer is engaged in the business of developing, manufacturing and distributing therapies for human health and has been conducting this business for the last thirty years at the Project Site. Bayer's Berkeley operations currently employ approximately 1,000 employees, making Bayer Berkeley's largest private-sector employer. Bayer aims to continue the development of patient therapies based on biotechnology, maintain the capacity to pursue multiple research tracks simultaneously, and focus on the development and production of specific therapies to address significant medical needs throughout the term of this Agreement. Product development encompasses many stages from the discovery or initial research on a



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potential new pharmaceutical product, through regulatory approval, to initial commercialization. As a consequence, long range planning and the expedition of various stages of manufacturing is essential to Bayer's ability to deliver therapies to patients as quickly as possible.

- L. Bayer wishes to continue to use its current site in Berkeley as a world-wide center for the development and implementation of the methods and facilities discussed above. Bayer further wishes to maximize its ability to attract and retain top talent and partners by ensuring that the campus' physical configuration and design support this goal and facilitate and enhance the Project Site's existing and future ability to support the biotech development and manufacture of medicines that improve patient outcomes. In order to accomplish this, Bayer seeks to maximize the productive utilization of the land areas and current buildings to take new treatments through biotech development and manufacturing, with a priority on commercializing new therapies using new and innovative technologies.
  
- M. Bayer intends to apply for various land use and building approvals in connection with the implementation of the Project during the term of this Agreement, including one or more zoning certificates, administrative use permits, design review approvals, building permits and certificates of occupancy as described more fully in this Agreement.
  
- N. Continued development of the Project Site in a comprehensive fashion as contemplated in this Agreement will result in substantial public benefits to West Berkeley and the City at large, its residents, and surrounding communities. Among other public benefits, the Project will further cement Berkeley's standing as a destination for research and development of therapies providing a large biotech anchor to:
  - (1) enable the continued productive use of industrial property in the City;
  
  - (2) expand the City's property tax base;
  
  - (3) provide publicly accessible open space in West Berkeley;
  
  - (4) continue to conduct and evolve operations in a sustainable manner that will assist in reducing greenhouse gas emissions, including the continuation and enhancement of

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Bayer's Transportation Demand Management Program, as outlined in **Exhibit H**, and sourcing of 100 percent renewable energy by 2030; and

- (5) support a variety of community programs as set forth in the Exhibits to this Agreement, including funding for STEAM/career technical education, affordable housing, childcare, public art, initiatives to advance carbon neutrality, initiatives to address inequities in health status among Berkeley residents, and programs designed to support locally-owned businesses, entrepreneurship, and/or general wealth building for disadvantaged members of the community.
- O. In consideration of the approval of vested and other development rights under this Agreement, the City has negotiated for and shall receive from Bayer the community investments and benefits set forth in **Exhibit D** and **Exhibit H** of this Agreement, in the full amounts and on the schedule specified therein. The City finds these investments will benefit the public welfare and reflect the priorities of the City Council and the community.
- P. **[PLACEHOLDER FOR CITY PLANNING COMMISSION ACTION ON AMENDED AND RESTATED DA AND CITY COUNCIL ACTION ON SEIR]**
- Q. **[PLACEHOLDER FOR CITY ACTION ON AMENDED AND RESTATED DA ORDINANCE]**.
- R. **[PLACEHOLDER FOR CITY FINDING OF CONSISTENCY, IF SO FOUND]**: The City Council finds that this Development Agreement furthers, and is not detrimental to, the public health, safety, and general welfare, including the health safety and welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; that the Agreement is consistent with the City's current General Plan and the West Berkeley Plan; that the mitigations adopted in the Project's Mitigation Monitoring and Reporting Program, as identified in **Exhibit E**, have been duly considered by the City; that the Project's Subsequent Environmental Impact Report completely and accurately identifies and properly mitigates the impacts of the Project; and that this environmental review complies with the provisions of the California Environmental Quality Act. This Agreement has been approved in accordance with the City's ordinances, rules and regulations for the approval of development agreements.

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**AGREEMENT**

**ARTICLE 1: DEFINITIONS**

Section 1.1. "Bayer" refers collectively to Bayer HealthCare LLC, a limited liability company organized and existing under the laws of the State of Delaware. As used in this Agreement, the term "Bayer" includes any successor in interest to Bayer HealthCare LLC, as authorized and permitted under this Agreement.

Section 1.2. "Bayer Campus" refers to Bayer's property, operations, and buildings within the Project Site.

Section 1.3. "City" is the City of Berkeley, a municipal corporation organized and existing under the Berkeley City Charter and the laws of the State of California.

Section 1.4. "City Council" is the City Council of the City.

Section 1.5. "City Manager" is the City Manager of the City or the City staff person they designate to carry out all or part of the City's responsibilities for implementing this Agreement.

Section 1.6. "Design Review Committee" is the Design Review Committee of the City.

Section 1.7. "Days" shall refer to calendar days.

Section 1.8. "Effective Date" is the date this Agreement is executed by the City Manager pursuant to Section 6.18 hereof.

Section 1.9. "Enacting Ordinance" means City Ordinance No. [New Ord #], enacted by the City Council on [date], 202[1], approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full, and a copy of this ordinance is attached hereto as Exhibit I.

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Section 1.10. "Existing Ordinances" means Ordinances in effect as of the Effective Date, including the Enacting Ordinance. Bayer shall have the right to waive its vested rights as to any particular vested law, regulation, development standard, or other requirement, at its sole discretion, consistent with the terms of Section 3.2 of this Agreement.

Section 1.11. "Future Ordinances" means Ordinances enacted after the Effective Date, and includes amendments which may be made to Existing Ordinances.

Section 1.12. "Ordinances" means the ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, improvement, and construction standards and specifications applicable to the use and development of the Project Site. Said Ordinances include without limitation the City's General Plan, the West Berkeley Plan, Zoning Ordinances, and building standards.

Section 1.13. "Original Agreement" means the 1992 Development Agreement, as amended by the 1999 Amendment.

Section 1.14. "Planning Commission" is the Planning Commission of the City.

Section 1.15. "Project" means the planned further development of the Project Site or a portion thereof from the years 2022 to 2052 in accordance with this Agreement, including **Exhibits C and H** hereto.

Section 1.16. "Project Site" means that certain real property graphically depicted on **Exhibit A** and legally described in **Exhibit B**.

Section 1.17. "Reserved Discretionary Approvals" means any Subsequent land use or development permits or entitlements applied for by Bayer or its successors in interest with respect to development of the Project, the approval of which requires the exercise of discretion on the part of any City office, board, or body having jurisdiction with respect thereto. The Reserved Discretionary Approvals, as identified in **Exhibit C**, shall include the following as

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applicable to the Project, unless otherwise exempt from a discretionary approval by this Agreement:

- (a) Administrative Use Permits.
- (b) Design Review.
- (c) Variance.
- (d) Environmental Review. Any required additional environmental review or procedures that may be applicable to the above-mentioned approvals.

Section 1.18. "Subsequent" means occurring after the Effective Date.

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**ARTICLE 2: LIST OF EXHIBITS**

- EXHIBIT A. SITE MAP
- EXHIBIT B. LEGAL DESCRIPTION OF PROJECT SITE
- EXHIBIT C. SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES
- EXHIBIT D. COMMUNITY BENEFITS
- EXHIBIT E. MITIGATION MONITORING AND REPORTING PROGRAM
- EXHIBIT F: REPORT ON JUSTIFICATION FOR HEIGHTS IN EXCESS OF FORTY-FIVE FEET
- EXHIBIT G: MANUFACTURING AND DEVELOPMENT ACTIVITIES,  
ENVIRONMENTAL SAFETY
- EXHIBIT H: TRANSPORTATION DEMAND MANAGEMENT PROGRAM
- EXHIBIT I: COPY OF EXISTING ORDINANCES

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**ARTICLE 3: DEVELOPMENT OF PROJECT SITE**

Section 3.1. General. Bayer shall have the vested right to develop the Project on the Project Site and City shall have the right to regulate development and use of the Project Site in accordance with the provisions of this Agreement.

Section 3.2. Applicable Ordinances. The Ordinances that apply to the Project, and are vested, under this Agreement are as follows:

- (a) *Existing Ordinances.* Subject to the terms of this Agreement, including without limitation **Exhibit C** of this Agreement, the Existing Ordinances shall control development of the Project. Except as otherwise provided in this Agreement, to the extent that any Existing Ordinances are in conflict with this Agreement, this Agreement shall prevail, unless the parties mutually agree to amend or modify this Agreement pursuant to Article 5 hereof.
- (b) *Future Ordinances.* To the extent that any Future Ordinances, whether adopted by the City Council or by initiative, are not in conflict with this Agreement and Existing Ordinances, such Future Ordinances shall be applicable to the Project. Future Ordinances, whether adopted by the City Council or by initiative, that are in conflict with this Agreement and Existing Ordinance shall not be applicable to the Project.
- (c) *Other future regulations.* Notwithstanding any other provision of this Agreement, state, federal, building, health and safety, and other rules shall apply to the Project as set forth in Sections 3.7, 3.8, and 3.9 of this Agreement.
- (d) *Conditions of approval.* This Agreement shall not prevent the City from denying or reasonably conditioning approval of any application for a Subsequent discretionary or ministerial approval for the Project on the basis of Existing Ordinances, Future Ordinances, and/or this Agreement to the extent they are applicable to the Project Site under this Article 3 and do not conflict with vested rights under this Agreement. This provision shall not be construed in any way as a waiver of Bayer's rights against unlawful takings and exactions under state and federal law.

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(d) *Conflicting Ordinances.* For purposes of this Agreement, an Ordinance or condition shall be deemed to conflict with this Agreement or Existing Ordinances if (1) there is an express inconsistency between the language of the Ordinance or condition and the terms of this Agreement or Existing Ordinances that makes it impossible for Bayer to comply with its obligations thereunder, or (2) implementation of the Ordinance or condition would materially limit the ability of Bayer to construct and operate the Project according to the terms of the Agreement and/or the Existing Ordinances. Examples of Future Ordinances or conditions that would conflict with the terms of this Agreement and/or Existing Ordinance include, without limitation, Future Ordinances or conditions that modify permitted uses of the Project Site, the density and intensity of such uses, the maximum height and size of proposed buildings, the requirements for reservation and dedication of land for public purposes, requirements associated with Subsequent discretionary approval processes (including without limitation the imposition of new discretionary permitting or approval processes), fee calculation methodologies, development standards, design guidelines, amendments to the City's Natural Gas Prohibition Ordinance under Berkeley Municipal Code Chapter 12.80 or the imposition of other energy requirements that render construction or operation of the Project technologically or otherwise infeasible, and any regulations materially interfering with Bayer's ability to undertake the scope of activities set forth in the Exhibits to this Agreement. However, Future Ordinances addressing solar infrastructure requirements, energy conservation, water conservation, or recycling requirements would not be in conflict with the Agreement.

(e) *Waiver of vested rights.* Notwithstanding the above, Bayer shall have the right, at its sole election, to waive any of the foregoing vested rights, in whole or in part, in conducting construction or operations on the Project Site or in pursuing any particular Reserved Discretionary Approval or other entitlement.

Section 3.3. Reserved Discretionary Approvals. Development of the Project Site shall be subject to the Reserved Discretionary Approvals of **Exhibit C**. In reviewing applications for administrative use permits and other Subsequent discretionary approvals, City may exercise design review authority consistent with the provisions of **Exhibit C** and any Applicable Ordinances as set out in Section 3.2, and may attach such conditions and requirements as may



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be necessary or appropriate so long as they are consistent with such provisions of **Exhibit C** and any of the Ordinances that apply as set forth in this Article 3.

Section 3.4. Processing of Subsequent Approvals. The parties recognize that in order to implement the further development of the Project Site as contemplated in this Agreement, Bayer must obtain Subsequent land use and building approvals from City including, without limitation, administrative use permits, zoning certificates, design review approvals, building permits, demolition permits, and/or certificates of occupancy. Provided that Bayer exercises reasonable diligence, acts in good faith, pays all required processing fees, and files full and complete applications in conformity with this Agreement and Applicable Ordinances, as set forth in this Article 3, City shall expeditiously review and process all applications for Subsequent approvals required to develop the Project. City shall use its best efforts to process and act upon all such applications within the following time periods following submission of a complete application to City and completion of any required CEQA review, or as soon thereafter as is reasonably practicable:

- (a) Administrative Use Permits – One hundred and twenty (120) Days
- (b) Staff-level Design Review – One hundred and twenty (120) Days
- (c) Design Review Committee Approval – One hundred and eighty (180) Days
- (d) Final Design Review – Within forty-five (45) Days of submitting a complete application.
- (e) Other ministerial approvals, including without limitation zoning certificates, building permit submittals, , electric, mechanical and plumbing permit submittals, and other construction-related work submitted and reviewed as part of the City's ministerial review processes. City shall complete initial plan checks and/or other necessary reviews and notify Bayer of any deficiencies within thirty (30) business days following the date the plans and supporting documentation are submitted for review and shall provide Subsequent plan checks and or other reviews, if necessary, within fifteen (15) business days from the date corrected or revised plans are submitted for review. Inspections (including final inspections) shall be conducted within three business days of Bayer's notification to the City that construction has been completed, and certificates of

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occupancy shall issue within five business days of a final inspection confirming improvements substantially comply with approved plans.

- (f) Applicable engineering and/or utility permits. Such permits shall be subject to the schedule for ministerial permits identified in section 3.4(e).

The above time periods shall be extended if necessary to achieve compliance with the California Environmental Quality Act or other applicable State or Federal laws or regulations. Notwithstanding the above, the City agrees to make best efforts to process any necessary negative declarations or mitigated negative declarations within six months of determining a project application is complete (or such application being deemed complete), and any environmental impact reports within one year of determining a project application is complete (or such application being deemed complete). Provided that the City makes best efforts to meet the timelines set forth in this Section, the failure to meet any such timeline shall not be a breach of this Agreement.

Section 3.5. Development Impact and Processing Fees. All City approvals, permits, and entitlements relating to the Project shall be subject to generally-applicable application, processing, and inspection fees in effect at the time the approvals, permits, and entitlements are issued.

As to all other fees imposed by ordinance ("City Fees"), including without limitation all development impact fees, all city approvals, permits, and entitlements relating to the Project shall be subject only to those City Fees in effect at the time the Enacting Ordinance becomes effective except to the extent modified under **Exhibit D**. As used in this paragraph, the term "development impact fees" shall mean monetary exactions which are charged by City to Bayer in connection with any approval, permit, or entitlement relating to the Project, for the purpose of defraying all or a portion of the cost of public facilities, programs, or services related to the Project pursuant to BMC Section 22.20.

Section 3.6. Other Governmental Permits. At its sole expense, Bayer shall apply for and obtain such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the

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development of, or provision of services to, the Project consistent with this Agreement. To the extent City has approved an application for a Subsequent Project approval, it shall cooperate in good faith by providing any information, documents, or consents within the City's control that are consistent with the City's approvals that are reasonably necessary for Bayer to process applications for such other government approvals. The requirements of this Section shall not be construed as limiting the City's discretion to approve or deny any Subsequent Project approval or as obligating the City to undertake any new studies or analyses.

Section 3.7. Building Standards. Ordinances establishing building standards, including without limitation the California Building Code, California Energy Code, California Green Building Standards, California Electrical Code, California Plumbing Code, California Fire Code, and California Mechanical Code (including any local amendments thereto adopted by the City), which are adopted or revised during the term of this Agreement, shall apply as of the time of granting construction and building permits for development of the Project.

Section 3.8. Health or Safety Ordinances. This Agreement shall not be construed to limit the authority of City to adopt and apply to the Project Future Ordinances or other Subsequent requirements or conditions which the City determines to be necessary to protect persons from a condition that is dangerous to their health, safety, or both. Examples include, without limitation, measures applicable to access for persons with disabilities; life safety systems; hazardous materials storage, transportation or disposal; fire protection; health officer orders and directives; and seismic safety. Notwithstanding the above, the adoption of any Ordinances under this Section shall not interfere with Bayer's otherwise lawful activities and development rights as set forth in **Exhibits C and G** of this Agreement or Bayer's ability to handle materials subject to Biosafety Level 1 and Biosafety Level 2 standard practices, as defined by the United States Department of Health and Human Services Centers for Disease Control and Prevention and National Institutes of Health and according to the terms set forth in **Exhibits C and G**.

Section 3.9. State and Federal Requirements. This Agreement shall not preclude the application to the development and use of the Project Site of changes in Ordinances, the terms of which are specifically mandated by, or are necessary for the City to come into compliance with, State or Federal laws or regulations, as provided in Government Code section 65869.5. In the event that State or Federal laws or regulations, or actions by any governmental jurisdiction other than City,

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prevent or preclude compliance with one or more provisions of this Agreement, or require changes in approvals issued by City, this Agreement shall be modified, extended or suspended to the extent reasonably necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental jurisdiction.

Section 3.10. Bayer's Obligations. The City Fees, any dedications of land, construction and financing of public improvements, and other community benefits and environmental mitigations and monitoring programs to be undertaken by Bayer in connection with the development of the Project Site shall be as set forth in Exhibits D, E, G, and H to this Agreement. The community benefits and mitigation measures in the foregoing Exhibits constitute the community benefits that Bayer is obligated to perform, and any and all exhibits to the 1992 Development Agreement and the 1999 Amendment are superseded and void. All monetary payments to be made by Bayer for dedications of land, construction and financing, benefits, and environmental mitigations and monitoring programs under this Agreement shall be adjusted for inflation. Such adjustments shall be applied as of the first business day of each new year following the Effective Date except that no adjustment shall be made at the beginning of 2022. Adjustments for inflation and deflation shall be based upon the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the Bay Area (San Francisco-Oakland-Hayward), not seasonally adjusted, using the Effective Date as a baseline for calculations, except to the extent specifically provided for in this Agreement.

The maximum buildout of the site will be in accordance with the maximum allowable levels identified in the Site Development Plan in Exhibit C, a level less than the aggregate amount entitled under the Original Agreement and the South Properties Use Permit. The parties acknowledge that Bayer cannot at this time predict whether Project buildout will occur to the maximum allowable levels identified in the Site Development Plan in Exhibit C. Future decisions with respect to actual Project buildout will depend upon a number of circumstances not entirely within the control of Bayer, including without limitation the success of its research efforts, demand for patient therapies, the development of new products, regulatory approvals, and marketing considerations. Decisions with respect to the extent of future Project buildout shall be within the exercise of Bayer's good judgment, so long as the Project is developed in accordance with the provisions of this Agreement. Bayer's decisions regarding the timing or extent of Project buildout shall not affect its obligation to provide the community benefits in accordance

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with this Agreement. This section does not limit or modify the procedures and remedies described in Article 4.

In the event of a third-party challenge to the City's approval of this Agreement in which the court has ordered a stay of the City's approval of this Agreement, Bayer shall not be obligated to make any community benefits payments under **Exhibit D** for so long as the stay remains in effect, unless the parties have agreed to toll the Term of this agreement. Upon termination of the stay, Bayer shall pay a pro-rated amount of the community benefits payment that would have been due for the year in which the stay is terminated. Notwithstanding the foregoing, Bayer shall not be relieved of its obligation to pay development impact fees as and when due. In the event of a successful third-party challenge to the City's approval of this Agreement, if Bayer has constructed or is operating any portion of the Project and the court order, judgment, or other decision does not require the removal of facilities or cessation of activities, the City shall not independently seek removal or cessation of such facilities or activities.

Section 3.11. Right of Way Dedication. The parties have discussed their various interests and determined that Bayer shall have no further obligations to dedicate public rights of way or other interests.

Section 3.12. General Provisions With Respect to Financing Public infrastructure. Insofar as applicable state and federal laws and City Ordinances require the construction of public infrastructure necessary to address demands and/or impacts of Bayer and third parties, and to the extent Bayer wishes to construct such public infrastructure in advance of governmental plans under an applicable capital improvement program or other plan, City and Bayer agree to cooperate in good faith to explore the use of reimbursement agreements and/or public financing mechanisms for the provision of public infrastructure relating to the Project Site. To the extent public infrastructure is not a negotiated benefit of this Agreement, Bayer reserves its rights to seek reimbursement for amounts exceeding its fair share contribution to the subject public infrastructure from the appropriate governmental entity.

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**ARTICLE 4: PERIODIC REVIEW OF AGREEMENT**

This Agreement shall be subject to annual review on April 1, [2023] and each April 1 thereafter during the term of this Agreement pursuant to Berkeley Municipal Code sections 22.16.070. To meet its responsibilities under Berkeley Municipal Code section 22.16.070.A.2, Bayer must submit a report which includes, in addition to other information submitted by Bayer or reasonably determined necessary by the City Manager, the following:

- (a) The total square footage developed for private use on the Project Site, and its level of compliance with Exhibit C;
- (b) The public space constructed, by category and location;
- (c) The status of implementation of the provisions of Exhibits D and E to this Agreement;  
and
- (d) Bayer's proposed schedule for further development of the Project over the remaining Term of this Agreement to the extent such is reasonably foreseeable.

In conjunction with each annual review, upon the request of either party, the parties shall meet in good faith to discuss and reasonably attempt to resolve any issues raised by that party as to the other party's compliance with this Agreement. If, following such annual review, the City Manager finds that Bayer is not in compliance with the terms of the Agreement, the City Manager shall give Bayer written notice specifying the respects in which Bayer has failed to comply, and shall set forth terms of compliance and specify a reasonable time consistent with Section 6.3 of this Agreement for Bayer to meet the terms of compliance. If Bayer does not comply with any terms of compliance within the prescribed time limits, the Agreement shall be subject to termination or modification pursuant to Berkeley Municipal Code section 22.16.080B.

The parties understand that the Site Development Standards and Design Guidelines (Exhibit C) reflect the maximum allowable buildout envisioned for the Project and that failure to achieve the maximum allowable buildout as reflected in the Site Development Plan shall not constitute failure to make reasonable progress toward buildout of the Project. Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to otherwise enforce the

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provisions of this Agreement, nor shall Bayer have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.

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**ARTICLE 5: AMENDMENT**

Section 5.1. In General. Except as provided in Article 4, this Agreement may be canceled, modified, or amended only by mutual written consent of the parties, in accordance with the provisions of Government Code Sections 65867, 65867.5 and 65868, as incorporated by reference into the Berkeley Municipal Code, and Berkeley Municipal Code sections 22.16.050.E, 22.16.050.G, and 22.16.080.A. Bayer intends to retain ownership of, and develop, the whole of the Project Site as contemplated in this Agreement. The parties agree that the sale of a significant portion of the Project Site would materially affect the planning assumptions underlying this Agreement, requiring an amendment hereof.

Section 5.2. Major Amendments. Any amendment to this Agreement which relates to the term, permitted uses, density or intensity of use, maximum height or maximum dimensions of buildings, requirements for reservation or dedication of land for public improvements, changes in production methods set forth in **Exhibit G**, or requirements relating to Reserved Discretionary Approvals, shall require giving of notice and shall require a public hearing before the Planning Commission and City Council pursuant to the provisions of the Berkeley Municipal Code set forth in Paragraph 5.1 above.

Section 5.3. Minor Amendments. The parties acknowledge that refinement and further implementation of the Project might demonstrate that certain minor changes might be appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the parties find that clarifications, minor changes, or minor adjustments are necessary and do not constitute a major amendment under Section 5.2, they shall effectuate such clarifications, minor changes, or minor adjustments through a written Minor Amendment approved in writing by Bayer and the City Manager. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearings, nor shall it constitute an amendment to this Agreement as defined by the Government Code.

Section 5.4. Approved Changes under Conceptual Plan. The Site Development Plan, including all its components as listed in **Exhibit C**, contemplates specific flexibilities in the implementation of the Project, including without limitation the transfer of certain developable areas among



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blocks within the Site Development Plan, the movement of internal roads, and the issuance of variances of development standards and design guidelines. Exercise of these authorized changes to the Site Development Plan in accordance with the procedures and criteria set forth in **Exhibit C** shall not be deemed a Major or Minor Amendment.

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**ARTICLE 6: GENERAL PROVISIONS**

Section 6.1. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site, and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project Site and all successors in interest to the parties hereto.

Section 6.2. Term. The Term of this Agreement shall commence upon the Effective Date and extend until the later of February 25, 2052 or the expiration of thirty (30) years after the Effective Date, unless sooner terminated as provided in Articles 4 of this Agreement. The provisions of this Agreement, including without limitation its vesting provisions, shall apply to any development proposal subject to an application for a Reserved Discretionary Approval that is submitted to City prior to expiration of the Term.

The Term has been established by City and Bayer as a reasonable estimate of the time required to carry out the Project and obtain the public benefits of the Project. In agreeing to the Term, City has determined that this Agreement incorporates sufficient provisions to permit the City to monitor adequately and respond to changing circumstances and conditions in granting Subsequent permits and development approvals and undertaking actions necessary to carry out the Project. Furthermore, the City has determined that this Agreement incorporates sufficient provisions to permit the City to enforce this Agreement and to terminate or modify this Agreement if necessary. If Bayer has not completed development of the Project as identified in **Exhibit C** prior to the expiration of the Term, including nine hundred and eighteen thousand (918,000) square feet of new construction and one million, seven hundred and thirty-eight thousand (1,738,000) square feet in total development, the City and Bayer may jointly elect and mutually agree, in each Party's sole and absolute discretion, to extend the Term of this Agreement for a period of up to five (5) years (the "Option"). Such an Option will not require an Amendment to the Agreement, provided the Option is approved in writing by Bayer and the City Manager prior to the expiration of the Term.

Section 6.3. Default: Remedies. Failure by either party to perform any obligation under this Agreement within thirty (30) business days after written notice thereof from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and the manner in which said

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default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within the thirty (30) business day period, the breaching party shall not be in default if it commences of the cure within such time period and diligently prosecutes the cure to completion. Upon a party's default, the other party, at its option, may institute legal proceedings to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto. In no event shall either party or its officers, agents or employees be liable in damages for any breach or violation of this Agreement (except to the extent the action seeks specific performance of a party's obligation to pay monetary amounts under the Agreement), it being expressly understood and agreed that the sole legal remedy available to either party for a breach or violation of this Agreement by the other party shall be a legal action in mandamus, specific performance, or injunctive or declaratory relief to enforce the provisions of this Agreement. Notwithstanding the above, in the event of default by the City, Bayer shall alternatively have the right to terminate this Agreement by giving City thirty (30) Days prior written notice of its intent to terminate. Upon giving notice of intent to terminate, City may suspend the processing of any pending permit or other application for development of the Project, and any such application shall be deemed withdrawn upon termination of this Agreement.

The waiver by either party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 6.4. Enforced Delay: Extension of Time of Performance. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are proximately caused by war, insurrection, strikes, walk-outs, riots, floods, earthquakes, fires, pandemics, casualties, acts of God, or similar cause which is not within the reasonable control of the party to be excused, or where performance would be inconsistent with state or federal laws or regulations, or with a court order that is not the result of the party's actions or inactions. If written notice of such delay is given to either party within thirty (30) business days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay. This section shall not be construed to extend the term of this Agreement.

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Section 6.5. Cooperation in the Event of Third-Party Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of Subsequent approvals for the Project, the parties hereby agree to cooperate in defending said action or proceeding. Bayer agrees to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorney's fees. City retains the option to employ independent defense counsel at its expense. Bayer further agrees to hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments, or other losses (including without limitation, attorneys' fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval of this Agreement or approval of any Reserved Discretionary Approval. Bayer shall have a right to terminate this Agreement by written notice of termination to the City in the event a third party files a legal challenge to the City's adoption of this Agreement or any concurrent approval so long as the notice of termination is given no later than one hundred and eighty (180) Days after the Effective Date so long as the City files a Notice of Determination with respect to its certification of the Project's Subsequent Environmental Impact Report and, otherwise, no later than two hundred and seventy (270) Days after the Effective Date, and Bayer has not constructed any Project facilities. Upon giving notice termination, any pending permit or other application for development of the Project shall be deemed withdrawn.

Section 6.6. Effect of Termination. Termination of this Agreement shall not affect Bayer's obligation to comply with the standards, terms, and conditions of any land use approvals issued with respect to the Project Site or any portion thereof, nor shall it affect any covenants of Bayer which are specified in this Agreement to continue after termination.

The following provisions of this Agreement shall survive and remain in effect following termination or cancellation of this Agreement for so long as necessary to give them full force and effect: (1) Section 6.5 (Cooperation in the Event of Third-Party Legal Challenge); (2) Section 6.3 (Default; Remedies); (3) Section 6.7 (Legal Actions; Attorneys' Fees); and (4) Section 6.9 (Hold Harmless).

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Section 6.7. Legal Actions; Attorneys' Fees; Voluntary Arbitration. In any legal action for breach or enforcement of this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs. If both parties mutually agree, each in their sole and absolute discretion, the parties may submit an action for breach of this Agreement to non-binding arbitration before a mutually acceptable retired Superior Court or Appellate Court judge. If the parties cannot agree on the selection of a retired Superior Court or Appellate Court judge, then they shall each select a retired Superior Court or Appellate Court judge, and the two selected judges will jointly select a third retired Superior Court or Appellate Court judge to serve as the arbitrator. The arbitrator shall issue such procedural and remedial orders as he/she may deem appropriate. The arbitrator's fees shall be shared equally between the City and Bayer.

Section 6.8. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California and City, as they may be amended, provided that such amendments do not substantially alter the rights granted to the parties by this Agreement. Both parties and their legal counsel have reviewed this Agreement and agree that any rule that ambiguities are to be construed against the drafting party shall not apply. This Agreement, including the text and all exhibits hereto, is intended to be interpreted as an integrated whole. Where provisions appear to be in conflict, they will be harmonized if possible. In the event that an irreconcilable conflict exists between the Agreement text and one or more of the exhibits, the text shall control.

Section 6.9. Hold Harmless. Except for claims, costs and liabilities caused solely by the active negligence, gross active negligence, or willful misconduct of City, its elected and appointed representatives, officers, agents or employees ("City Officials"), Bayer hereby agrees to defend, save and hold City Officials harmless from claims, costs and liabilities for any personal injury, death or property damage which arises, directly or indirectly, from the development or operation of the Project, or from any activities performed under this Agreement by Bayer or Bayer's contractors, subcontractors, agents or employees, whether such activities were performed by Bayer or by any of Bayer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for, Bayer or any of Bayer's contractors or subcontractors.

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Section 6.10. No Joint Venture, Partnership, or Agency. It is specifically understood and agreed by City and Bayer that the development of the Project Site according to the Development Plan is a purely private development. No partnership, joint venture, agency, or other association of any kind between City and Bayer is formed by this Agreement. The only relationship between City and Bayer is that of a governmental entity regulating the development. City and Bayer agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Bayer joint venturers, partners, or agents of one another.

Section 6.11. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

Section 6.12. Further Documents. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 6.13. Notices. Any notice or communication required hereunder between City or Bayer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) business days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Notwithstanding the foregoing, if due to shelter-in-place restrictions or any other reason a party requests in writing to receive notices by electronic mail, then notices to that party thereafter shall be given by electronic mail until such time as the party rescinds the request, provided that if notice sent electronically to the address given is blocked, returned, or otherwise undeliverable, the party may be noticed by the other methods prescribed in this section. Each Party representative noticed by email shall

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provide acknowledgement of receipt as soon as reasonably possible, and notice by electronic mail shall be deemed given on the date acknowledged. If the sender does not receive an acknowledgement within five (5) business days, that notice will nevertheless be deemed to have been received when originally sent by email if no more than ten (10) business days later the sender delivers a written copy of that notice as otherwise provided in this Agreement. If a party sending an email notice under this Agreement receives a machine-generated message that delivery has failed, written notice shall be provided as otherwise set forth in this Agreement. Any party hereto may at any time, by giving ten (10) business days' written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth on the below:

If to City:

City Manager  
2180 Milvia Street  
Berkeley, CA 94704

With copy to:

City Attorney  
2180 Milvia Street  
Berkeley, CA 94704

If to Bayer:

Law & Patents  
Bayer HealthCare LLC  
800 Dwight Way  
Berkeley, CA 94710

With copies to:

Vice President of Site Engineering  
Bayer HealthCare LLC  
800 Dwight Way  
Berkeley, CA 94710

Section 6. 14. Assignment. Bayer has represented to City that it possesses the experience, qualifications and financial resources to carry out the Project and develop the Project Site in the manner specified in the Development Plan. It is because of such qualifications and representations of Bayer that City is entering into this Agreement. Accordingly, certain

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restrictions on the right of Bayer to assign or transfer its interest under this Agreement are necessary in order to assure the achievement of the goals, objectives, environmental mitigations and community benefits of this Agreement. The rights and obligations of Bayer hereunder shall not be assigned or transferred, except that on thirty (30) Days written notice to City, Bayer may assign all or a portion of Bayer's rights and obligations thereunder to any person or persons, partnership, or corporation who purchases all of Bayer's right, title, and interest in the Project and the Project Site, provided such assignee or grantee assumes in writing each and every obligation of Bayer hereunder yet to be performed with respect to the assigned portion of the Project, and further provided that Bayer obtains the written consent of City to the assignment, which consent shall be given so long as the City determines that the assignee has experience, qualifications, and the financial resources sufficient to comply with the terms of this Agreement, which determination shall not be unreasonably delayed or withheld. The notice to City shall include the identity of any such assignee and a copy of the written assumption of the assignor's obligations hereunder pertaining to the portion assigned or transferred. After such notice and the receipt of such consent, the assignor shall have no further obligations or liabilities hereunder. The City Manager shall act on behalf of City regarding any actions concerning the assignment of this Agreement. Within ten (10) Days thereafter, Bayer or any interested person may appeal to the City Council the decision of the City Manager regarding the assignment of this Agreement. If the City fails to consent to an assignment under this section, Bayer shall have the right to terminate this Agreement by thirty (30) days prior written notice to the City. Upon receipt of a notice of intent to terminate, the City may suspend processing of any permit or other applications for the Project, and such applications shall be deemed withdrawn upon termination. City consent to assignment or other transfer under this Section shall not be required for an assignment or transfer resulting from a corporate reorganization, restructuring, merger, or name change involving Bayer and affiliated entities, so long as there is no substantial change in the management or control of Bayer, and Bayer provides City with prior notice of the assignment.

Section 6.15. Right to Lease Project Facilities. The parties acknowledge and agree that Bayer, as owner of the real estate, has the right to lease, sublease or license any portion of the real estate situated at the Project (each a "Project Component") to affiliated or third parties for any purpose consistent with the terms of this Agreement, including, but not limited to constructing, operating, subleasing, and any other use related to producing therapies and medicines. Any



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such lease, license, or sublease ("Lease") of a Project Component shall require the tenant or occupant to comply with the obligations and requirements of this Agreement that would be applicable to such tenant or occupant, including without limitation obligations to limit activities to those set forth in **Exhibit G** of this Agreement and the handling of materials subject to Biosafety Level 1 and Biosafety Level 2 standard practices, as defined by the United States Department of Health and Human Services Centers for Disease Control and Prevention and National Institutes of Health and set forth in more detail in **Exhibit G**. Bayer shall provide City with at least thirty (30) Days prior notice of any such Lease of a Project Component. No consent by the City is required to the extent the aggregate square footage of a Project Component or Project Components subject to a Lease or Leases would comprise, cumulatively, less than three hundred and fifty thousand (350,000) of the usable floor area on the Project Site (the "350,000-square-foot Threshold"). To the extent a Lease would convey rights to use space in excess of the 350,000-square-foot Threshold, the City shall have the right to disapprove the conveyance if it determines, in its reasonable discretion, that the lessee lacks sufficient experience, qualifications, or financial resources to comply with the terms of this Agreement, and the City gives Bayer notice of the disapproval within thirty (30) Days after the City's receipt of the foregoing notice. Notwithstanding any Lease of a Project Component, Bayer shall remain fully liable for its obligations under this Agreement.

Section 6.16. Entire Agreement. This written Agreement, including the exhibits hereto, contains all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, drafts, memoranda, agreements, warranties, or representations are superseded in total by this Agreement. By way of illustration and not limitation, the terms of and any and all exhibits to the 1992 Development Agreement and the 1999 Amendment ("Outdated Exhibits") are void and no longer in effect. The provisions of the exhibits to this Agreement supersede any and all obligations and requirements set forth in the Outdated Exhibits.

Section 6.17. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

Section 18. Warranty of Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly

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organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

Section 6.19. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one and the same Agreement.

Section 6.20. Recordation. Within ten (10) Days after the Enacting Ordinance takes effect, the City Manager shall execute this Agreement on behalf of City, and the City Clerk shall record this Agreement with the Alameda County Recorder. If this Agreement is terminated, modified or amended pursuant to Article 4 or 5 of this Agreement, the City Clerk shall record notice of such action with the Alameda County Recorder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

[SIGNATURE BLOCKS TO FOLLOW]

**EXHIBIT A**  
**Property Map**

**[TO BE PROVIDED IN FINAL DEVELOPMENT AGREEMENT]**



**EXHIBIT B**  
**Legal Description**

**[TO BE PROVIDED IN FINAL DEVELOPMENT AGREEMENT]**



## **EXHIBIT C**

### **Site Development Standards and Design Guidelines**

The overall Site Development is based upon an Urban Campus concept, with the purpose of ensuring efficient and productive operations. The organizational approach is to provide a campus layout that prioritizes pedestrian travel, limits vehicle circulation, and improves outdoor gathering spaces, in order to help foster easier staff collaboration.

#### **Table of Contents**

1. Administration and Implementation
2. Zoning and Permitted Uses
3. Development Standards
4. Design Guidelines

### **1. Administration and Implementation**

#### **1.1 Purpose and Intent**

These conditions pertain to the processing and issuance of the Reserved Discretionary Approvals for the Project. Terms used herein which are defined in the body of the Agreement shall have the meanings previously identified.

#### **1.2 Special Determinations**

The City shall grant Reserved Discretionary approvals for the Project Site so long as the following Specified Determinations can be made, supported by substantial evidence:

- A. General findings:
  - A.1 The application for the Reserved Discretionary Approval sought is complete.
  - A.2 The requested approval, together with conditions attached thereto, is consistent with applicable Ordinances and this Agreement.
  - A.3 Bayer is in compliance with the provisions of the Development Agreement as set forth in the project application for the subject Reserved Discretionary approval.
  - A.4 The project and the Bayer Campus have demonstrated compliance with all applicable mitigations measures as set forth in the Bayer Healthcare DA Amendment Subsequent Environmental Impact Report (EIR) via the included compliance checklist in Appendix B.
- B. Bayer has entered into agreements with, or obtained necessary permits and approvals from, other regional, State or Federal agencies with jurisdiction over all or part of the Project, to the extent necessary for the approval sought.

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- C. To the extent necessary for the approval sought, the requirements of the California Environmental Quality Act (CEQA) have been satisfied. It is anticipated that future applications for discretionary land use approvals needed prior to actual construction of production buildings, parking structures and other improvements will be reviewed to determine whether the Final Supplemental EIR adequately identifies, analyzes and mitigates, as appropriate, significant project-level environmental impacts, including any significant adverse impacts on Aquatic Park. Where the impacts of proposed development activities are not adequately addressed, supplemental environmental analysis will be conducted and appropriate mitigation, as determined by the City pursuant to CEQA Guidelines Sections 15091-15093, shall be required.
- D. The requested approval is consistent with the Site Development Plan and Site Development Standards. The use, location, size and height of any proposed building will be deemed to be appropriate if it complies with the Site Development Plan and Site Development Standards, and deviations therefrom are permitted insofar as the City makes an express finding supporting a variance as described below.
- E. In undertaking the project or activity subject to an approval set forth in Table 1, the applicant meets or commits to meet, to the City's reasonable satisfaction, the City's applicable standard conditions (as provided in Appendix C), which are not in conflict with this Agreement.
- F. The proposal will not adversely affect the public health or safety.

In the event that any of the Specified Determinations required herein for issuance of a Reserved Discretionary Approval cannot be made, approval may nevertheless be granted if unique or special circumstances exist or there are overriding public benefits or considerations with respect to the Project that warrant granting the requested approval consistent with the applicable Ordinances and this Agreement, notwithstanding the inability to make all the special determinations.

Failure of the City to strictly comply with the requirements of this Section shall not invalidate any approval issued by the City in good faith and reasonably relied upon by Bayer.

**1.3 Steps in Discretionary Permit Application Process**

**Table 1 – Permit Requirements**

<b>Development Type</b>	<b>Required Permit</b>	<b>Design Review</b>
Signage not visible from the public right-of-way.	Building Permit	N/A
Guard stations (per Section 3.1.2.F).		
Demolition of buildings subject to permitting processes herein, except to extent subject to Mitigation Measures in the SEIR, as outlined in Appendix B.		
Interior renovations		



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Temporary buildings (trailers or structures).		Plan Check Design Review
Temporary surface parking.		
Active interior private-open space (i.e., fitness usage, barbeque areas, etc.).		
Signage visible from the public right-of-way.		
Fencing		
Construction of buildings or exterior renovation of building areas of less than 40,000 square feet.	Zoning Certificate	Staff-Level Review
Towers, antennae etc. (per Section 3.1.2.D)		
Construction of buildings or exterior renovation of building areas of 40,000 square feet or greater.	Administrative Use Permit	Design Review Committee
Construction of buildings over 45' in height and buildings visible to pedestrians from the adjacent right of way.		
Seventh Street publicly accessible open space plan for zero-build height zone.		
Parking Garages and pedestrian bridge.		

Notes:

Staff, or the Design Review Committee for purposes of review of the parking garages, shall have final approval for the projects described in the table above per the DA outlined processes and shall not be subject to administrative appeal or referral.

Demolition or renovation of structures necessary for the development of the Project Site shall not be subject to the review by the Landmarks Preservation Board nor other requirements of Chapter 3.24, Chapter 23C.08, and 23E.76 of the Berkeley Municipal Code),

- A. Pre-application discussion with City, if requested by Bayer.
- B. Mitigation by mitigation verification that Bayer Campus in general and project in specific complies with all mitigation measures of the Supplemental Draft EIR.
- C. File Application for Administrative Use Permit.
- D. Environmental initial study and further environmental review, if required.
- E. Design Review to the extent necessary. Staff shall have final design review approval for all projects except parking garages and Seventh Street publicly accessible open space, which shall be reviewed by the Design Review Committee.
- F. Zoning Officer review, as applicable.
- G. Administrative Use Permit issued.
- H. Building Permit Application(s) filed.

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I. Building Permit issued.

1.4 **List of Required Items for Complete Reserved Discretionary Approval Applications**

- A. All applications for approvals set forth in Table 1 shall include all of the following, unless explicitly waived by the City at the time of application:
- A.1 Relevant Application Forms.
  - A.2 Applicant's Statement – a written summary of the project including description of proposed building or addition, organisms to be used in the building, basis for making the findings required by Section 7.2. This requirement not applicable to: (a) demolition of buildings; and (b) guard stations.
  - A.3 Fees – application fees required by City Council Resolution as may be amended from time to time.
  - A.4 Completed Development Standards Conformity Review table (included in Appendix A below). This requirement not applicable to signs, fencing, and antennae visible and not visible from public right-of-way.
  - A.5 Completed Mitigation Measure Conformity Review (included in Appendix B). This requirement not applicable to: (a) signs visible and not visible from public right-of-way; (b) guard stations; (c) antennae; and (d) fencing.
  - A.6 Updated bicycle and vehicular parking count pre- and post- project. This requirement not applicable to: (a) signs visible and not visible from public right-of-way; (b) guard stations; (c) antennae; and (d) fencing.
  - A.7 Transportation Demand Management ministerial checklist confirming that Bayer's operations include the program elements listed in Exhibit I.
  - A.8 Design Review Application – where required for new construction and changes to building exteriors. Including application form and other submittal requirements for design review. This requirement not applicable to: (a) signs not visible from public right-of-way; and (b) guard stations.
  - A.9 Vicinity Map – to show project in context of the site and the neighborhood. This requirement not applicable to demolition of buildings.
  - A.10 Drawings, Plans, and Perspectives:
    - A.10.1 Drawings – two sets of the following full site plans and one reduction to 8-1/2" x 11". Project address, scale, north arrow, legend must appear on each sheet.
    - A.10.2 Site Plan – show proposed and existing buildings, parking spaces, driveways, property lines, fences, streets, curbs, sidewalks, landscape, and

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natural features. Indicate dimensions of property, building, setbacks, and parking.

- A.10.3 Floor Plans – overhead view of each floor, mezzanine, basement, mechanical service area. Label rooms/areas with the use and dimensions of all spaces. Differentiate graphically existing from proposed walls, doors, windows, stairs, counters, and fixtures.
- A.10.4 Elevations – front, rear and side views of buildings. Show exterior walls, fences, landscaping, signs, etc. Include windows, doors, exterior finishes, and roof and eave lines.
- A.10.5 Rendered Perspective – for new buildings as viewed from the public street.
- A.10.6 Grading Plans – to show slope, excavation and fill areas.
- A.10.7 Landscaping Plans – show plant locations, size, and species.
- A.10.8 These requirements are not applicable to demolition of buildings.
- A.11 For Buildings Along the Public Right-of-Way – include two separate façade design concepts, a primary and an alternative, with varying exterior colors and materials that comply with the objective design guidelines stated herein, with City having the discretion to pick between the two alternatives.
- A.12 For Production Buildings – description of water conservation measures incorporated in the design. This requirement not applicable to: (a) demolition of buildings; and (b) guard stations.
- A.13 For Production Buildings – description of energy conservation measures incorporated in the design. This requirement not applicable to: (a) demolition of buildings; and (b) guard stations.
- A.14 Other information which may be reasonably requested by the City to complete review of the application consistent with the City’s generally applicable application requirements.
- B. Variances – A variance shall be considered concurrently with other project approvals, and shall be a discretionary approval considered by staff with appeal rights to the Zoning Adjustments Board \. A variance shall be issued to the extent the City may find the following findings, supported by substantial evidence:
  - B.1 That there are exceptional or extraordinary circumstances or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, and/or uses in the same zoning district and the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner; or
  - B.2 Strict application of the standard or requirement would result in practical difficulties or unnecessary hardships; and

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- B.3 That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare, and safety and benefit the City as a whole.
- C. Applications for permits other than Administrative Use Permits and Variances shall include the following:
- C.1 Zoning Certificate.
- C.2 Design Review Application – Where applicable law so requires, for new construction and changes to building exteriors, including application form and other submittal requirements for design review. Refer to Table 1 for applicable projects.
- C.3 Building and other Ministerial Permit Applications – all submittals required for complete building permit application. The Mitigation Monitoring and Reporting Program must be printed on the second sheet of the building permit plans and must include the required conformance review.
- D. Design Review:
- D.1 Applicability
- D.1.1 Projects which are subject to either a Zoning Certificate or Administrative Use Permit, as dictated in Table 1, shall be reviewed for design criteria by Staff.
- D.1.2 Standalone parking garages and Seventh Street publicly accessible open space are subject to Design Review Committee, as dictated in Table 1. Parking garages below grade are not subject to Design Review Committee, but shall be processed otherwise in accordance with Table 1.
- D.2 Design Review Criteria. Staff or the DRC, whichever is applicable per Section D.1 and Table 1, shall review design applications for buildings on the Bayer Campus governed by the approved Development Agreement, based on the following criteria:
- D.2.1 The design of the proposed building is in substantial compliance with the intent of the Design Guidelines contained in the approved Development Agreement for the Bayer property.
- D.2.2 The project conforms to the Development Standards contained in the approved Development Agreement approved for the Bayer property.
- D.2.3 As outlined in Table 1, the size, location, and intensity of the project are in compliance with the Site Development Plan and Development Standards contained in the approved Development Agreement.

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- D.2.4 Project details, materials, signage, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design and buildings on the Bayer campus.
- D.2.5 Landscaping is designed to be compatible with and enhance the architectural character and features of the buildings on-site, and help relate the building to the surrounding landscape. Proposed planting materials avoid conflicts with views, lighting, infrastructure, utilities, and signage.

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2. Zoning and Permitted Uses

Table 2 – Permitted Uses within the Site

Use	Block			
	A	B	C	D
Production	P	P	P	-
Laboratories	P	P	P	-
Maintenance	P	P	P	-
Parking	P	P	P	P
Utility	P	P	P	-
Administration	P	P	P	P
Warehouse	P	P	P	-
P = Permitted within this block - = Not permitted within this block				

Table 3 – Definitions of Permitted Uses within the Site

Use	Definition
Administration	Administration buildings provide: offices for management and support functions, conference rooms, computer rooms, fitness/health facilities, site security stations, training rooms, library spaces, and cafeteria spaces. In addition, offices for campus management are placed in buildings throughout the site according to function and discipline.
Laboratories	Laboratories provide areas in which research into production and manufacturing technologies can be accomplished. These areas also provide quality assurance examination and testing of therapeutic pharmaceuticals produced on-site. Laboratory related offices and utilities are permitted in these areas.
Maintenance	Maintenance provides areas to conduct necessary repair, replacement, and preventive maintenance activities in support of site operations. Generally, these activities require workshops and maintenance bays. Maintenance related offices parking, and utilities are permitted in these areas.
Parking	Parking areas are covered or uncovered parking for vehicles.
Production	Production uses may include pilot plants, production facilities and fill and finishing facilities. Pilot plants are used to develop and scale up processes and to support new drug applications. Production facilities are comprised of various processing areas with support offices. The interior spaces are among the most complex in the industry, with numerous data, safety, storage, air-handling, and testing systems technologies equipping the buildings. Fill and finishing areas involve processing the product into transportable containers and final packaging. Production related laboratories, offices, and utilities are permitted in these areas.

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Utility	Utility buildings are used to house monitored water distillation operations, refrigeration equipment, electrical equipment, compressed air, and steam generation equipment. Additional functions may include a water retention basin. Utilities which support specific buildings may be located adjacent or in close proximity to those buildings which they support.
Warehouse	The warehouse area is used to hold products for distribution on-site and off-site. Warehouse related offices, utilities, and parking are permitted in these areas.

**3. Development Standards**

The Development Standards are the required standards govern the physical development of the site and supersede the City of Berkeley Zoning Ordinance. These Standards are intended to supplement and clarify the Site Development Plan and, where these Standards are silent with regard to any standard or definition, the standards and definitions in the City of Berkeley Zoning Ordinance shall apply as vested pursuant to Section 3.2 of the Development Agreement. In the event of a conflict between the Site Development Standards and the Site Development Plan, the Site Development Plan shall govern.

The conceptual development plan at year 30 of the extended Development Agreement is shown below in Figure 1, with the six Permitted Uses identified, as well as their conceptual distribution. This configuration represents the most reasonably foreseeable layout based on Bayer’s estimated long-term planning needs, although it is envisioned that densities of various Permitted Uses can be transferred to different portions of the site without increasing the overall site density.

Conceptual illustrations and tables showing the orientation of access, parking, and circulation, as well as phasing for years 10 and 30, are shown in later chapters of this exhibit. Consistent with Section 3.10 [to be updated pending final numbering of sections in DA] of the Development Agreement, buildout of the Project Site might not occur to the maximum extent predicted in these conceptual illustrations and tables, but to a lesser extent, and the final configuration of buildings and parking areas might not match these conceptual drawing.

**3.1 Building Design: Development Standards**

**Table 4 – Building Development Standards**

Development Standard	Block			
	A	B	C	D
Maximum Height	65 feet	80 feet for manufacturing uses, 65 feet for all other uses	45 feet	45 feet
Stepbacks	Within stepback zone shown on-site development plan (Figure 1); all buildings must step down 15 feet from main building maximum allowed height.			

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Note: See Section 3.1.2 for instructions on measuring height.



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Figure 1 – Site Development Plan

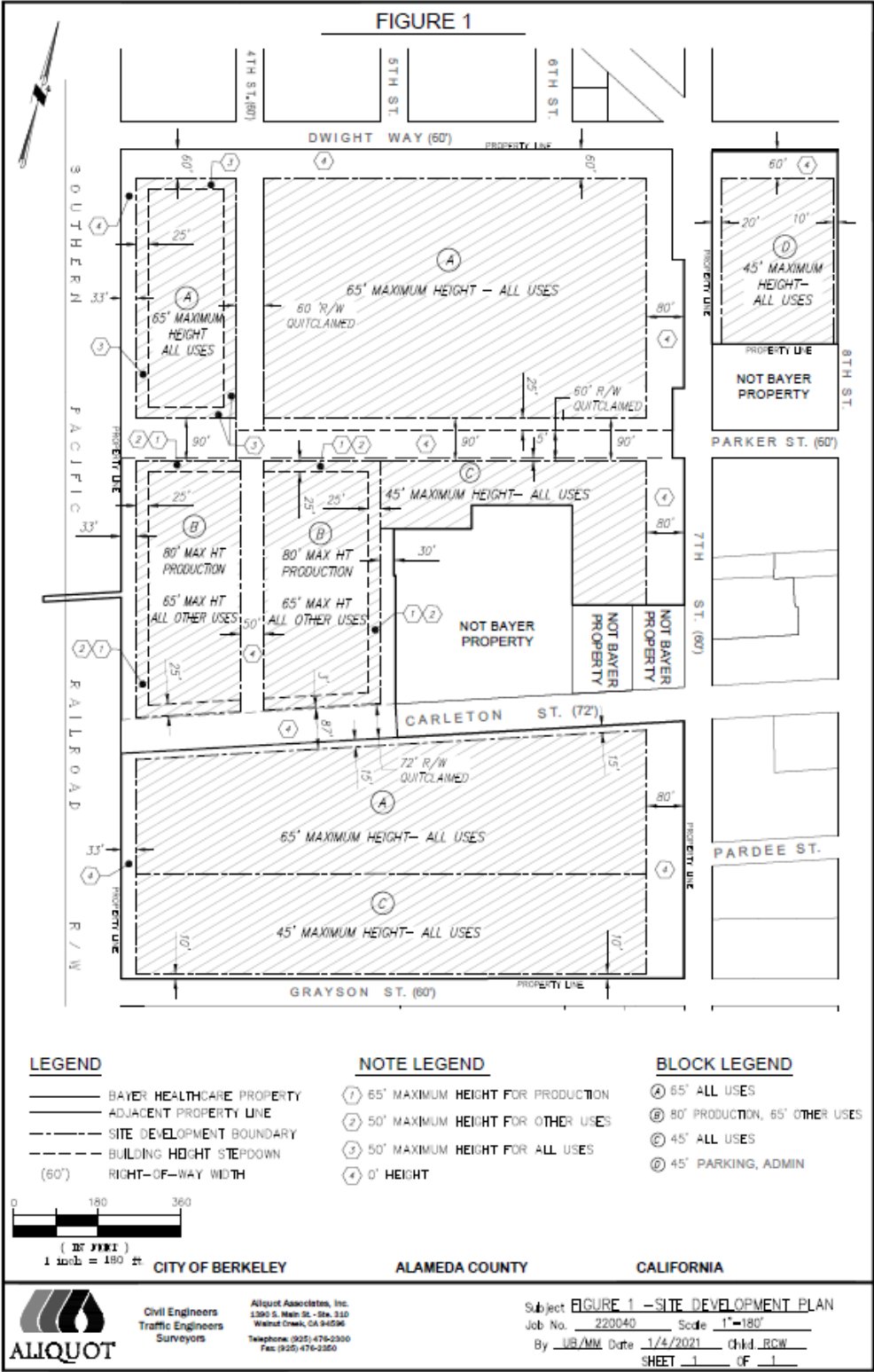


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**3.1.1 Height Districts**

- E. Height Districts define the height limitations for buildings within the Site Development Plan, where the term “building” means any enclosed structure having a roof and supported by columns or walls, consistent with the 2021 Berkeley Municipal Code. The Height Districts are sensitive to adjacent neighborhoods, relate to the scale and massing of existing buildings, support Production and Laboratory operations and accommodate future development within the Site Development Plan Area (refer to the Site Development Plan in Figure 1).

**3.1.2 General**

- A. Building Height Calculation: Allowable building heights are to be calculated by determining the average height from finished grade of a structure not to exceed the height limit for the Height Districts which the building is located as defined in the Site Development Plan.
- B. Finished grade for new development shall be the minimum amount necessary to account for drainage, sea level rise needs, or other applicable regulations, unless otherwise agreed to by the City and Bayer.
- C. Average building height is the vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building to: in the cases of sloped, hipped or gabled roofs, the average height of the roof between the ridge and where the eave meets the plate; in the case of a roof with parapet walls, to the top of the parapet wall; in the case of a gambrel roof the average height of the roof between the ridge and the point where the uppermost change in the roof’s slope occurs; in the case of a mansard roof, to the height of the deck; and in the case of a shed roof, to the height of the roof ridge.
- D. Towers, antennas and poles used for the transmission of electricity, telephone, telegraph, cable television, or other messages; except for electromagnetic signals for cellular radiotelephone service and wireless telecommunications; and flag poles, chimneys, water tanks, heating and air conditioning equipment, skylights, solar energy equipment, vents, pipes and similar structures and necessary mechanical appurtenances may be built and used to a greater height than the limit established for the height district in which the building is located. Roof-mounted wireless telecommunication antennas shall not extend or project more than 15 feet above the height limit of the district and shall require an Administrative Use Permit.
- E. Any projection not listed in the foregoing paragraph is prohibited except upon issuance of an Administrative Use Permit, including, but not limited to, mechanical penthouses, elevator equipment rooms, and cupolas, domes, turrets, and other architectural elements which exceed a District’s height limit. No such structure shall represent more than fifteen percent (15%) of the average floor area of all of the building’s floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building.

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- F. Guard stations and non-habitable structures may be located in the Zero Height Districts. Guard stations and non-habitable structures will not exceed twelve feet in height and 120 square feet of floor area. Guard stations shall only be located near ingress and egress locations and only as necessary for security purposes. Guard stations shall be subject to the building permit process as described in Table 1. Non-habitable structures shall not be located in Zero Height Districts along public streets.
- G. To the extent the Colgate Tower (B83) is refurbished, its height need not be reduced to conform to existing Height Districts.
- H. Fencing:
- H.1 Fencing along Seventh Street frontage adjacent to publicly accessible open space:
- H.1.1 Fencing around open space accessible to the public is permitted, with lockable gates.
- H.1.2 Fencing around publicly accessible open space, while functional, should also be decorative.
- H.1.3 Fencing shall not exceed eight feet in height at any point.
- H.1.4 Fencing shall not be constructed in a manner or of materials that would substantially prohibit views into or out of the publicly accessible open space.
- H.1.5 Fencing around open space accessible to the public shall not be constructed with chain link.
- H.1.6 No fence, or portion of a fence, shall contain strands of barbed or razor wire, nor shall sharp or jagged glass, metal such as, but not limited to razor-spikes, or similar materials be attached to a fence.
- H.1.7 Fencing around open space shall be subject to staff level design review.
- H.2 All other fencing along perimeter of and within closed portions of the campus:
- H.2.1 Fencing is permitted, with lockable gates.  
Bayer shall not construct fencing in excess of 12 feet in height at any point.
- H.2.2 Fencing can be constructed with a variety of materials, including, but not limited to, chain link, rod iron, or masonry.
- H.2.3 A fence, or any portion of a fence, along the campus, may have, but not limited to, razor-spikes or strands of barbed or razor wire, provided that the lowest strand is more than five feet above the ground.
- H.2.4 Fencing along the campus perimeter shall be subject to staff level design review.

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**3.1.3 Additional Building and Site Layout Development Standards (Refer to the Site Development Plan in Figure 1)**

- A. General: These additional standards support and provide the framework for the future development of the Site Development Plan. Primary objectives:
  - A.1 The distance between buildings only need comply with California Building and Fire Codes.
  - A.2 Project physical improvements, including, but not limited to, backflow preventers, canopies, landscape walls, fire department connections, may be connected to existing buildings subject to applicable codes.
  - A.3 Buildings may span adjacent blocks, as depicted on the Site Development Plan, and encroach in a limited manner into open spaces within blocks depicted on the Site Development Plan, provided all other limitations of the Development Agreement are met and the building meets development standards of underlying block. This provision does not allow encroachment of buildings into identified setback areas.
  - A.4 Transfer of developable area for Permitted Uses is allowed between blocks, as depicted on the Site Development Plan, and open space areas, provided all other limitations of the Site Development Plan are met (e.g., requirements related to allowable square footage, cumulative open space, applicable building setbacks, building heights and proximity of parking; *see, e.g.*, Section 3.2 and Table 5).

**3.1.4 Building Footprint, Setbacks, and Stepbacks**

- A. Building Footprint: Building footprints will be determined by the setbacks defined in the Site Development Plan with the clarifications set forth below.
  - A.1 Setbacks:
    - A.1.1 Setbacks only apply to the above grade portion of any building.
    - A.1.2 No building setback is required adjacent to open space or adjacent to other structures; only setbacks depicted on the Site Development Plan govern site development.

**3.1.5 Projections**

- A. Service roads are permitted within setback areas to the extent necessary to comply with the California Fire Code, material delivery, or site production requirements. Pipe racks and other utilities can be located within setback areas to the extent they comply with the provisions of Section 3.4 below.
- B. Non-occupiable architectural features such as arcades, columns, overhangs, awnings, and trellises may extend a maximum of 10' within a setback of a public street as follows:

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- B.1 As determined by the City Traffic Engineer, lines of sight for pedestrians and on-coming vehicles along the public street are not blocked or impaired as to affect pedestrian and vehicular safety.
- B.2 The maximum height does not exceed ten feet (10'-0").
- C. Stepbacks that apply are those identified on the Site Development Plan.

**3.2 New Construction Limits: Development Standards**

- A. Total new building floor area of the overall campus will not exceed 918,000 square feet with plans to keep approximately 820,000 square feet of existing facility floor area. Table 5 below provides the maximum square feet per block that is allowed. The purpose of these block limits (that cumulatively, exceed 918,000 square feet) is to allow for location flexibility for where the total allowable 918,000 square feet of new floor area is constructed.

**Table 5 – Total Maximum Allowed Development**

	<b>Block</b>			
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Total Maximum Allowed Floor Area (sq.ft) per block	1,500,000	495,000	400,000	30,000

- B. Buildings proposed to be retained may be replaced in kind and/or remodeled and will not be counted against the new maximum allowed floor area.
- C. Surface and structural parking shall not be counted towards maximum allowed floor area nor allowed floor area ratio (FAR).

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3.3 New Construction and Demolition Phasing: Development Standards

	Values in Sq. Ft.				
	<i>Existing</i> <sup>3</sup>	<i>Year 10</i>	<i>Year 30</i>		
	2020	2032	2052	Total	Net Increase to Existing (New - Demo)
<b>North Property (Current DA)</b>	567,000	672,000	1,122,000		
Existing	567,000	567,000	672,000		
Demolition		(140,000)	0	(140,000)	
New Construction		245,000	450,000	695,000	555,000
<b>South Property (Use Permit)</b>	520,000	516,000	616,000		
Existing	520,000	520,000	516,000		
Demolition		(127,000)	0	(127,000)	
New Construction		123,000	100,000	223,000	96,000
<b>Entire Campus (North + South) Combined</b>	1,087,000	1,188,000	1,738,000		
Existing	1,087,000	1,087,000	1,188,000		
Demolition	0	(267,000)	0	(267,000)	
New Construction	0	368,000	550,000	918,000	651,000

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

**3.4 Parking and Loading: Development Standards**

- A. The number of parking spaces will comply with the parking requirement stipulated in Table 6 below.
- B. Adequate parking will be provided at any time during the project build-out for all uses on-site at issuance of a certificate of occupancy.
- C. Parking requirements will be determined by buildings' principal use, defined to be the use occupying the greatest square footage within a given building.

**Table 6 – Parking Requirements**

Use	Automobile Parking Requirements	Bicycle Parking Requirements
Production	1 space per 1,000 square feet of floor area	1 space per 2,000 square feet of floor area
Laboratory		
Warehouse	1 space per 5,000 square feet of floor area	
Utility		
Administration	1 space per 500 square feet of floor area	

- D. The parking standards in Table 6 can be adjusted through the processes set forth in Table 1 in cases when the specific number of employees for a specific building can be verified and/or Transportation Demand Management programs to which Bayer commits demonstrate a verifiable reduction in parking demand.
- E. Unoccupied space is not counted as floor area when figuring required number of parking spaces. These standards can be adjusted in cases when the specific number of employees for that building can be verified. For purposes of clarification, only space occupied by employees shall be counted as floor area when figuring required number of vehicular or bicycle parking spaces. Unoccupied space, including without limitation mechanical spaces and rooms, stairwells, closets, storage, and penthouses shall not count as floor area when calculating parking requirements. Employee amenities, whether standalone or collocated with other facilities, including without limitation cafeteria space and fitness rooms, shall also not count as floor area when calculating parking requirements.
- F. Bayer will include cumulative building areas and provide calculations related to require vehicle and bicycle parking requirements, which will include both existing parking and necessary sitewide parking to demonstrate the necessary amount of parking is being provided.
- G. Vehicular and bicycle parking will be calculated on a sitewide basis, based on square footage in accordance with Sections D and E above. Permitting will be conducted in

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accordance with Table 1. Parking spaces shall not be required within any specific distance of a specific building so long as the parking is located within the Bayer Campus.

- H. Approval of parking structures shall conform with the approval process identified in Table 1 and the foregoing requirements in Section 3.2 and no further entitlements are necessary to approve parking at any specific location.
- I. Off-street loading docks for individual buildings will not be required provided that delivery and shipping of materials to and from the site occurs from a central warehouse(s) only, and the size and number of loading docks at the warehouse(s) will be adequate for the volume and traffic at the warehouse(s), as approved with the building approval in accordance with Table 1.

**3.5 Landscape and Open Space: Development Standards**

- A. The open space areas depicted in Figure 2 create an ‘Urban Campus’ environment, which integrates urban structures with significant amounts of open space. Open space areas accessible to Bayer employees will consist of fields, sports courts, pedestrian trails, bicycle trails, outdoor eating areas, landscaping, and similar uses. Open space along the Seventh Street frontage will be accessible to the public and will consist of urban park facilities, as shown in Table 7 below.

**Table 7 – Allowed Uses for Open Spaces within the Site**

<b>Allowed Uses within Restricted Access Open Space</b>	<b>Allowed Urban Park Facilities within Publicly Accessible Open Space</b>
Fields	Pedestrian and/or bicycle trails
Sport Courts	Hardscape and softscape surfacing areas
Pedestrian and Bicycle Trails	Benches and tables
Outdoor eating areas	Landscaping
Landscaping	

- B. The Site Development Plan enhances the existing view corridors from the Berkeley Hills by establishing Zero Height Districts (see Figure 1) within, and setbacks from, the public streets, and maintaining view corridors along Parker and Carleton Streets. The pedestrian experience has been enhanced along Seventh Street and Dwight Way through increased setbacks, inclusion of landscaping, and publicly accessible open space. This publicly accessible open space shall be operated and maintained by Bayer. This area is also intended to be passive open space to provide a buffer from new buildings and also possibly include walking and bike paths, benches, public art, trees, hardscape and softscape surfacing areas, and landscaping (as identified in the Design Guidelines below). This area will be open to the public during daylight hours and for longer durations at the discretion of Bayer.



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- C. The Site Development Plan ‘consolidates’ Height Districts that allow for taller buildings, generally aligning them along an east-west axis, to mitigate the view corridor impacts. The consolidation of the Height Districts minimizes the impact and benefits the view corridor from the Berkeley Hills.
- D. Open spaces identified in Figure 2 do not reflect exact locations within the Site Development Plan's planning area, but rather that an open space area will occur within a general location. Development of these open spaces will correspond to building development defined in the Site Development Plan. The conceptual development plan contains the following open space commitments: Bayer will provide
- a minimum of 0.8 acres of publicly available open space along Seventh Street at Year 5,
  - a minimum of six acres of open space that includes 1.6 acres of publicly accessible open space area along Seventh Street at Year 10, and
  - a minimum of nine acres of open space at Year 30.

Any administrative Use Permit or other land use entitlement submitted for the improvement of open space pursuant to Table 1 shall be separate and independent of any land use permits or other entitlements submitted for project buildings and other improvements, and accordingly shall be considered for approval separately and independently by the City.

- E. Landscape and site improvements associated with, or adjacent to, a proposed building should be installed at the time of construction of the building. This may include, but is not limited to: plant materials, street trees, automatic irrigation, sidewalks, internal roads, and open space plazas.

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Figure 2 – Conceptual Open Space Areas



3.6 Access and Circulation: Development Standards

- A. Access to the site is separated by Visitor, Staff, Service, and Delivery access.
- B. Visitor entries/exits, staff access entries/exits, service entries/exits, and delivery entries/exits are depicted in Figures 3a and 3b, below.
- C. On-site streets as shown on the Site Development Plan shall be aligned generally as depicted. Minor modifications to existing private roads and new private roads within the campus not depicted on the Site Development Plan can be located and sized to meet Bayer's circulation needs and corporate specifications, so long as they comply with the California Fire Code, and no modification to the Development Agreement or variance need be issued. Any new or modified private streets shall be reviewed with the Public Works Department as part of the associated application.
- D. Pipe racks and other utilities can be located within, beneath, or over circulation network components so long as they do not result in violations of the California Fire Code. Pipe racks shall not exceed 40 feet in height. Notwithstanding anything else in the Development Agreement or its exhibits, to the extent pipe racks or other utilities are located over circulation network components, the height to the bottom of the pipe rack shall be no more than is required for truck clearance.
- E. Parking demand for any one building can be satisfied with any parking area located within the Site Development Plan.

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- F. Temporary surface parking lots and temporary structures (Ten years (10) or less) can be located anywhere on-site. Notwithstanding the above, temporary parking structures cannot be located in Zero Height Districts (see Figure 1 above).
- G. The Site Development Plan includes an option to integrate some parking into other new buildings located along the northeast perimeter of the site, near the intersection of Dwight Way and Seventh Street, new buildings near the intersection of Seventh Street and Parker Street, and in new buildings adjacent to the B83 near the intersection of Seventh Street and Carleton Street, in order to potentially reduce the amount of area allocated solely to parking. However, these underground parking locations would not increase total parking, but rather accommodate a redistribution of parking inventory.
- H. Conceptual illustrations and tables showing the orientation of access at the time of development phasing, are shown in Figures 3a and 3b below. To the extent that buildout of the Site is ultimately less than the amount depicted in these conceptual drawings and tables, parking inventory shall be reduced below the parking supply amounts therein by a commensurate amount so long as parking supply is provided consistent with the provisions set forth in Section 3.4.
- I. Service and Utilities: The flow of site services and utilities should be consolidated and efficiently routed, prioritizing pedestrian movements along inner streets. These services include deliveries, material flows, and waste movement and removal. There should be designated access points for fire service and a shared surface in the green corridor which can also be used by fire trucks in emergency situations. See Figures 3a and 3b below.

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Figure 3a – Campus Access Points Year-10 of Development

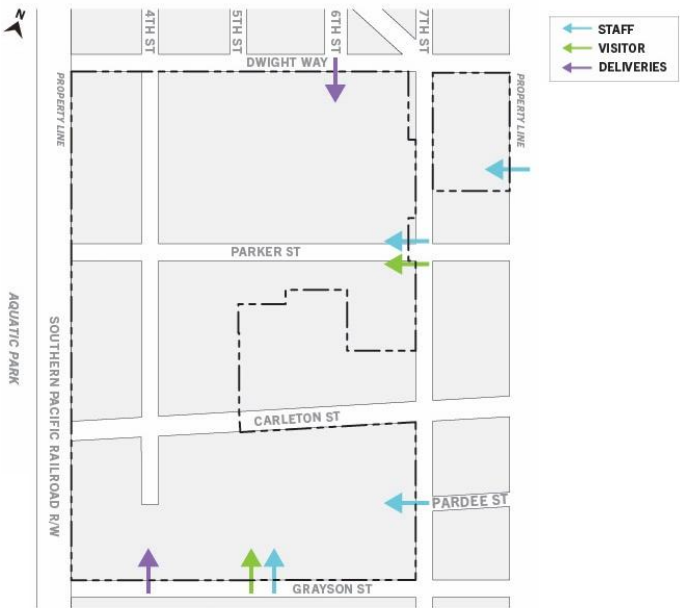
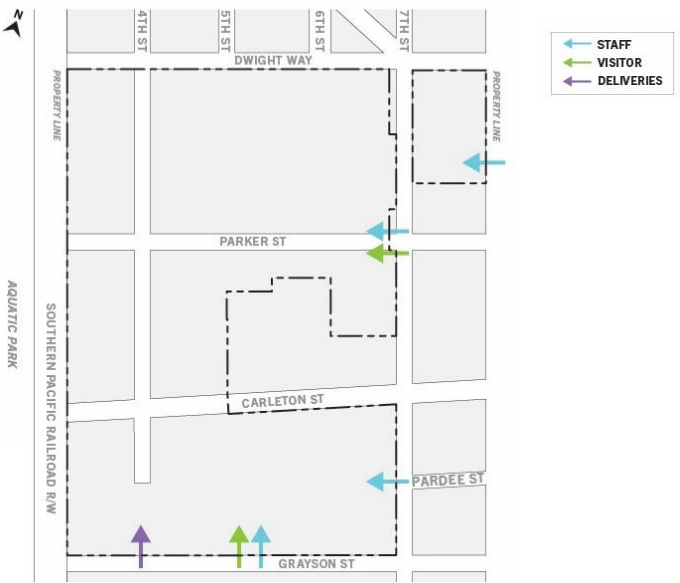


Figure 3b – Campus Access Points Year-30 of Development



3.7 Signage: Development Standards

- A. Ground-floor marquee signs are permitted at any main site entrance and shall not exceed 6 feet in height.

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- B. The sign area of wall signs shall not exceed fifteen (15) percent of the building face of the premises or eight hundred (800) square feet, whichever is less.

**4. Design Guidelines**

The guidelines outlined in this section establish general parameters for the continued development of the Bayer campus in terms of urban planning, building design, landscape design, and sustainable design strategies. They are intended to provide for both consistency with existing conditions (as guided by the previous Development Agreement) and the positive evolution of the campus during the next 30 years. They outline a consistent framework for development across the entire site in order to provide a unified campus environment. They provide a framework for the continuation of the mutually supportive relationship between Bayer and the adjacent neighborhoods of West Berkeley, paying special attention to transition zones where the campus meets the City. They will assist Bayer in delivering a world class campus that attracts and retains the best talent, as well as forging links with partner companies and innovators. The guiding principles outlined here will drive the continued development of a safe, sustainable, modern working environment that exists in harmony with its urban context. Provided that the project as whole meets the intent of the guidelines, the issuance of any variance from the guidelines is unnecessary. In no case shall a guideline be implemented in a manner that would operate to modify or render more restrictive, directly or indirectly, one of the development standards or the Site Development Plan and, where a conflict between a development standard or Site Development Plan and a design guideline exists, the development standard or Site Development Plan shall prevail.

The design guidelines will also be used by the City, as outlined in Table 1, to review the design of future buildings.

**4.1 Signage: Design Guidelines and Approval Process**

- A. Prior to the issuance of a building permit for a sign, staff level design review shall only be conducted if it's determined by City Staff that the proposed signage is visible from the public right-of-way. Signage visible from the public right-of-way shall be subject to staff-level design review.

Section	Sub Topic	Design Guideline
<b>Building Design</b>	Entrances	Primary building entrances must be clearly defined to promote visual interest and architectural presence. Building entrances shall be clearly identifiable by use of scale change and material changes. Emphasize using features such as glazing, panel color, size and accent stripes.
	Building Design	Large, blank walls along the public streets shall be avoided. Blank walls (facades without doors, windows, landscaping treatments, or other elements of pedestrian interest) shall be less than 30 feet in length for buildings 75 feet or longer or 20 feet in length for buildings less than 75 feet. Building facades along public streets shall incorporate features, including but not limited, the treatments below to mitigate blank walls: <ul style="list-style-type: none"> <li>• windows</li> <li>• doors</li> <li>• canopies</li> <li>• landscaping</li> <li>• decorative materials and textures</li> <li>• building wall offsets, including projections and recesses (relief and reveal depths shall be a minimum of three-quarter inch)</li> </ul>
		All buildings shall employ at least two of the following techniques: <ul style="list-style-type: none"> <li>• Change material or color with each building module to reduce the perceived mass, or:</li> <li>• Vary the height of a wall plane or building module, or:</li> <li>• Change roof form to help express the different modules of the building mass, or:</li> <li>• Change the arrangement of windows and other facade articulation features, such as columns or strapwork, that divide large wall planes into smaller components.</li> </ul>
		Through the use of transparency and activity, the building should create an environment that promotes and spurs a strong connection back to the campus.  When feasible, for buildings with public facing facades, incorporate science windows (transparent windows at the ground-floor that encourage visibility into buildings) facing onto the adjacent right-of-way.

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	Rooftop Equipment	Integrate roof equipment screens and/or penthouses with building design. Use similar or same color and materials as on building exterior.
	Building Color/Materials <sup>1</sup>	The materials and finishes selected shall focus on sustainability and functionality, ensuring long-term durability and ease of maintenance.
		Accent colors may be used and shall be compatible with the overall color scheme. Reserve bolder colors as accents for building details, ornamentation, or special features.
		The design principals followed in façade design are: <ul style="list-style-type: none"> <li>• Simple palette of durable and sustainable materials</li> <li>• Repetition of materials on various facades to create a unified composition for the building</li> <li>• Facades designed to control solar glare and gain</li> <li>• Materials should reflect and support the function contained within the spaces</li> <li>• Vertical and horizontal breakup of the façade using materials such as shading and solar fins, facility access means, or other functional structure</li> </ul>
		New buildings will be designed to include varying materials, color, texture, ornamentation, and/or other facade details to provide visual interest.
		Recommended exterior building finish materials include: glass curtainwall, aluminum or other coated metal panel, natural materials panels as accents, or similar sustainable materials.
		New buildings will target 100% bird-safe glass or similar bird-safe treatments as specified in Mitigation Measure BIO-2 (i.e., in the west-facing facades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park). In other portions of the project site not addressed by Mitigation Measure BIO-2, Bayer shall target for new and renovated facilities 100% bird-safe glass or similar treatments

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<sup>1</sup> For Buildings Along the Public Right-of-Way – include two separate façade design concepts, a primary and an alternative, with varying exterior colors and materials that comply with the objective design guidelines stated herein, with City having the discretion to pick between the two alternatives.

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		unless inclusion of such would compromise the ability of a given facility to meet or exceed Title 24 standards.
<b>Landscape and Open Space</b>	Tree Canopy	For new interior roads, site coverage of tree canopy at maturity shall be a minimum of twenty percent (20%) for the existing right-of-way, excluding intersections. Trees shall be planted upon establishment of new interior road segments to meet this canopy requirement.
		For new surface parking lots, site coverage of tree canopy at maturity shall be a minimum of fifty percent (50%) of the total outdoor surface area. Trees shall be planted upon establishment of new surface parking lots to meet this canopy requirement.
	Landscaping	Examples of potential landscape design elements include: different scaled parks, open common areas, circulation corridors, and green roofs.
		Plant selection will be based on compatibility with the local climate. All plants shall be drought tolerant, be low maintenance, and at least 70% native and/or wildlife supporting. The selection of plants shall provide variety between different types of spaces but also provide consistency across the site creating a unified, landscaped campus. Planting zones shall combine different species, heights, and colors of planting to create visual interest and variety.
		Landscape elements shall be compatible with the California Energy Commission, Climate Zone 3 and California Water Efficient Landscape Ordinance, as amended.
		All projects shall be designed to meet or exceed the California Department of Water Resources Model Water Efficient Landscape Ordinance ("MWELO") or any other equivalent standard.
<b>Access and Circulation</b>	Access	Campus circulation shall be designed to separate service corridors from pedestrian and bicycle corridors similar to the manner conceptually shown below in Figure 4.
		Provide pedestrian access between buildings.
<b>Lighting</b>	Lighting	Exterior lighting shall illuminate the open space for vehicular, bicycle and pedestrian paths, provide for security in public areas and reinforce the style and ambiance of the surrounding area, including the additional security measures as set forth in Mitigation Measure PS-1: Security Measures in the Supplemental EIR.
		Any permanent lighting shall not blink, flash, or be of unusually high intensity or brightness.



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		Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.
		Lighting fixtures shall be energy efficient.
		All outdoor lighting fixtures shall be designed and installed so that light rays are not emitted across property lines, to the extent feasible. Lighting shall be located to minimize glare and/or impact on adjacent neighborhoods, be architecturally integrated with the character of project structures, be energy-efficient and fully shielded or recessed, and must completely turn off or be significantly dimmed at the close of business hours when the exterior lighting is not essential for security and safety.
		Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.
		Outdoor lighting shall be no brighter than 3000 Kelvin.
<b>New Construction and Demolition</b>	Phased Development	The campus shall be developed through a combination of renovating existing buildings, demolishing buildings where appropriate, and adding new structures using a phased approach. See Figures 5, 6, and 7 below for conceptual renderings of the campus' potential buildout.
<b>Signage</b>	Illumination	No illuminated signs shall face Aquatic Park.
		Signs are allowed to be illuminated, except as noted above, but shall not move or flash. Any illuminated signs shall be maintained and kept in functioning order.
<b>Sustainability</b>	Building Materials	Incorporate protections for birds as set forth in the Mitigation Measure BIO-2: Bird Strike Avoidance of the Supplemental EIR for window area of the west-facing façades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park.
	Energy Efficiency	Building designs shall be energy efficient utilizing site-wide energy efficiency programs and standards and exceed California Title 24 Standards.
	Building Design	All buildings shall be designed using the LEED certification process.
	Water	Where feasible and not compromising sanitation, incorporate water capture, retention, and reuse for new buildings.

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<b>Parking</b>	Parking Garage	Consistent with Mitigation Measure AES-1: Parking Structure Design in the Supplemental EIR, structured parking adjacent to public streets that includes a frontage onto the street should use appropriate design (such as faux facades, plantings and landscaping, green walls, public murals, etc.) to minimize its visual impact.
	Access	Provide identifiable pedestrian paths in the parking lots which lead to the building entrances. Parking structures shall fit within designed parking and circulation patterns and shall be linked to the pedestrian circulation system. Consider pedestrian routes to and from parking structures.
	Parking Garage and Pedestrian Bridge Design	Materials and colors shall be compatible with adjacent buildings, as set forth in Mitigation Measure AES-1: Parking Structure Design in the Supplemental EIR.

Figure 4 – Service and Utility Zones

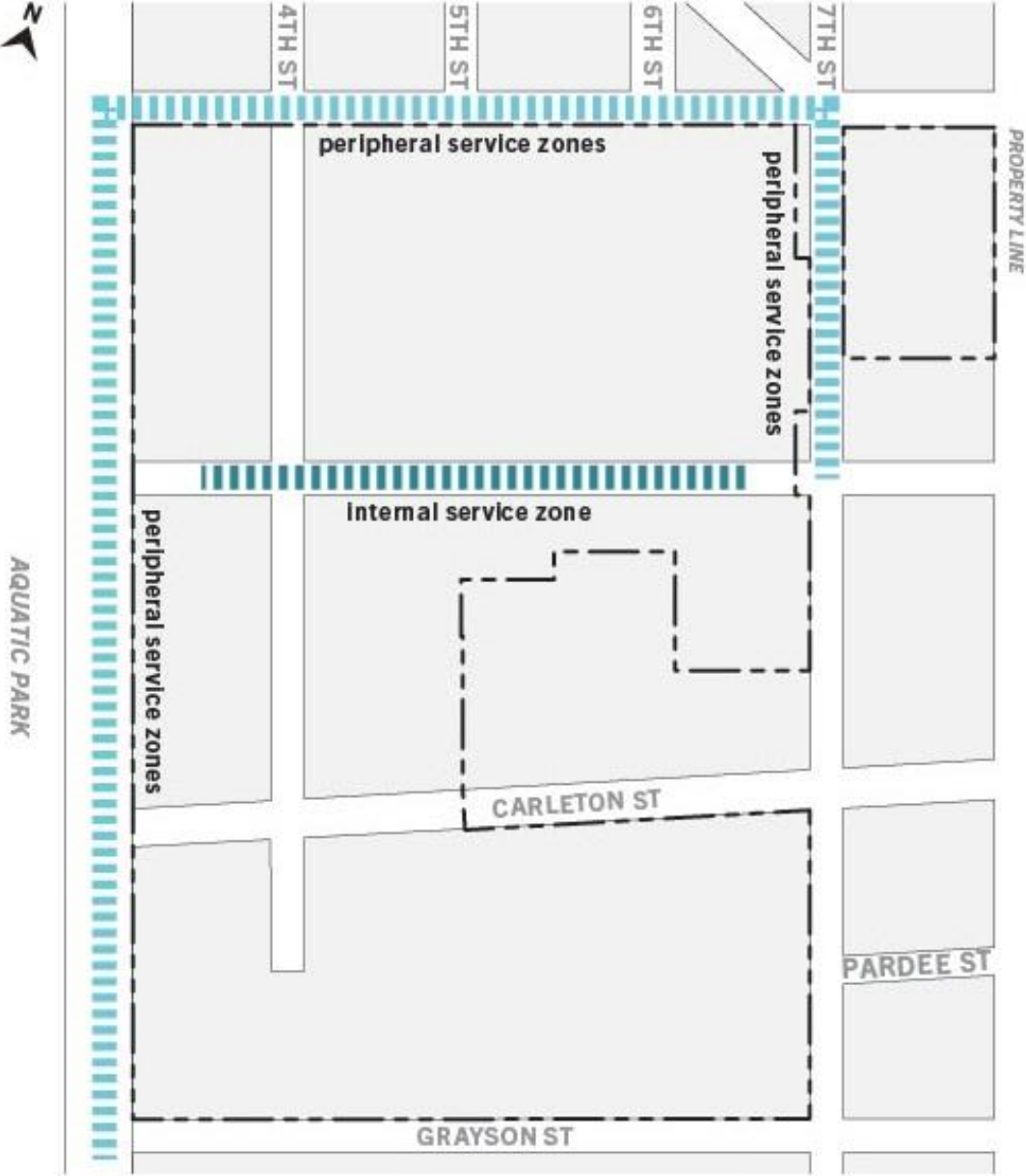


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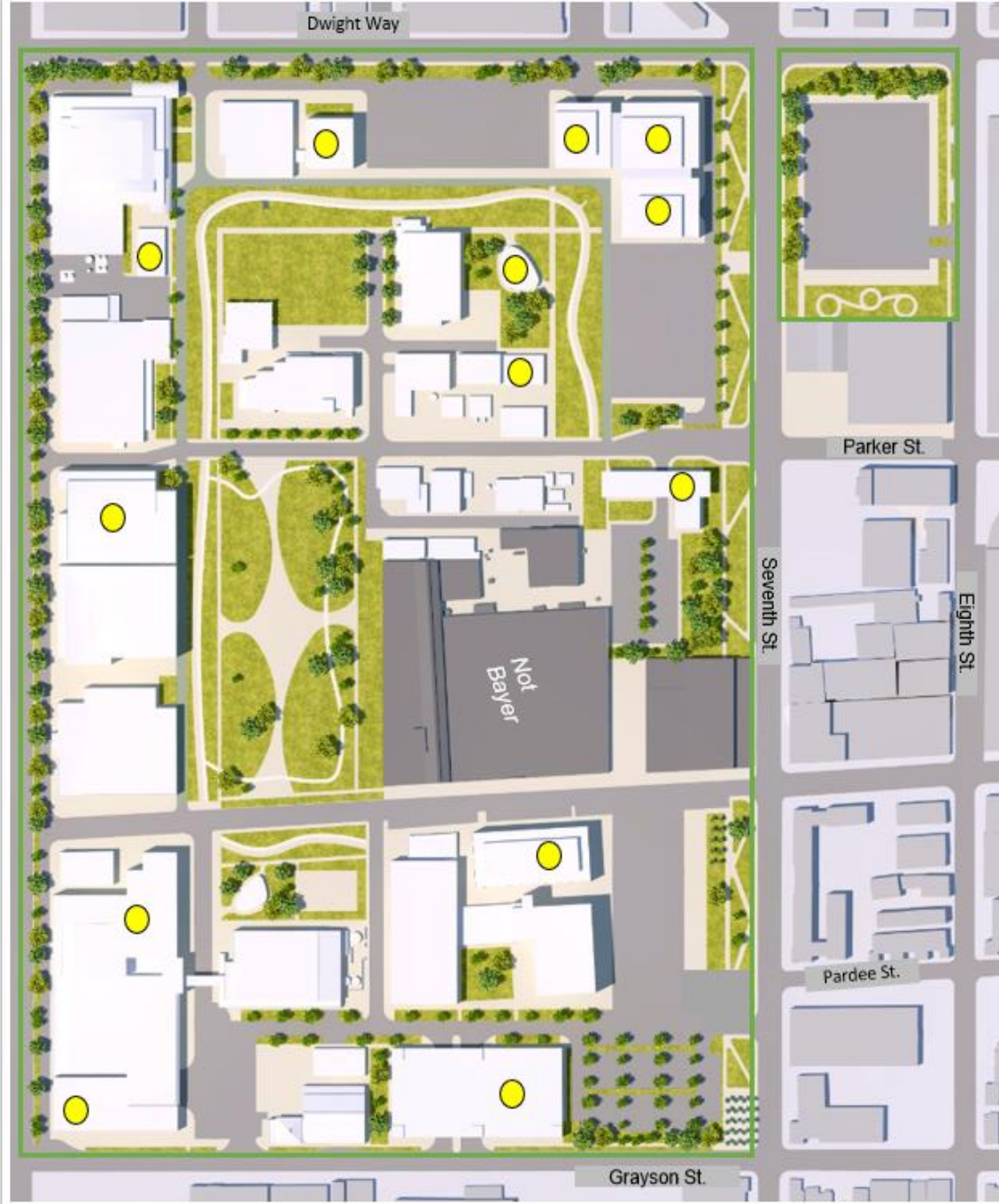
Figure 5 – Conceptual Year-30 Plan



- RETAIN BUILDINGS
- REPURPOSE/ REFURBISH
- FUTURE DEMOLISH

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Figure 6 – Conceptual Year-10 of Development

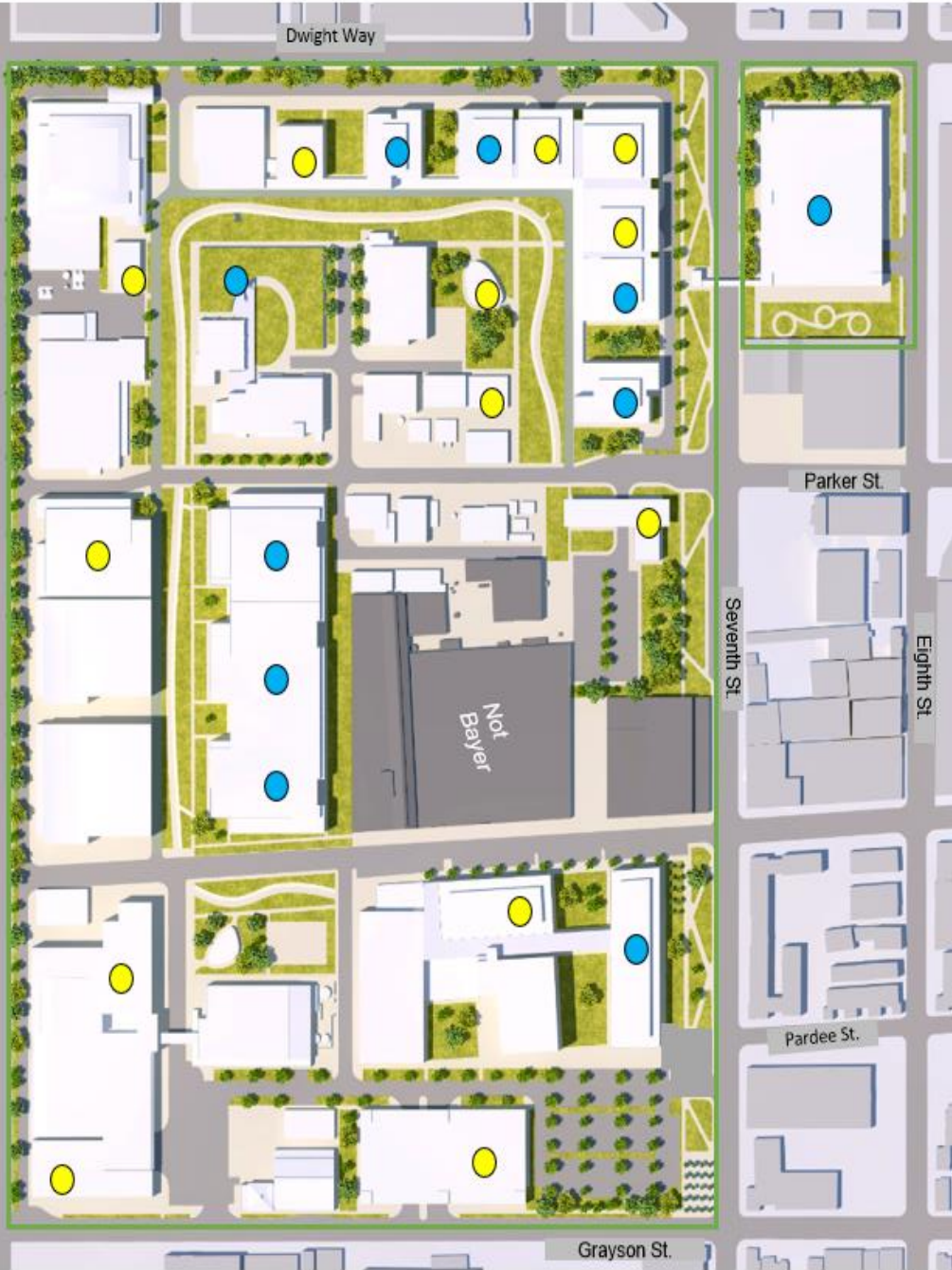


● New at Year 10



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Figure 7 – Conceptual Year-30 of Development



- New at Year 30
- New at Year 10

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**Appendix A: Development Standards Conformity Review**

The table below provides a template of which is required for all applicable projects to complete.

<b>Standard</b>	<b>DA Source</b>	<b>Standard Per DA</b>	<b>Proposed Project</b>	<b>Plan Set Source</b>
<b>Block Standards</b>				
Project Block				
Permitted Land Use				
Max. Height				
Average Height				
Stories				
Max Floor Area within Project's Block				
<b>Site Development Standards</b>				
Gross Floor Area (sq. Ft.)		n/a		
Setbacks				
(insert applicable setback requirements)				
Stepbacks				
(insert applicable stepback requirements)				
Fencing Height				
Fencing Materials				
<b>Special Requirements for portions of buildings above 45' in height</b>				
Top floor max floor area				
Top floor stepback				
All walls above 45' stepped back from west property line				
Façade length				
Footprint Diagonal Length				

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Standard	DA Source	Standard Per DA	Proposed Project	Plan Set Source
<b>Campus-Wide Standards</b>				
Vehicle Parking – Campus Wide				
Bicycle Parking – Campus Wide				
Open Space – Campus Wide				



**Appendix B: Mitigation and Monitoring Reporting Checklist**

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<b>AESTHETICS</b>					
<b>Mitigation Measure AES-1: Parking Structure Design (Updated 1991 EIR MM)</b>					
The proposed parking structure between Dwight Way, Seventh Street, Eighth Street, and Parker Street shall be designed to maximize visual compatibility with the low-rise, low intensity uses to the north and east, in terms of the parking structure’s massing, color, and adjacent landscaping. The Eighth Street façade of the garage shall be articulated to add texture and depth to the structure. A setback as well as landscape and streetscape amenities shall be provided on the perimeter of the parking structure. Stepbacks shall also be provided along Eighth Street.	Review design of parking structure to ensure it maximizes compatibility with adjacent uses, is broken up and articulated, and provides setbacks and stepbacks.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development		
<b>Mitigation Measure AES-2: Glare Reduction (Updated 1991 EIR MM)</b>					
For new and renovated buildings along and visible from the western property line, the use of reflective glass or other glazing that would cause glare as the sun sets shall be prohibited.	Review design of new and renovated buildings along western property line to ensure the use of reflective glass and glazing	Prior to issuance of building permits	City of Berkeley Department of Planning & Development		

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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification Project Conformance	Plan Set Sheet or Reference
	that would cause glare is not used.				
<b>AIR QUALITY</b>					
<b>Mitigation Measure AQ-1: Construction Emissions Measures</b>					
Demolition, grading and construction activities shall comply with the current Bay Area Air Quality Management District’s basic control measures for reducing construction emissions (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines or equivalent as updated by BAAQMD).	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building or engineering permit	City of Berkeley Department of Planning & Development		
<b>Mitigation Measure AQ-2: Tier 4 Construction Equipment</b>					
Demolition, grading and construction activities shall utilize at least 90 percent Tier 4 equipment (or better) through 2032 and all Tier 4 equipment (or better) after 2032. If the use of such equipment is not commercial available, the applicant shall prepare a project-specific air quality assessment to evaluate construction-related criteria air pollutant. If the project-specific air quality assessment finds that construction emissions would exceed any of the applicable BAAQMD thresholds, the air quality	Review all demolition, grading, and building permits to ensure compliance. If the use of Tier 4 equipment is not achievable or feasible, require and review a	Prior to issuance of building or engineering permit and during demolition, grading and construction	City of Berkeley Department of Planning & Development and Public Works Department		

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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification
				Project Conformance
				Plan Set Sheet or Reference
<p>assessment shall identify emission reduction measures to reduce emissions below the thresholds and the applicant shall implement the measures. Measures may include, but would not be limited to, some or all of the following, as necessary:</p> <ul style="list-style-type: none"> <li>• Equip construction equipment with Tier 3 or Tier 4 certified engines or CARB-certified Level 3 diesel particulate filters. All diesel particulate filters shall be kept in working order and maintained in operable condition according to manufacturer’s specifications.</li> <li>• Minimizing the idling time of diesel-powered construction equipment to two minutes.</li> <li>• Use late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.</li> <li>• Use low-sulfur fuel or other non-diesel for stationary construction equipment.</li> <li>• Use low-emission on-site stationary equipment.</li> <li>• Use alternatively-fueled construction</li> </ul>	<p>project-specific air quality assessment.</p>			

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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<p>equipment (e.g., natural gas, electric).</p> <ul style="list-style-type: none"> <li>Schedule soil import and/or export to reduce the number of daily haul truck trips.</li> <li>Phase construction activities to reduce daily equipment use.</li> <li>Limit the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time to reduce the amount of disturbed ground surfaces at any one time.</li> </ul>					

**BIOLOGICAL RESOURCES**

**Mitigation Measure BIO-1: Nesting Bird Surveys and Avoidance**

<p>Demolition, grading, construction and tree removal activities shall be conducted outside of the migratory bird nesting season (February 1 through August 31) to reduce any potentially significant impact to birds that may be nesting in the project site. If construction and tree removal activities must occur during the migratory bird nesting season, an avian nesting survey of the project site shall be conducted for active nests of protected migratory birds. The avian nesting survey shall be performed by a qualified wildlife biologist within seven days prior to the start of ground or vegetation disturbance</p>	<p>If construction and tree removal activities must occur during the migratory bird nesting season, review and approve avian nesting survey.</p> <p>If an active bird nest is found,</p>	<p>Prior to issuance of building and engineering permits</p> <p>Ongoing during</p>	<p>City of Berkeley Department of Planning &amp; Development</p>
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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<p>or building demolition activities. The survey will consist of a qualified biologist conducting a visual inspection of the disturbance area plus a 200-foot buffer and vicinity, as is feasible depending on possible access and/or line-of-site constraints, to detect any suitable nesting locations and determine if any nests occur. If an active bird nest is found, the nest shall be flagged and mapped on the construction plans, along with an appropriate no disturbance or protection buffer based on site conditions, which shall be determined by the biologist based on the species sensitivity to disturbance (generally, standard buffers can be 50-250 feet for passerines and 250-500 feet for raptors and special-status species, but site- and species-specific adjustments can be made within the discretion of the biologist, with different buffers established with respect to different levels of disturbance). Work within the nest avoidance buffer shall be prohibited or otherwise restricted per requirements determined by the biologist until the juveniles have fledged. The nest buffer shall be demarcated in the field with flagging and stakes or construction fencing.</p>	<p>review all demolition, grading, and building permits to ensure nests and buffered have been flagged and mapped.</p>	<p>construction activities</p>			
<b>Mitigation Measure BIO-2: Bird Strike Avoidance</b>					
<p>New structures or structures undergoing exterior renovations shall include the</p>	<p>Review building permits to ensure</p>	<p>Prior to issuance of</p>	<p>City of Berkeley</p>		

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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<p>following:</p> <ul style="list-style-type: none"> <li>One hundred (100) percent of the window area of the west-facing façades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park shall consist of verified bird-safe glazing products, e.g., American Bird Conservancy-endorsed products such as Arnold Glass Ornilux Mikado, Acopian Birdsavers, Bendheim Channel Glass, GlasPro Bird Safe Glass, Guardian Glass SunGuard SN68, Viracon, or others. Alternatively, the reflective or transparent surface area visible to the west-facing frontage of the property shall employ bird-safe glazing treatments, including fritting, netting, permanent stencils, frosted glass, exterior screens, physical grids placed on the exterior of glazing or UV patterns visible to birds. To qualify as bird-safe glazing treatment, vertical elements of the window patterns shall be at least 1/4-inch wide at a maximum spacing of 4 inches, or have horizontal elements at least 1/8-inch wide at a maximum spacing of 2 inches.</li> <li>Automatic shades shall be installed on windows and shall be programmed to operate between 10:00 p.m. and sunrise</li> </ul>	<p>compliance with bird strike avoidance measures.</p>	<p>building permits</p>	<p>Department of Planning &amp; Development</p>		

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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<p>on new building facades facing the western boundary of the project site. Non-emergency exterior lighting shall be shielded to minimize light emission.</p> <ul style="list-style-type: none"> <li>• Transparent glass shall not be allowed on rooftops of new, expanded, and renovated buildings, including in conjunction with green roofs.</li> <li>• The cumulative area of glass façades for newly constructed or expanded buildings facing the project site’s westerly boundary shall not exceed 2,250 square feet.</li> </ul>					

**CULTURAL RESOURCES**

**Mitigation Measure CR-1: Architectural History Evaluation**

<p>Demolition or alteration of a building or structure that is at least 40 years old at the time of permit application and has not previously been evaluated for demolition or renovation within the last five years from the time demolition or alternation is proposed shall be subject to review at the request of the City by a qualified architectural historian who meets the Secretary of the Interior’s Professional Qualifications Standards (PQS) in architectural history or history. The qualified architectural historian or historian shall conduct an intensive-level evaluation in accordance with the guidelines</p>	<p>If applicable, require and review historical resources evaluation to ensure compliance.</p>	<p>Prior to issuance of building permits</p>	<p>City of Berkeley Department of Planning &amp; Development</p>
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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification Project Conformance	Plan Set Sheet or Reference
<p>and best practices recommended by the State Office of Historic Preservation to identify if the building or structure proposed for demolition or alteration qualifies as a historical resource under CEQA guidelines. Buildings and structures shall be evaluated within their historic context and documented in a technical report and on Department of Parks and Recreation Series 523 forms. The report shall be submitted to the City for review and approval prior to the issuance of a building permit. If no historic resources are identified, no further analysis is warranted. If historic resources are identified, the applicant shall be required to implement Mitigation Measure CR-2.</p>					
<b>Mitigation Measure CR-2: Architectural History Mitigation</b>					
<p>For renovations involving Building B83 or historical resources identified through the process described in the architectural history evaluation mitigation measure (CR-1), project activities shall comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties (Standards). During the project planning phase (prior to any construction activities), input shall be sought from a qualified architectural historian or historic architect meeting the Secretary of the Interior’s Professional Qualifications Standards to ensure project compliance with the Standards for</p>	<p>Review project plans and Standards Project Review Memorandum to ensure compliance.</p>	<p>Prior to issuance of building permits</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		



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<p>Rehabilitation. This input will ensure the avoidance of any direct/indirect physical changes to historical resources. The findings and recommendations of the architectural historian or historic architect shall be documented in a Standards Project Review Memorandum at the schematic design phase. This memorandum shall analyze all project components for compliance with the Standards for Rehabilitation. The memorandum should recommend design modifications necessary to bring projects into compliance with the Standards for Rehabilitation, which shall be incorporated into project designs to ensure compliance with the Standards. The memorandum shall be submitted to the City for review and approval prior to the issuance of a building permit.</p>				
<b>Mitigation Measure CR-3: Cultural Resources Desktop Analysis</b>				
<p>Prior to demolition, grading, new construction, or underground work such as utility installation, a cultural resources Desktop Analysis, consisting of a review of existing information regarding cultural resources on a given project site, shall be conducted. The Desktop Analysis shall include, but not be limited to, a review of the project description and extent of proposed ground disturbance, a review of recent cultural resources records on file at the California Historical Resources Information</p>	<p>Review desktop analysis to ensure compliance.</p>	<p>Prior to issuance of building permits</p>	<p>City of Berkeley Department of Planning &amp; Development</p>	

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<p>System, and a review of available historic maps and aerial photography. If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. If no resource impacts are identified, no further analysis is warranted. If potential impacts to resources are identified, the applicant shall be required to implement Mitigation Measure CR-4. If the desktop analysis identifies that an area has been subject to a Phase I cultural resources study in the previous five years, Measure CR-4 would not be required. If the Desktop Analysis identifies that no further analysis is warranted, the results will be documented in a memorandum for review and approval by the City prior to issuance of a building permit.</p>					
<b>Mitigation Measure CR-4: Phase I Archaeological Resources Study</b>					
<p>If the desktop analysis described in Mitigation Measure CR-3 identifies the potential to encounter cultural resources, a Phase I cultural resources study shall be performed by a qualified professional meeting the Secretary of the Interior's (SOI) Professional Qualifications Standards (PQS) for archaeology (National Park Service 1983). The Phase I cultural resources study shall include a pedestrian survey of the project site and sufficient background research and fieldwork to determine</p>	<p>If applicable, review Phase I report to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		

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<p>whether archaeological resources may be present. Archival research shall include a records search of the California Historical Resources Information System and a Sacred Lands File search with the Native American Heritage Commission. The report will be submitted to the City for review and approval prior to the issuance of a building permit. Recommendations in the Phase I Report must be implemented prior to and/or during construction to avoid or reduce impacts on archaeological resources. Adherence to recommendations included in the Phase I report shall be documented as appropriate for verification by the City. If the Phase I identifies an archaeological site and/or a high likelihood of subsurface deposits, Measure CR-5 shall be implemented.</p>					
<b>Mitigation Measure CR-5: Extended Phase I Testing</b>					
<p>For any projects proposed within 100 feet of a known archaeological site or in areas that have not been subject to previous archaeological testing, monitoring, or other subsurface investigation, as determined by the Desktop Analysis (Mitigation Measure CR-3) or Phase I Report (Mitigation Measure CR-4), the project applicant shall retain a qualified archaeologist to conduct an Extended Phase I (XPI) study to determine the presence/absence and extent of archaeological</p>	<p>If applicable, review XPI study to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning &amp; Development and Public Works</p>		

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<p>resources on the project site. If the boundaries of the archaeological site are already well understood based on previous work and are clearly interpretable as such by a qualified cultural resource professional, or if there is documentation that fill is already present to the depth of the current project, XPI testing will not be required. XPI testing shall include a series of shovel test pits and/or hand augured units and/or mechanical trenching to establish the boundaries of archaeological site(s) on the project site. All archaeological excavation shall be conducted by a qualified archaeologist(s) under the direction of a principal investigator meeting the SOI's PQS for archaeology (National Park Service 1983).The results of the XPI will be documented in a technical report and submitted to the City for review and approval prior to the issuance of a building permit. If the archaeological resource(s) of concern are Native American in origin, the qualified archaeologist shall confer with local California Native American Tribe(s) and, if applicable, a Native American monitor shall be present in accordance with Mitigation Measure TCR-2. Recommendations in the XPI Report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.</p>			Department		
<p><b>Mitigation Measure CR-6: Archaeological Site Avoidance</b></p>					

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<p>Avoidance will be the preferred treatment measure for an archaeological site identified on the Bayer campus. Any identified archaeological sites will be avoided by project-related construction activities, to the maximum extent feasible to still be able to fulfill the project objectives as determined by Bayer and confirmed by the City. The determination of feasibility will include an assessment of project redesign options, including but not limited to relocation of a proposed building, realignment of utilities, redesign of building plans to build above the existing ground surface and/or to minimize the proposed depth of disturbance, or other options as appropriate for a given project. A barrier (temporary fencing) and flagging will be placed between the work location and any resources within 60 feet of a work location to minimize the potential for inadvertent impacts. The 60-foot avoidance buffer may be reduced as appropriate if recommended by the qualified archaeologist. If the feasibility of avoidance of an archaeological resource of Native American origin is not immediately apparent, Bayer and the City of Berkeley shall contact consulting Tribes to discuss appropriate treatment of the resource, including the implementation of MM CR-7 and CR-8. If, after a good faith effort at resolution, the City, Bayer, and consulting Tribe conclude that agreement is not possible, MM CR-7</p>	<p>Review all demolition, grading, and building permits to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits and during construction</p>	<p>City of Berkeley Department of Planning &amp; Development and Public Works Department</p>		

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shall be implemented.					
<b>Mitigation Measure CR-7: Phase II Site Evaluation</b>					
<p>If the results of the Phase I Report and/or XPI indicate the presence of archaeological resources that cannot be avoided by the project and that have not been adequately evaluated for CRHR listing at the project site, the project applicant shall retain a qualified archaeologist to conduct a Phase II investigation to determine if intact deposits are present and if they may be eligible for the CRHR or qualify as unique archaeological resources. A Phase II evaluation shall include necessary archival research to identify significant historical associations and mapping of surface artifacts, collection of functionally or temporally diagnostic tools and debris, and excavation of a sample of the cultural deposit. The sample excavation will characterize the nature of the site, define the artifact and feature contents, determine horizontal and vertical boundaries, and retrieve representative samples of artifacts and other remains.</p> <p>If the archeologist and, if applicable, a Native American monitor or other interested tribal representative from a locally affiliated Tribe as listed by the Native American Heritage Commission determine it is appropriate, cultural materials collected from the site shall be processed and</p>	<p>If applicable, review the Phase II evaluation to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning &amp; Development and Public Works Department</p>		

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<p>analyzed in a laboratory according to standard archaeological procedures. The age of the materials shall be determined using radiocarbon dating and/or other appropriate procedures; lithic artifacts, faunal remains, and other cultural materials shall be identified and analyzed according to current professional standards. The significance of the sites shall be evaluated according to the criteria of the CRHR. The results of the investigations shall be presented in a technical report following the standards of the California Office of Historic Preservation publication “Archaeological Resource Management Reports: Recommended Content and Format (1990 or latest edition).” The report shall be submitted to the City for review and approval prior to the issuance of any building or engineering permits that could disturb identified resources. Recommendations in the Phase II report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.</p>					
<b>Mitigation Measure CR-8: Phase III Data Recovery</b>					
<p>If the Phase II site evaluation identifies resources that meet CRHR significance standards and if the resources cannot be avoided, the project applicant shall incorporate recommendations for mitigation of</p>	<p>Review all demolition, grading, and building permits to ensure</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning</p>		

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<p>archaeological impacts into the final design as per CR-7 above prior to construction. If the resource is significant for its data potential and if recommended by the archaeologist and approved by consulting Tribes if appropriate, Phase III data recovery may be required, including excavation, to exhaust the data potential of significant archaeological sites, and shall be carried out by a qualified archaeologist meeting the SOI standards for archaeology according to a research design reviewed and approved by the City and prepared in advance of fieldwork and using appropriate archaeological field and laboratory methods consistent with the California Office of Historic Preservation Planning Bulletin 5, Guidelines for Archaeological Research Design (1991 or the latest edition thereof). Methods of artifact disposition may include curation for historic-era archaeological resources and reburial onsite within a tribal cultural resources easement as identified in TCR-3 for tribal cultural resources. Curation is not appropriate for tribal cultural resources unless agreed to and/or requested by consulting tribes.</p> <p>The final Phase III Data Recovery reports shall be submitted to the City of Berkeley prior to issuance of any building permit for grading or construction. Recommendations contained therein shall be implemented throughout all ground disturbance</p>	<p>compliance that all feasible recommendations for mitigation of archaeological impacts are incorporated.</p>		<p>&amp; Development and Public Works Department</p>	



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activities.				
<b>Mitigation Measure CR-9: Worker’s Environmental Awareness Program</b>				
<p>Prior to any ground disturbing activities, the project applicant shall retain an SOI qualified archaeologist to conduct a Worker’s Environmental Awareness Program (WEAP) training. The WEAP training shall be focused on archaeological sensitivity and shall be provided to all construction personnel prior to the commencement of any ground- disturbing activities. The WEAP training shall include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find. Attendance at the WEAP training shall be documented with a sign-in sheet to be submitted to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with the training required under TCR-1.</p>	<p>Monitor compliance with WEAP training.</p>	<p>Prior to ground disturbing activities</p>	<p>City of Berkeley Department of Planning &amp; Development</p>	
<b>Mitigation Measure CR-10: Archaeological Monitoring</b>				
<p>If recommended by the Desktop Analysis, Phase I, XPI, Phase II, or Phase III studies, the project applicant shall retain a qualified archaeologist (Monitor) to observe project-related ground-disturbing activities. The Monitor will have the</p>	<p>If applicable, ensure retention of a qualified archaeologist.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning</p>	

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<p>authority to halt and redirect work if any archaeological resources are identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find must be evaluated for listing in the CRHR. Archaeological monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance activity moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.</p>	<p>Monitor ongoing compliance.</p>	<p>Ongoing during construction</p>	<p>&amp; Development</p>		
<p><b>Mitigation Measure CR-11: Unanticipated Discovery of Archaeological Resources</b></p>					
<p>If archaeological resources are encountered during ground-disturbing activities, whether or not an archaeological monitor is present, work within 60 feet shall be halted. The project applicant shall</p>	<p>If applicable, ensure retention of a qualified archaeologist.</p>	<p>Ongoing during</p>	<p>City of Berkeley Department of</p>		

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<p>notify the City and retain an archaeologist meeting the SOI's Professional Qualification Standards for archaeology (National Park Service 1983) to evaluate the find. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for CRHR eligibility. If the discovery proves to be eligible for the CRHR and impacts cannot be avoided, data recovery excavation may be required. Reports prepared to document and/or evaluate unanticipated discoveries and their treatment shall be submitted to the City of Berkeley for review and approval. Recommendations contained therein shall be implemented throughout the remainder of ground disturbance activities.</p>	<p>Monitor compliance with required measures in the event of unanticipated discovery of archaeological resources.</p>	<p>construction.</p>	<p>Planning &amp; Development</p>		
<b>GEOLOGY AND SOILS</b>					
<b>Mitigation Measure GEO-1: Discovery of Paleontological Resources</b>					
<p>If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. Prior to ground- disturbing activities, the project applicant shall retain a qualified paleontologist to provide on-call services in the event of an unanticipated discovery. A qualified paleontologist is defined by the Society of Vertebrate Paleontology (SVP) standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is</p>	<p>Ensure retention of a qualified paleontologist.</p> <p>Monitor compliance with WEAP training and SVP guidelines.</p>	<p>Prior to permit approval.</p> <p>Ongoing during construction.</p>	<p>City of Berkeley Department of Planning &amp; Development and Public</p>		

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<p>experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010). Prior to the start of construction, the qualified paleontologist shall conduct a Paleontological Worker Environmental Awareness Program (WEAP), a training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The WEAP shall be fulfilled at the time of a preconstruction meeting at which a Qualified Paleontologist shall attend.</p> <p>In accordance with SVP (2010) guidelines, all work shall halt in the immediate vicinity of a find and the qualified paleontologist shall evaluate the discovery. The qualified paleontologist shall determine the significance of the discovery and identify whether additional mitigation or treatment is warranted. Measures may include testing, data recovery, reburial, archival review and/or transfer to the appropriate museum or educational institution, such as the University of California Museum of Paleontology. All testing, data recovery, reburial, archival review or transfer to research institutions related to monitoring discoveries shall be determined by the qualified paleontologist and shall</p>			Works Department		

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<p>be reported to the City. Work in the area of the discovery may resume after the find is properly documented and authorization is given to resume construction work.</p>					
<p><b>GREENHOUSE GAS EMISSIONS</b></p>					
<p><b>Mitigation Measure GHG-1 Renewable Electricity Resources</b></p>					
<p>Electricity used at the site shall be sourced from 100 percent renewable energy resources by 2030. Bayer shall submit documentation showing as such to the City every five years, or at intervals required by the City, to ensure compliance.</p>	<p>Review documentation of electricity sourced from renewable energy.</p>		<p>City of Berkeley Department of Planning &amp; Development</p>		
<p><b>HAZARDS AND HAZARDOUS MATERIALS</b></p>					
<p><b>Mitigation Measure HAZ-1 Property Assessment – Phase I and II ESAs</b></p>					
<p>The project applicant shall prepare a site-specific Phase I ESA for each development area / Block, in accordance with standard ASTM methodologies, to assess the land use history of the project site. Phase II ESAs (i.e., soil, groundwater, soil vapor subsurface investigations) shall be completed where a building is proposed south of Carleton Street or based on the results of the Phase I ESAs. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas,</p>	<p>Review Phase I and Phase II ESAs.</p>	<p>Prior to issuance of building or engineering permits</p>	<p>City of Berkeley Department of Planning &amp; Development and Public</p>		

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<p>a Phase II ESA would be conducted to determine whether the soil, groundwater, and/or soil vapor has concentrations exceeding regulatory screening levels for commercial/industrial land uses. If the Phase II ESA concludes that the site is or may be impacted and could affect the planned development, then an assessment, remediation, or corrective action (e.g., removal of contaminated soil, in-situ treatment, capping, engineering controls) shall be conducted prior to or during construction under the oversight of federal, state, and/or local agencies (e.g., USEPA, DTSC, SFB RWQCB, City of Berkeley TMD, Alameda County DEH) and in full compliance with current and applicable federal and state laws and regulations. Additionally, Voluntary Cleanup Agreements may be used for parcels where remediation or long-term monitoring is necessary.</p>			Works Department		
<b>Mitigation Measure HAZ-2: Regulatory Agency UST Involvement – City of Berkeley TMD and SFB RWQCB</b>					
<p>Because the project site and immediately adjacent properties are associated with open and closed LUST and Cleanup Program cases overseen by the SFB RWQCB, the project applicant shall notify the SFB RWQCB of the following:</p> <ul style="list-style-type: none"> <li>Development plans for each Block located south of Carleton Street and for Block B North east of Fourth Street</li> </ul>	Review Phase I and Phase II ESAs to ensure compliance	Prior to issuance of building or engineering permits.	City of Berkeley Department of Planning & Development and		

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<ul style="list-style-type: none"> <li>• Completion of subsequent Phase I ESAs</li> <li>• Identification of unanticipated stained or odorous soils during demolition, grading, and/or construction activity</li> <li>• Identification of additional underground tanks and associated piping, or other underground features such as railroad spurs or ties, unknown piping, cisterns, wells, waste/burn pits, etc., if encountered</li> </ul> <p>Additionally, all onsite UST removals and associated assessment work shall be completed under the direction of the City of Berkeley TMD and/or the SFB RWQCB. To the extent there are any pending LUST and Cleanup Program cases on the project site, the UST closure and agency approval documents shall be reviewed and approved by the City of Berkeley TMD and/or the SFB RWQCB prior to issuance of building permits for grading or any other ground disturbance. Upon identification of stained soil, odorous soil, USTs, or other underground features onsite, City of Berkeley TMD and/or SFB RWQCB could require actions such as: preparation of removal action workplans; obtaining permits for removal of USTs or other underground features; excavation and offsite disposal of soil; assessment of soil and/or groundwater beneath the excavation; and/or completion of UST removal reports or case closure</p>			Public Works Department		

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documents.					
<b>Mitigation Measure HAZ-3: Regulatory Agency Subsurface Involvement – ACPWA, SFB RWQCB and City of Berkeley</b>					
<p>The City of Berkeley TMD and the SFB RWQCB shall continue to provide agency oversight of assessment and remediation of the open Cleanup Program case (case #01S0045) on the project site. Additionally, the applicant shall notify the City of Berkeley and SFB RWQCB Cleanup Program project manager of the following:</p> <ul style="list-style-type: none"> <li>• Development plans for Block B North east of Fourth Street and development south of Carleton Street</li> <li>• Onsite use of 14 hydraulic elevators that may have contained oils containing PCBs (Farallon, 2020)</li> <li>• Onsite use of above-ground storage tanks used to store diesel for generators (Farallon, 2020)</li> <li>• Other regulatory UST case listings (City of Berkeley and SFB RWQCB) and assessment work that will be completed under the direction of other regulatory agencies</li> <li>• All former environmental documents completed for the site of development disturbance, including this SEIR</li> </ul> <p>SFB RWQCB could require actions such as: preparation of subsurface investigation workplans;</p>	<p>Review all demolition, grading, and building permits to ensure oversight by City of Berkeley TMD and the SFB RWQCB.</p> <p>Coordinate with City of Berkeley TMD and the SFB RWQCB to ensure compliance with required measures.</p>	<p>Prior to permit approval.</p> <p>Ongoing during cleanup.</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		



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<p>completion of soil, soil vapor, and/or groundwater subsurface investigations; installation of soil vapor or groundwater monitoring wells; excavation and offsite disposal of soil; completion of human health risk assessments; and/or completion of remediation reports or case closure documents.</p> <p>If groundwater wells or soil vapor monitoring probes are identified within the construction area during demolition, subsurface demolition, or construction at the project site, they will be abandoned/destroyed under permit from the Alameda County Public Works Agency (ACPWA). Demolition activities will be documented in a letter report submitted to the ACPWA and SFB RWQCB within 60 days of the completion of abandonment activities. Abandonment of sub-slab vapor points will be completed with SFB RWQCB approval and demolition activities will be documented in a letter report to SFB RWQCB.</p> <p>The SFB RWQCB non-objection, concurrence, no further action, closure, and/or agency approval documents shall be delivered to and reviewed by the City of Berkeley prior to issuance of any building permit authorizing grading or construction on the site. The SFB RWQCB may determine that City of Berkeley TMD or DTSC may be best suited to perform the lead agency duties for assessment and/or remediation at the project site, in which case</p>					

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this and other mitigation measures will still apply.					
<b>Mitigation Measure HAZ-4: Soil and Groundwater Management Plan</b>					
<p>The project applicant shall implement the recommendations of the Soil and Groundwater Management Plan (SGMP) prepared by Farallon Consulting LLC dated December 28, 2020. The SGMP shall be reviewed by the City of Berkeley Toxics Management Division prior to issuance of permits for grading or other ground disturbance and the report shall be updated if needed. The SGMP recommendations are related to:</p> <ul style="list-style-type: none"> <li>• Management of Unanticipated Subsurface Conditions</li> <li>• Health and Safety Requirements</li> <li>• Onsite Soil Management</li> <li>• Groundwater Management</li> <li>• Stormwater Management</li> <li>• Soil and Groundwater Management Plan Reporting Requirements</li> </ul> <p>Construction workers shall be informed about environmental conditions and measures to mitigate potential risks to the environment, construction workers, and other nearby receptors from potential exposure to hazardous substances that may be associated with unknown conditions or unexpected underground</p>	<p>Review and approve updated SGMP and review all demolition, grading, and building permits to ensure compliance.</p>	<p>Prior to issuance of building or engineering permits.</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		

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<p>structures, and known contaminated soil or groundwater encountered during construction activities.</p> <p>The SGMP shall be updated and the updated recommendations shall be implemented in the following cases:</p> <ul style="list-style-type: none"> <li>• A change in project site uses;</li> <li>• Receipt of additional information pertaining to project site environmental conditions;</li> <li>• Updated chemical toxicity information for contaminants detected at the project site based on revised regulatory screening levels; or,</li> <li>• New legal or regulatory soil or groundwater management requirements applicable to the project site.</li> </ul>					
<b>Mitigation Measure HAZ-5: Hazardous Materials Safety Plan (Updated 1991 EIR MM)</b>					
<p>The project applicant shall prepare a Hazardous Materials Safety Plan to address potential issues that may be encountered during project operation involving the use, storage, transport, and disposal of biohazardous and chemical materials. The Hazardous Materials Safety Plan shall be updated annually and reviewed by Berkeley's Toxics Management Division. The Plan shall include, but not be limited to, the following information and measures:</p>	<p>Review and approve Hazardous Materials Safety Plan.</p>	<p>Annually</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		

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<ul style="list-style-type: none"> <li>• Documentation of ongoing compliance with all applicable federal, state, and local regulations related to biohazardous safety, storage, transport, and disposal procedures, and emergency response preparedness, including biosafety guidelines published by the NIH and CDC.</li> <li>• Documentation that current and future operations would prohibit the use of biohazardous agents within Risk Groups 3 and 4.</li> <li>• Documentation of ongoing coordination for emergency preparedness with the City of Berkeley, including preparation of an emergency response plan and an emergency disaster procedures manual for release of hazardous biological materials. The disaster preparedness plan shall include annual training for and coordination with City of Berkeley emergency responders as to the nature of hazards on site, types of organisms likely to be encountered, where to take exposed persons to receive appropriate treatment, and staging semi-annual mock disaster drills.</li> <li>• Updates to and continued compliance with the site’s Risk Management Prevention Plan (RMPP) for the use of ammonia. The RMPP</li> </ul>				

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<p>shall be subject to review and approval by the USEPA.</p> <ul style="list-style-type: none"> <li>Updates to and continued compliance with the Hazardous Materials Release Response Plan and inventory and Risk Management and Prevention program required by CalEPA.</li> </ul>					
<b>HYDROLOGY AND WATER QUALITY</b>					
<b>Mitigation Measure HWQ-1: Best Management Practices (Updated 1991 MM)</b>					
<p>The project applicant shall prepare documentation of Best Management Practices to minimize the potential for water pollution. Typical elements of such a document would include addressing the possibility of substituting less toxic compounds in manufacturing and research and development and proper handling of those toxic compounds used.</p>	<p>Review all demolition, grading, and building permits to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning &amp; Development and Public Works Department</p>		
<b>Mitigation Measure HWQ-2: Source Control (Updated 1991 MM)</b>					
<p>The project applicant shall manage pollutants on the project site such that they are not easily mobilized and discharged into stormwater runoff. This shall involve configuring fuel storage under roofed areas</p>	<p>Review all demolition, grading, and building permits</p>	<p>Prior to issuance of building and engineering</p>	<p>City of Berkeley Department of</p>		

EXHIBIT C  
 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
and preventing on-site runoff from flowing through these areas. Hazardous materials stored in uncovered areas shall be fully contained or covered such that they do not come into contact with rainfall.	to ensure compliance.  Monitor compliance during operation.	permits.  Ongoing	Planning & Development and Public Works Department		
<b>Mitigation Measure HWQ-3: Water Quality Monitoring (Updated 1991 MM)</b>					
The project applicant shall perform sampling and testing of stormwater runoff from the project site four times per year. The extent and location of this monitoring will be based upon the degree of source runoff controls implemented. Monitoring shall be used primarily to ensure source controls are working and to detect any additional or accidental pollutants in stormwater runoff.	Review sampling and testing of stormwater runoff to ensure compliance.	Quarterly	City of Berkeley Department of Planning & Development and Public Works Department		
<b>Mitigation Measure HWQ-4: Pollutant Removal (Updated 1991 MM)</b>					
The project applicant shall install systems to remove pollutants before stormwater runoff leaves the project site. This may involve physical removal or chemical or biological treatment depending on the	Review all demolition, grading, and building permits	Prior to issuance of building and engineering	City of Berkeley Department of		

EXHIBIT C  
 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
type of pollutants that would be present. Uncovered parking areas shall receive street sweeping monthly to remove pollutants, oils, and greases before they are mobilized by runoff. Storm drains downstream of hazardous materials storage areas shall be equipped with manual shut-off valves. In the event of a spill, these valves shall be immediately closed, and shall remain closed until clean-up has been completed.	to ensure compliance.  Monitor compliance during operation.	permits.  Ongoing	Planning & Development and Public Works Department		
<b>Mitigation Measure HWQ-5: Management of Underground Tanks (Updated 1991 MM)</b>					
The project applicant shall protect from damage existing wells that monitor potential releases of pollutants from underground tanks and may be required to relocate them if they would be affected by construction. Remediation or excavation of soil contaminated by underground tank releases, if necessary, shall be completed before construction of permanent foundations.	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits	City of Berkeley Department of Planning & Development and Public Works Department		
<b>Mitigation Measure HWQ-6: Monitoring and Remediation of Seepage into Aquatic Park (Updated 1991 MM)</b>					
The project applicant shall contribute to the funding of (as determined by the City), or perform, periodic groundwater sampling and monitoring where	Review results of groundwater sampling and, if	Ongoing	City of Berkeley Department		

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<p>groundwater seeps from the 10- to 12-foot-high embankment along the western edge of the Southern Pacific Railroad. If the City determines that the Bayer Campus' use of hazardous material has contributed to contamination of groundwater seepage which supports the narrow freshwater wetland between the main lagoon at Aquatic Park and the railroad, Bayer shall contribute to the funding of remediation, if necessary. If the City determines that contamination of groundwater seepage originates from properties outside the Bayer Campus, then the project applicant shall not be responsible for funding remediation of such contamination.</p>	<p>applicable, require funding.</p>		<p>ent of Planning &amp; Development and Public Works Department</p>		
<p><b>Mitigation Measure HWQ-7: Source Control for Groundwater Contamination (Updated 1991 MM)</b></p>					
<p>The project applicant shall implement standard safeguards, monitoring, and contingency measures to minimize the potential for future contamination of the local groundwater. Such measures include roofing and/or berming of storage areas, lining storage areas to prevent infiltration, and/or installing shutoff valves in downslope storm drain lines.</p>	<p>Review all demolition, grading, and building permits to ensure compliance and monitor compliance during operation.</p>	<p>Ongoing</p>	<p>City of Berkeley Department of Planning &amp; Development and Public Works Department</p>		



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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<b>NOISE</b>					
<b>Mitigation Measure N-1: Construction-Related Noise Reduction Measures</b>					
<p>The following measures shall be implemented during construction for the purpose of reducing construction-related noise impacts:</p> <ul style="list-style-type: none"> <li>Neighbor Notification. At least two weeks prior to initiating construction activities requiring the use of two or more pieces of heavy construction equipment at the project site, the applicant shall provide an ongoing website of on-site construction activities and written notice to businesses and residents within 500 feet of the project site construction areas , including: (1) a description of the Project; (2) a description of construction activities; (3) a daily construction schedule (i.e., time of day) and expected duration (number of weeks or months); (4) the name and phone number of the “Noise Management Individual” for the Project; (5) a commitment to notify neighbors at least four days in advance of any authorized extended work hours and the reason for extended hours; (6) notice that construction work is about to commence; and (7) the designated “Disturbance Coordinator” responsible for responding to</li> </ul>	<p>Monitor compliance with noise reduction measures.</p>	<p>Monitoring during construction</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		

EXHIBIT C  
 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
	<p>any local complaints about construction noise. The noise manager would determine the cause of the noise complaints (e.g., starting too early, bad muffler) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval prior to issuance of a building permit.</p> <ul style="list-style-type: none"> <li>• Disturbance Coordinator. The applicant shall designate a disturbance coordinator who shall be responsible for responding to any local complaints about construction noise. The noise disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall require that reasonable measures warranted to correct the problem be implemented. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site outside the gate visible to passersby (the campus is closed).</li> <li>• Noise Reduction Program. The applicant shall develop a site-specific construction noise reduction program prepared by a qualified acoustical consultant to reduce construction related noise impacts to the</li> </ul>				

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
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	<p>maximum extent feasible, subject to review and approval of the Zoning Officer or a delegate prior to issuance of a building permit. The noise reduction program shall include time limits for construction and all technically and economically feasible measures to ensure that construction complies with the City of Berkeley Municipal Code Section</p> <ul style="list-style-type: none"> <li>13.40.070. The program shall include, but is not limited to the following available controls to reduce construction noise levels to as low as practical:</li> <li>Temporary Noise Barrier. The applicant shall construct eight-foot-high solid plywood fences along construction site boundaries adjacent to off-site noise sensitive residences or other noise-sensitive land uses (e.g., school uses) to meet applicable thresholds. These fences shall be outfitted with noise control blanket barriers where necessary to effect reductions that result in compliance with the City's quantified noise construction thresholds, as determined by the noise control plan.</li> <li>Mufflers. Construction equipment shall be properly maintained and all internal combustion engine driven machinery with</li> </ul>				

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
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	<p>intake and exhaust mufflers and engine shrouds, as applicable, shall be in good condition and appropriate for the equipment. During construction, all equipment, fixed or mobile, shall be operated with closed engine doors and shall be equipped with properly operating and maintained mufflers, consistent with manufacturers' standards.</p> <ul style="list-style-type: none"> <li>• Electrical Power. The applicant shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists. The applicant shall select hydraulically or electrically powered equipment where feasible and avoid pneumatically powered equipment where feasible.</li> <li>• Equipment Staging. All stationary noise-generating equipment shall be located as far as possible from sensitive receivers when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.</li> <li>• Equipment Idling. Unnecessary idling of internal combustion engines shall be prohibited. Construction equipment that would not be used for more than five minutes should be turned off completely.</li> </ul>				

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
				Project Conformance	Plan Set Sheet or Reference
<ul style="list-style-type: none"> <li>• Construction Vehicles. Construction-related traffic shall be routed along major roadways and away from sensitive receivers, where feasible.</li> <li>• Workers' Radios. All noise from workers' radios shall be controlled such that radios are not audible at sensitive receivers near construction activity.</li> <li>• Smart Back-up Alarms. Mobile construction equipment shall have smart back-up alarms that automatically adjust the sound level of the alarm in response to ambient noise levels. Alternatively, back-up alarms shall be disabled and replaced with human spotters to ensure safety when mobile construction equipment is moving in the reverse direction.</li> <li>• Additional Noise Attenuation Techniques. For development on the portion of the site east of Seventh Street, implement the measures set forth in the Noise Reduction Program and either: (1) erect temporary noise control blanket barriers, where necessary, along building facades facing construction sites; (2) restrict construction to weekdays; or (3) implement other noise reductions alternatives that could feasibly</li> </ul>					

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
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reduce noise to achieve the City's quantified noise construction thresholds.					
<b>PUBLIC SERVICES</b>					
<b>Mitigation Measure PS-1 Security Measures (Updated 1991 MM)</b>					
The project applicant shall continue implementing the following measures recommended by the Berkeley Police Department including but not limited to: <ul style="list-style-type: none"> <li>• Prepare a Crime Prevention Evaluation Analysis Report in coordination with the Police Department;</li> <li>• Employ a highly visible security guard;</li> <li>• Provide adequate lighting in parking areas and around buildings in use in the evenings; and</li> <li>• Utilize solid walls, burglar alarms, and/or safety glazing on the windows for buildings containing pharmaceuticals.</li> </ul>	Review all demolition, grading, and building permits to ensure implementation of security measures.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development		
<b>RECREATION</b>					
<b>Mitigation Measure REC-1 (Updated 1991 MM)</b>					
The project applicant shall contribute to park maintenance and improvements related to Aquatic Park through an upfront payment of \$385,000. The contribution shall be paid to the City of Berkeley Parks, Recreation, and Waterfront Department by	Require contribution of a fair share of the cost of park maintenance.	Ongoing	City of Berkeley Department of Planning		

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

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February 25, 2022.

Monitoring Agency & Development

**TRANSPORTATION**

**Mitigation Measure T-1 Transportation Demand Management Program (Updated 1991 EIR MM)**

The project applicant shall continue to implement and update the Transportation Demand Management (TDM) Program to reduce single-occupant automobile trips generated by the project site. The TDM Program shall be reviewed and approved by the City of Berkeley prior to issuance of building permits for development allowed under the amended DA. In addition, the TDM Program shall be updated by Bayer and approved by the City every five years, or at intervals required by the City, to ensure that services are consistent with best practices to reduce the use of single-occupant automobile trips to and from the project site. The TDM Program shall include, but not be limited to, the following information and measures:

- Continued funding and implementation of the West Berkeley Shuttle with service as needed to meet demand.
- Other TDM measures intended to reduce single-occupant automobile trips, including but not limited to on-site bicycle parking requirements, car share and bike share

Review and approve TDM program.

Every five years, at the request of the City of Berkeley Transportation Division

City of Berkeley Department of Planning & Development and Transportation Division

EXHIBIT C  
 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification Project Conformance	Plan Set Sheet or Reference
memberships for Bayer employees, and parking pricing. Additional measures consistent with the City’s TDM policies may be required by the City.					
<b>TRIBAL CULTURAL RESOURCES</b>					
<b>Mitigation Measure TCR-1 Worker’s Environmental Awareness Program</b>					
Prior to ground disturbing activities, the project applicant will retain a locally affiliated tribal member who represents a tribal organization that was contacted as part of Assembly Bill 52 outreach to conduct a Worker’s Environmental Awareness Program (WEAP) training. The WEAP training shall be provided to all construction personnel (in conjunction with the cultural resources WEAP) prior to the commencement of ground-disturbing activities. The WEAP training shall include a description of the types of materials that may constitute Tribal Cultural Resources, the reasons for their traditional cultural significance and importance to tribal members, the stop work authority of the Native American monitor, and the proper protocol for the respectful treatment of the resource in the event of an unanticipated discovery. Attendance at the WEAP training shall be documented with a sign-in sheet for submittal to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with	Monitor compliance with WEAP training.	Prior to ground disturbing activities	City of Berkeley Department of Planning & Development		



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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
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the training required under CR-9.					
<b>Mitigation Measure TCR-2 Native American Monitoring</b>					
<p>If recommended by the Desktop Analysis, Phase I, Extended Phase I (XPI), Phase II, or Phase III studies required under Mitigation Measures CR-1 through CR-8, the project applicant shall retain a qualified local Native American monitor to observe all ground disturbance, including archaeological excavation, associated with development facilitated by the project. Native American monitoring shall be provided by a locally affiliated tribal member. Monitors will have the authority to halt and redirect work if tribal cultural resources are identified during monitoring. If tribal cultural resources are encountered during ground-disturbing activities, work within 60 feet must halt and the find must be evaluated. Native American monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will</p>	<p>If applicable, confirm a qualified Native American monitor has been retained and review all demolition, grading, and building permits to ensure compliance with required monitoring and measures in the event that tribal cultural resources are identified.</p> <p>Monitor ongoing compliance.</p>	<p>Prior to issuance of building permits.</p> <p>Periodically throughout construction activities, or as determined by the Native American monitor.</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		

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 SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification Project Conformance	Plan Set Sheet or Reference
<p>extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.</p>					
<p><b>Mitigation Measure TCR-3 Cultural Resources Open Space Easement</b></p>					
<p>The project applicant will set aside an area that could be used as a Tribal Cultural Resources Open Space Easement in the event that tribal cultural resources are encountered during construction activities and are unable to be avoided. The purpose of the Cultural Resources Open Space Easement will be to provide an onsite location for reinterment of sensitive Native American cultural resources and/or human remains, as well as other associated funerary objects. If said remains are encountered, a Cultural Resource Open Space Easement will be developed and granted by the project applicant in consultation with the identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC as applicable. Should an easement be necessary, the following actions would be prohibited on the land subject to said easement, except as required for the reburial of sensitive cultural resources: grading; excavation;</p>	<p>If applicable, confirm a qualified Native American monitor has been retained and review all demolition, grading, and building permits to ensure compliance with required monitoring and measures in the event that tribal cultural resources are identified.</p>	<p>Prior to issuance of building permits.</p> <p>Periodically throughout construction activities, or as</p>	<p>City of Berkeley Department of Planning &amp; Development</p>		

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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification	
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<p>placement of soil, sand, rock, gravel or other material; clearing of vegetation with machinery; construction; erection or placement of a building or structure; vehicular activities; trash dumping; installation of wet or dry infrastructure, such as irrigation systems; or for a purpose other than as open space for tribal use only.</p> <p>Exceptions include the following:</p> <ul style="list-style-type: none"> <li>• Placement and reburial of sensitive Native American cultural resources or human remains.</li> <li>• Access shall be provided for identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC in perpetuity.</li> <li>• Selective clearing of vegetation by hand if required by fire authorities for the purpose of reducing an identified fire hazard or the removal of vegetation using chemicals for vector control purposes where required by the Department of Environmental Health.</li> <li>• The installation of a bench, marker, or other amenity if desired by the consulting Tribe(s).</li> </ul>	<p>Monitor ongoing compliance.</p>	<p>determined by the Native American monitor.</p>			

**Appendix C: Standard Conditions of Approval for All Projects**

The following conditions, as well as all other applicable provisions described above, apply to all projects insofar as they are not in conflict with the rest of this Agreement:

***[SECTION TO BE UPDATED WITH CITY'S MOST UP TO DATE SCA LIST]***

## EXHIBIT D Community Benefits

Bayer shall provide community benefits and impact fees to the City of Berkeley as set forth below:

### I. ANNUAL COMMUNITY INVESTMENT

A. Bayer<sup>1</sup> shall provide the community with the following annual investments by September 1 of each calendar year, as follows:

<b>Investment Schedule</b>			
Year	Investment No.		Amount
2022	1	\$	800,000
2023	2	\$	832,320
2024	3	\$	848,966
2025	4	\$	865,946
2026	5	\$	883,265
2027	6	\$	900,930
2028	7	\$	918,949
2029	8	\$	937,328
2030	9	\$	956,074
2031	10	\$	975,196
2032	11	\$	994,699
2033	12	\$	1,014,593
2034	13	\$	1,034,885
2035	14	\$	1,055,583
2036	15	\$	1,076,695
2037	16	\$	1,098,229
2038	17	\$	1,120,193
2039	18	\$	1,142,597
2040	19	\$	1,165,449
2041	20	\$	1,188,758
2042	21	\$	1,212,533
2043	22	\$	1,236,784
2044	23	\$	1,261,519
2045	24	\$	1,286,750
2046	25	\$	1,312,485
2047	26	\$	1,338,734
2048	27	\$	1,365,509
2049	28	\$	1,392,819
2050	29	\$	1,420,676
2051	30	\$	1,461,537
<b>Total</b>			<b>33,100,000</b>

<sup>1</sup> All capitalized terms refer to those terms defined in the Amended and Restated Development Agreement.

- B. The aggregate amount of those investments set forth in Section I.A during the thirty-year (30-year) term of the Agreement amounts to thirty-three million, one hundred thousand dollars (\$33,100,000).<sup>2</sup> Nothing in this Exhibit shall be construed to require Bayer to make investments exceeding this amount.
- C. Except as otherwise provided herein, any City actions or approvals required or authorized by this Exhibit D shall be undertaken by the City Manager on behalf of the City.

## II. ALLOCATION OF FUNDS

The amounts set forth in Section I of this Exhibit will be allocated as follows:

Forty-Eight and One Half Percent (48.5%)	Science, Technology, Engineering, Arts and Math ("STEAM") Education / Career Technical Education Partners
Twenty Percent (20.0%)	West Berkeley Fund (community infrastructure and resiliency)
Twenty Percent (20.0%)	City of Berkeley Affordable Housing Trust Fund (the "Housing Investment") <sup>3</sup>
Four Percent (4.0%)	City of Berkeley Affordable Childcare Fund (the "Childcare Investment")
Seven and One Half Percent (7.5%)	City of Berkeley Private Percent for Art Fund

Each of the foregoing programs and funds are described in more detail in Sections III and IV of this Exhibit.

The allocation schedule of funds in Section I is set forth in Figure 1 below.

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<sup>2</sup> In general, annual investments under this Section I escalate by 2 percent each year. The exception is that in year 2, the investment amount escalates by 4.04 percent and in year 30, the investment amount escalates by 2.88 percent. These increased escalators exist so as to provide the City with the negotiated amount of \$33.1 million in community benefits and impact fees.

<sup>3</sup> Note that the allocation to the City of Berkeley Housing Trust fund is significantly greater than the amount that would be required to mitigate the Affordable Housing Impacts of Bayer's development under the Agreement

Figure 1

<b>Investment Schedule</b>							
<b>Year</b>	<b>Investment No.</b>	<b>Total Annual Investment Amount</b>	<b>STEAM Investment Portion</b>	<b>West Berkeley Fund Investment Portion</b>	<b>Affordable Housing Investment Portion</b>	<b>Affordable Childcare Investment Portion</b>	<b>City of Berkeley Private Percent for Art Fund Investment Portion</b>
2022	1	\$800,000	\$388,000	\$160,000	\$160,000	\$32,000	\$60,000
2023	2	\$832,320	\$403,675	\$166,464	\$166,464	\$33,293	\$62,424
2024	3	\$848,966	\$411,749	\$169,793	\$169,793	\$33,959	\$63,672
2025	4	\$865,946	\$419,984	\$173,189	\$173,189	\$34,638	\$64,946
2026	5	\$883,265	\$428,384	\$176,653	\$176,653	\$35,331	\$66,245
2027	6	\$900,930	\$436,951	\$180,186	\$180,186	\$36,037	\$67,570
2028	7	\$918,949	\$445,690	\$183,790	\$183,790	\$36,758	\$68,921
2029	8	\$937,328	\$454,604	\$187,466	\$187,466	\$37,493	\$70,300
2030	9	\$956,074	\$463,696	\$191,215	\$191,215	\$38,243	\$71,706
2031	10	\$975,196	\$472,970	\$195,039	\$195,039	\$39,008	\$73,140
2032	11	\$994,699	\$482,429	\$198,940	\$198,940	\$39,788	\$74,602
2033	12	\$1,014,593	\$492,078	\$202,919	\$202,919	\$40,584	\$76,094
2034	13	\$1,034,885	\$501,919	\$206,977	\$206,977	\$41,395	\$77,616
2035	14	\$1,055,583	\$511,958	\$211,117	\$211,117	\$42,223	\$79,169
2036	15	\$1,076,695	\$522,197	\$215,339	\$215,339	\$43,068	\$80,752
2037	16	\$1,098,229	\$532,641	\$219,646	\$219,646	\$43,929	\$82,367
2038	17	\$1,120,193	\$543,294	\$224,039	\$224,039	\$44,808	\$84,014
2039	18	\$1,142,597	\$554,160	\$228,519	\$228,519	\$45,704	\$85,695
2040	19	\$1,165,449	\$565,243	\$233,090	\$233,090	\$46,618	\$87,409
2041	20	\$1,188,758	\$576,548	\$237,752	\$237,752	\$47,550	\$89,157
2042	21	\$1,212,533	\$588,079	\$242,507	\$242,507	\$48,501	\$90,940
2043	22	\$1,236,784	\$599,840	\$247,357	\$247,357	\$49,471	\$92,759
2044	23	\$1,261,519	\$611,837	\$252,304	\$252,304	\$50,461	\$94,614
2045	24	\$1,286,750	\$624,074	\$257,350	\$257,350	\$51,470	\$96,506
2046	25	\$1,312,485	\$636,555	\$262,497	\$262,497	\$52,499	\$98,436
2047	26	\$1,338,734	\$649,286	\$267,747	\$267,747	\$53,549	\$100,405
2048	27	\$1,365,509	\$662,272	\$273,102	\$273,102	\$54,620	\$102,413
2049	28	\$1,392,819	\$675,517	\$278,564	\$278,564	\$55,713	\$104,461
2050	29	\$1,420,676	\$689,028	\$284,135	\$284,135	\$56,827	\$106,551
2051	30	\$1,461,537	\$708,845	\$292,307	\$292,307	\$58,461	\$109,615
<b>Total</b>		<b>33,100,000</b>	<b>16,053,499</b>	<b>6,620,000</b>	<b>6,620,000</b>	<b>1,324,000</b>	<b>2,482,500</b>

### III. IMPACT FEES

- A. In order to ensure that affordable housing and affordable childcare impacts are timely addressed throughout the term of the Agreement, Bayer and the City shall ensure that the payments to the Affordable Housing Trust Fund and the Affordable Childcare Trust Fund are sufficient to cover the development impact fees required for the Project as those fees become due. Impact fees shall be assessed on each Project application for a Reserved Discretionary Approval which is associated with a construction and/or demolition proposal under the Agreement

("Implementation Project"). The impact fees for each Implementation Project shall be paid in a single lump sum due upon issuance of the Occupancy Permit for the building shell.

- B. Bayer's impact fee payments shall be calculated in accordance with the affordable housing and affordable childcare impact fee requirements in effect as of the Effective Date (City Council Resolutions 66,617 N.S. and 66,618 N.S., or "**Existing Fee Requirements**"), subject to annual adjustments based on the Consumer Price Index, All Urban Consumers, San Francisco Bay Area ("**CPI**"), as required by the Existing Fee Requirements. Per Existing Fee Requirements, impact fees shall be assessed on new construction<sup>4</sup> associated with each Implementation Project under the Agreement.
- C. Under the Community Benefits investment schedule set forth in Figure 1, Bayer will be making annual investments in the Affordable Housing Trust Fund and Affordable Childcare Trust Fund. These annual investments may be made in advance of the time when the affordable housing and childcare impact fees will be due for a given Implementation Project. Accordingly, Bayer shall receive a credit toward the applicable impact fees for all such investments made before the fees are due. That is, investments to the Affordable Housing Trust Fund shall be credited toward the affordable housing mitigation fee, and investments to the Affordable Childcare Trust Fund shall be credited toward the affordable childcare mitigation fee, as such fees become due. The amount of available credit for application to a fee due shall be the sum of all annual Housing Investments or Childcare Investments, as applicable, made prior to the due date of the fee, less the amounts previously applied to earlier fees. In calculating that sum, the amount of each Housing Investment and Childcare Investment shall be adjusted annually by CPI for the period of time between when such an Investment was made and the time of calculation. If the available credit exceeds the amount of fees due, the exceedance shall be carried over and be applied as a credit to future impact fees, if any. If the credits are insufficient to pay the amount of fees due, Bayer shall pay the difference, and the amount of the difference shall be subtracted in full from the amount Bayer is required to pay for its next Housing Investment or Childcare Investment, as applicable, and if the difference exceeds the amount of that payment, the exceedance will be carried over and subtracted in full from the following Housing or Childcare Investment, and so on, until the full amount of the difference has been applied, or all of the Housing or Childcare Investments have been completed.
- D. Because the Project will be developed in multiple phases spanning numerous Implementation Projects, it is possible that a particular Implementation Project may include more demolition than new development, resulting in a net decrease in new gross floor area. Similarly, an Implementation Project may include a net increase in new gross floor area, but the increase may be below the threshold amount that ordinarily triggers the fee requirement. The parties acknowledge that impact fees are intended to apply to the cumulative net development actually built for the Project. Accordingly, if a particular Implementation Project does not include a net increase in gross floor area in excess of the threshold 7,500 square feet that triggers the fee requirement (or if it includes a remodel of less than 7,500 square feet that would otherwise qualify for impact fees), then any net increase or net decrease in gross floor area, or any square footage of the remodel, associated with that Implementation Project (a "**Gross Floor Area**

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<sup>4</sup> "**New construction**" means (1) the net additional, newly constructed floor area for a given Implementation Project, which is equal to the total square footage of proposed new construction minus the total square footage of existing square footage that will be demolished or replaced, or (2) the alteration of existing buildings that have been substantially vacant of all uses for at least three (3) years if there is a change of use that is intended to intensify employment on the site, consistent with the terms of the Existing Fee Requirements.



**Carryover**") shall be carried over and applied to the calculation of new gross floor area for the next Implementation Project.

- E. The Parties expect that the total amount to be paid into the Affordable Housing and Affordable Childcare Trust Funds over the life of the Agreement, \$7,944,000.00 in nominal dollars, will substantially exceed the aggregate amount of impact fees likely due over the life of the Agreement, which is estimated at \$4,952,230.00 in nominal dollars. The ultimate amount of impact fees that will be due will depend on a number of factors, including the timing and extent of each Implementation Project, and the possibility of minor amendments to the site plan or phasing plan that do not require amendment of the Agreement. To the extent the approximately \$3,000,000 of payments in excess of expected impact fees is not needed to satisfy impact fees due, it shall be retained by the City as an additional Community Benefit investment towards affordable housing. In the unlikely event that the actual aggregate amount of impact fees due exceeds \$7,944,000, Community Benefit monies shall be reallocated per the City's direction to the Affordable Housing and/or Affordable Childcare Trust Funds, as applicable, in the amount of the deficiency.<sup>5</sup>
- F. The City shall maintain a ledger ("Ledger") to account for the payment of monies into the Affordable Housing and Affordable Childcare Trust Funds, the annual CPI adjustment of those payments, and amounts credited or paid to satisfy Bayer's impact fee obligations. The Ledger shall also account for any Gross Floor Area Carryover as described in Section III.D. Within thirty (30) days of submittal of annual investments by Bayer, the City shall provide Bayer with an updated Ledger confirming the City's receipt of the annual investments, that such investments have been placed in the appropriate trust funds, the cumulative amount of credits, if any, to be carried forward, and any floor area Carryover for each use category set forth in the Existing Fee Requirements, including with respect to any replacement Implementation Projects.<sup>6</sup>

#### **IV. PARAMETERS GOVERNING COMMUNITY BENEFIT PROGRAMS AND CITY DEVELOPMENT FEE FUNDS**

##### **A. STEAM Education / Career Technical Education Partners**

Bayer shall provide the following community benefits, and according to the following terms:

- 1. Subcategories for investment include: Transitional Kindergarten to 8th Grade; high school career technical education and paid internships; and community college STEAM career pathways and paid internships. Monies allocated toward STEAM Education under this Section shall be sub-allocated as follows:
  - a. Transitional Kindergarten through 8<sup>th</sup> Grade programs – Ten Percent (10%)
  - b. High School career technical education and paid internships – Fifty Percent (50%)

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<sup>5</sup> Nothing in this Exhibit shall be construed to require Bayer to make investments exceeding \$33,100,000.

<sup>6</sup> A replacement project is the scope of development identified in Section 3.2(A) and (B) of Exhibit C.

- c. Community college STEAM career pathways and paid internships – Forty Percent (40%)
2. Bayer shall convene a committee charged with administering the issuance of grants for the purposes and according to the allocations set forth in this Section IV.A, subject to the following terms:
    - a. A grant committee of stakeholders shall include representatives from Bayer, education experts, and community leaders. Grant committee members shall serve on a volunteer basis. Such committee is not a municipal committee and is not exercising any municipal authorities (and is not authorized to do so), but is a private committee of individuals per the terms of this Exhibit, and for the grant award purposes set forth in this Exhibit.
    - b. The grant committee shall consist of nine (9) or fifteen (15) persons, as the parties may mutually agree.
    - c. The City shall have the right to select one or more community leaders and one or more education experts to serve on the private committee, constituting 1/3 of the committee membership. The City and Bayer, by mutual agreement, shall have the right to select one or more community leaders and one or more education experts to serve on the private committee, constituting 1/3 of the committee membership. Representatives from Bayer selected by Bayer shall constitute 1/3 of the committee membership. Grant committee members shall each serve terms of four (4) years, and shall be reappointed or replaced upon expiration of their terms (or earlier replaced for cause) in the manner described above for their appointment.
    - d. Grant committee members shall meet at least annually and shall not make any decision unless a quorum of committee members participate, where a quorum shall be fifty (50) percent of committee members. Decisions of the grant committee shall be made by majority vote.
    - e. Grant award protocols shall be established by written policies and procedures established by the grant committee. The policies and procedures shall provide that the issuance and/or award of grants, the evaluation of awardees against performance standards, and the termination of grants shall be made on the basis of criteria and performance standards established in writing and provided to prospective grantees and incorporated as applicable into grant agreements.
    - f. To the extent feasible and consistent with the terms of the Agreement, the parties shall establish the grant committee within six (6) months of the Effective Date, and in no event later than 60 days prior to the first required Community Benefits payment.

- g. Grants funded by monies under this Section IV.A shall be awarded by the grant committee by August 1 and disbursed by Bayer to grantees by September 1 in each calendar year during the term of the Agreement for purposes consistent with the terms of this Section IV.A and consistent with the terms of the Agreement.
  - h. The foregoing grant committee shall not be dissolved prior to the end of the term set forth in the Agreement unless Bayer and the City mutually consent to dissolution in writing, and have agreed on alternative procedures for awarding grants under this Section IV.A.
  - i. The grant committee shall award grants with at least a five-year (5-year) term to eligible recipients with grant review of performance annually, and with an option to extend any awarded grants according to criteria and performance standards established pursuant to this Section IV.A.
3. By mutual agreement, the City and Bayer may authorize the committee to use (A) a portion of first year funding, not to exceed thirteen percent (13%) of the first year allocation of funds under this Section IV.A, to create a framework for program outcomes, selection process, and outcomes monitoring, and (B) a portion of each subsequent year's funding, not to exceed five percent (5%) of that year's allocation, to assist with implementation of the framework and other administrative expenses, including third-party consultants. Otherwise, all monies allocated must be allocated to grantees.

**B. West Berkeley Fund Committee**

- 1. Bayer shall convene a committee, tentatively to be named the West Berkeley Fund Committee, charged with administering the issuance of grants for the purposes and according to the allocations set forth in this Section IV.B, subject to the following terms:
  - a. Grants awarded by the committee shall be used to finance charitable and/or educational programs that support community infrastructure and resiliency programs for the benefit of the community within the boundaries of the City's West Berkeley Plan. Grantee programs shall focus on three charitable objectives: climate action, health equity, and economic resiliency. Such grant amounts are to be distributed in equal portions to address these three charitable objectives.
  - b. The grant committee shall include representatives from Bayer and community leaders. Grant committee members shall serve on a volunteer basis. Such committee is not a municipal committee and is not exercising any municipal authorities (and is not authorized to do so), but is a private committee of individuals per the terms of this Exhibit, and for the grant award purposes set forth in this Exhibit.

- c. The grant committee shall consist of nine (9) or fifteen (15) persons, as the parties may mutually agree.
  - d. The City shall have the right to select one or more community leaders to serve on the private committee, constituting 1/3 of the committee membership. The City and Bayer, by mutual agreement, shall have the right to 1/3 of the committee membership. Representatives from Bayer selected by Bayer shall constitute 1/3 of the committee membership. Community members unaffiliated with Bayer shall constitute a majority of the committee. Grant committee members shall each serve terms of four (4) years, and shall be reappointed or replaced upon expiration of their terms (or earlier replaced for cause) in the manner described above for their appointment.
  - e. All grant decisions shall be made by the vote of more than two-thirds of the members of the grant committee.
  - f. Grant award protocols shall be established by written policies and procedures established by the grant committee. The policies and procedures shall provide that the issuance and/or award of grants, the evaluation of awardees against performance standards, and the termination of grants shall be made on the basis of criteria and performance standards established in writing and provided to prospective grantees and incorporated as applicable into grant agreements.
  - g. To the extent feasible and consistent with the terms of the Agreement, the parties shall establish the grant committee within six (6) months of the Effective Date, and in no event later than 60 days prior to the first required Community Benefits payment.
  - h. To the extent it is feasible to do so, community benefits payments shall be made by Bayer to grant recipients in the same calendar year that grant recipients are identified by the committee.
  - i. The foregoing grant committee shall not be dissolved prior to the end of the term set forth in the Agreement unless Bayer and the City mutually consent to dissolution in writing, and have agreed on alternative procedures for awarding grants under this Section IV.B. .
  - j. The grant committee shall award grants with at least a three-year (3-year) term to eligible recipients, with grant review of performance annually, and with an option to extend any awarded grants according to criteria and performance standards established pursuant to this Section IV.B.
2. By mutual agreement, the City and Bayer may authorize the committee to use (A) a portion of first year funding, not to exceed twenty-five percent (25%) of the first year allocation of grants under this Section IV.B, to create a framework for program outcomes, selection process, and outcomes monitoring, and (B) a

portion of each subsequent year's funding, not to exceed ten percent (10%) of that year's allocation, to assist with implementation of the framework and other administrative expenses, including third-party consultants. Otherwise, all monies allocated must be allocated to grantees.

**C. Affordable Housing Trust Fund**

1. The Affordable Housing Trust Fund is that municipal fund identified in Chapter 22.20 of the Berkeley Municipal Code.
2. Monies allocated to the Affordable Housing Trust Fund pursuant to this Exhibit D shall be utilized by the City in the same manner prescribed in: Chapter 22.20 of the Berkeley Municipal Code, as it might be amended from time to time; any resolutions, regulations, or official policies adopted by the City in implementing and/or administering the Affordable Housing Trust Fund; and any applicable state or federal law.

**D. Affordable Childcare Trust Fund**

1. The City of Berkeley Affordable Childcare Fund is that municipal fund identified in Resolution 66,618.
2. Monies allocated to the Affordable Childcare Fund pursuant to this Exhibit D shall be utilized by the City in the same manner prescribed in Resolution 66,618, as it might be amended from time to time; any resolutions, regulations, or official policies adopted by the City in implementing and/or administering the Affordable Childcare Fund; and any applicable state or federal law.

**E. Private Percent for Art Fund**

1. The City of Berkeley Private Percent for Art Fund is that municipal fund identified in the Public Art in Private Development Program Guidelines that is associated with the City's collection of the in-lieu fee to the City as set forth in section 23C.23.070 of the Berkeley Municipal Code.
2. Monies allocated to the Private Percent for Art Fund pursuant to this Exhibit D shall be utilized by the City in the same manner prescribed in Chapter 23C.23 of the Berkeley Municipal Code, as it might be amended from time to time; any resolutions, regulations, or official policies adopted by the City in implementing and/or administering the Private Percent for Art Fund; and any applicable state or federal law.

**V. IN-KIND CONTRIBUTIONS**

In addition to the monetary investments toward community benefits set forth in this Exhibit, Bayer shall provide the following non-monetary, in-kind contributions:

- A. Bayer employee volunteerism hours and mentorships. To this end, each year Bayer shall:
1. Maintain its commitment to provide mentors for up to:
    - a. Fifteen (15) high school summer internships of at least one hundred and twenty (120) hours each, on an annual basis.
    - b. Eight (8) community college year-round internships of at least eight hundred (800) hours each, on an annual basis.
  2. Provide at least six hundred and twenty (620) volunteer hours on an annual basis in Berkeley, including at least twenty (20) hours to support requested teacher development support and/or student career exploration engagement.
- B. Local hiring outreach and promotion. To this end, Bayer shall:
1. Commit to focused community outreach about Bayer's open career positions to Berkeley residents via social media, local publications, job fair participation and engagement at Berkeley educational institutions. Any hiring decision must comply with applicable law, and Bayer strictly prohibits hiring discrimination on any basis protected by local, state, or federal law.
  2. Report annually, in conjunction with annual review processes that apply to the Amended and Restated Development Agreement, on hires from among:
    - a. Berkeley residents; and
    - b. Graduates of Bayer-funded high school and community college internships.
- C. Promotion of neighborhood events (e.g., community-building events, community meetings, and mailers for Bayer sirens and alarm systems). To this end, Bayer shall:
1. At the request of City leaders or community partners, promote at least two West Berkeley neighborhood community-building events per year to Bayer employees and encourage volunteerism.
  2. Mail postcards to Bayer neighbors with information on Bayer's siren and alarm systems in an annual basis, where such postcards will be delivered to postal addresses of residents living south of University Avenue, north of Ashby Avenue, and West of San Pablo Avenue.
  3. Host biennial community meetings (virtual or in person, at Bayer's discretion) to connect with neighbors on issues of shared concern and to report on Bayer's community engagement.

- D. Non-monetary support for one (1) Career Technical Education ("CTE") program receiving funding from the grant committee identified in Section IV.A (i.e., hosting qualified CTE internship programs on site as well as administrative and Information Technology support for internships). To this end, Bayer shall:
1. Provide on-site administrative space for internship coordination organization(s) identified under STEAM grant allocations identified in Section V.A up to a maximum of ten (10) people consistent with current Bayer administrative space practices.
  2. Provide information technology support for the aforesaid internship coordination organization(s).
- E. Identification and, where possible, pursuit of an increase of specific commitments to contracting with minority- owned businesses. To this end, Bayer shall, every three years, at the request of the City's Office of Economic Development, and to the extent consistent with applicable law:
1. Provide an update on its supplier inclusion and diversity program.
  2. Identify potential categories where Berkeley or Bay Area minority-owned businesses may be suppliers based on information provided by the City and refer suppliers already qualified through City of Berkeley Minority Business Enterprise ("MBE") programs to be evaluated as potential Bayer vendors.
  3. Engage major suppliers for its Berkeley operations to encourage them to source from diverse suppliers.
- F. Sustainability commitments beyond those required mitigation measures identified through CEQA process, including those bird-safe glass provisions, native planting requirements, and other sustainability practices programmed into Bayer's design review guidelines, as set forth in Exhibit C to the Amended and Restated Development Agreement.
- G. Use of facilities, if available and reasonably appropriate (e.g., does not interfere with site operations), for Berkeley Fire Department training, pursuant to the following terms:
1. At the request of Berkeley Fire Department, each year Bayer will host at least one training on community-facing emergency skills in Building 83 and Building 84.
  2. When Building 84 is removed, Bayer will no longer be obligated to host community facing training events at this building, and when Building 83 is renovated, Bayer will no longer be obligated to host community facing training events at this building.





## **Mitigation Monitoring and Reporting Program**

The Subsequent Environmental Impact Report (SEIR) for the Bayer HealthCare LLC Development Agreement Amendment Project identifies mitigation measures to reduce the potential impacts of the project. The California Environmental Quality Act (CEQA) requires a public agency to adopt a monitoring and reporting program for ensuring compliance with required mitigation measures.

The following table lists mitigation measures identified in the SEIR and identifies the timing of and responsibility for monitoring each measure. The project proponent will have the responsibility for implementing the measures, and the various listed City of Berkeley departments will have the primary responsibility for monitoring and reporting the implementation of the mitigation measures.

The Development Agreement, Exhibit C, Site Development Standards and Design Guidelines, may include more stringent measures than those required in the EIR. As required by Exhibit C, applications for approvals set forth in Table 1 of Exhibit C must include a completed Development Standards Conformity Review table and completed Mitigation Measure Conformity Review.

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<b>AESTHETICS</b>						
<b>Mitigation Measure AES-1: Parking Structure Design (Updated 1991 EIR MM)</b>						
The proposed parking structure between Dwight Way, Seventh Street, Eighth Street, and Parker Street shall be designed to maximize visual compatibility with the low-rise, low intensity uses to the north and east, in terms of the parking structure’s massing, color, and adjacent landscaping. The Eighth Street façade of the garage shall be articulated to add texture and depth to the structure. A setback as well as landscape and streetscape amenities shall be provided on the perimeter of the parking structure. Stepbacks shall also be provided along Eighth Street.	Review design of parking structure to ensure it maximizes compatibility with adjacent uses, is articulated, and provides setbacks and stepbacks.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development			
<b>Mitigation Measure AES-2: Glare Reduction (Updated 1991 EIR MM)</b>						
For new and renovated buildings along and visible from the western property line, the use of reflective glass or other glazing that would cause glare as the sun sets shall be prohibited.	Review design of new and renovated buildings along and visible from western property line to ensure the use of reflective glass and glazing that would cause glare is not used.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development			
<b>AIR QUALITY</b>						
<b>Mitigation Measure AQ-1: Construction Emissions Measures</b>						
Demolition, grading and construction activities shall comply with the current Bay Area Air Quality Management District’s basic control measures for reducing construction emissions (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines or equivalent as updated by BAAQMD).	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building or engineering permit	City of Berkeley Department of Planning & Development			
<b>Mitigation Measure AQ-2: Tier 4 Construction Equipment</b>						
Demolition, grading and construction activities shall utilize at least 90 percent Tier 4 equipment (or better) through 2032 and all Tier 4 equipment (or better) after 2032. If the use of such equipment is not commercial available, the applicant shall prepare a project-specific air quality assessment to evaluate construction-related criteria air pollutant. If the project-specific air quality assessment finds that construction emissions would exceed any of the applicable BAAQMD thresholds, the air quality assessment shall identify	Review all demolition, grading, and building permits to ensure compliance. If the use of Tier 4 equipment is not commercially available,	Prior to issuance of building or engineering permit and during demolition, grading and construction	City of Berkeley Department of Planning & Development and Public Works Department			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>emission reduction measures to reduce emissions below the thresholds and the applicant shall implement the measures. Measures may include, but would not be limited to, some or all of the following, as necessary:</p> <ul style="list-style-type: none"> <li>▪ Equip construction equipment with Tier 3 or Tier 4 certified engines or CARB-certified Level 3 diesel particulate filters. All diesel particulate filters shall be kept in working order and maintained in operable condition according to manufacturer's specifications.</li> <li>▪ Minimizing the idling time of diesel-powered construction equipment to two minutes.</li> <li>▪ Use late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.</li> <li>▪ Use low-sulfur fuel or other non-diesel for stationary construction equipment.</li> <li>▪ Use low-emission on-site stationary equipment.</li> <li>▪ Use alternatively-fueled construction equipment (e.g., natural gas, electric).</li> <li>▪ Schedule soil import and/or export to reduce the number of daily haul truck trips.</li> <li>▪ Phase construction activities to reduce daily equipment use.</li> <li>▪ Limit the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time to reduce the amount of disturbed ground surfaces at any one time.</li> </ul>	<p>require and review a project-specific air quality assessment.</p>					

**BIOLOGICAL RESOURCES**

**Mitigation Measure BIO-1: Nesting Bird Surveys and Avoidance**

<p>Demolition, grading, construction and tree removal activities shall be conducted outside of the migratory bird nesting season (February 1 through August 31) to reduce any potentially significant impact to birds that may be nesting in the project site. If construction and tree removal activities must occur during the migratory bird nesting season, an avian nesting survey of the project site shall be conducted for active nests of protected migratory birds. The avian nesting survey shall be performed by a qualified wildlife biologist within seven days prior to the start of ground or vegetation disturbance or building demolition activities. The survey will consist of a qualified biologist conducting a visual inspection of the disturbance area plus a 200-foot buffer and vicinity, as is feasible depending on possible access and/or line-of-site</p>	<p>If construction and tree removal activities must occur during the migratory bird nesting season, review and approve avian nesting survey.</p> <p>If an active bird nest is found, review all demolition, grading, and</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning &amp; Development</p>			
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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>constraints, to detect any suitable nesting locations and determine if any nests occur. If an active bird nest is found, the nest shall be flagged and mapped on the construction plans, along with an appropriate no disturbance or protection buffer based on site conditions, which shall be determined by the biologist based on the species sensitivity to disturbance (generally, standard buffers can be 50-250 feet for passerines and 250-500 feet for raptors and special-status species, but site- and species-specific adjustments can be made within the discretion of the biologist, with different buffers established with respect to different levels of disturbance). Work within the nest avoidance buffer shall be prohibited or otherwise restricted per requirements determined by the biologist until the juveniles have fledged. The nest buffer shall be demarcated in the field with flagging and stakes or construction fencing.</p>	<p>building permits to ensure nests are buffered have been flagged and mapped.</p>	<p>Ongoing during construction activities</p>				
<b>Mitigation Measure BIO-2: Bird Strike Avoidance</b>						
<p>New structures or structures undergoing exterior renovations shall include the following:</p> <ul style="list-style-type: none"> <li>▪ One hundred (100) percent of the window area of the west-facing façades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park shall consist of verified bird-safe glazing products, e.g., American Bird Conservancy-endorsed products such as Arnold Glass Orniflux Mikado, Acopian Birdsavers, Bendheim Channel Glass, GlasPro Bird Safe Glass, Guardian Glass SunGuard SN68, Viracon, or others. Alternatively, The reflective or transparent surface area visible to the west-facing frontage of the property shall employ bird-safe glazing treatments, including fritting, netting, permanent stencils, frosted glass, exterior screens, physical grids placed on the exterior of glazing or UV patterns visible to birds. To qualify as bird-safe glazing treatment, vertical elements of the window patterns shall be at least 1/4-inch wide at a maximum spacing of 4 inches, or have horizontal elements at least 1/8-inch wide at a maximum spacing of 2 inches.</li> <li>▪ Automatic shades shall be installed on windows and shall be programmed to operate between 10:00 p.m. and sunrise on new building facades facing the western boundary of the project site. Non-emergency exterior lighting shall be shielded to minimize light emission.</li> <li>▪ Transparent glass shall not be allowed on rooftops of new, expanded, and renovated buildings, including in conjunction with green roofs.</li> </ul>	<p>Review building permits to ensure compliance with bird strike avoidance measures.</p>	<p>Prior to issuance of building permits</p>	<p>City of Berkeley                      Department of Planning &amp; Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments

- The cumulative area of glass façades for newly constructed or expanded buildings facing the project site's westerly boundary shall not exceed 2,250 square feet.

**CULTURAL RESOURCES**

**Mitigation Measure CR-1: Architectural History Evaluation**

Demolition or alteration of a building or structure that is at least 40 years old at the time of permit application and has not previously been evaluated for demolition or renovation within the last five years from the time demolition or alteration is proposed shall be subject to review at the request of the City by a qualified architectural historian who meets the Secretary of the Interior's Professional Qualifications Standards (PQS) in architectural history or history. The qualified architectural historian or historian shall conduct an intensive-level evaluation in accordance with the guidelines and best practices recommended by the State Office of Historic Preservation to identify if the building or structure proposed for demolition or alteration qualifies as a historical resource under CEQA guidelines. Buildings and structures shall be evaluated within their historic context and documented in a technical report and on Department of Parks and Recreation Series 523 forms. The report shall be submitted to the City for review and approval prior to the issuance of a building permit. If no historic resources are identified, no further analysis is warranted. If historic resources are identified, the applicant shall be required to implement Mitigation Measure CR-2.

If applicable, require and review historical resources evaluation to ensure compliance.

Prior to issuance of building permits

City of Berkeley  
 Department of  
 Planning &  
 Development

**Mitigation Measure CR-2: Architectural History Mitigation**

For renovations involving Building B83 or historical resources identified through the process described in the architectural history evaluation mitigation measure (CR-1), project activities shall comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Standards). During the project planning phase (prior to any construction activities), input shall be sought from a qualified architectural historian or historic architect meeting the *Secretary of the Interior's Professional Qualifications Standards* to ensure project compliance with the Standards for Rehabilitation. This input will ensure the avoidance of any direct/indirect physical changes to historical resources. The findings and recommendations of the architectural historian or historic architect shall be documented in a Standards Project Review Memorandum at the schematic design phase. This memorandum shall analyze all project components for compliance with the Standards for Rehabilitation.

Review project plans and Standards Project Review Memorandum to ensure compliance.

Prior to issuance of building permits

City of Berkeley  
 Department of  
 Planning &  
 Development

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>The memorandum should recommend design modifications necessary to bring projects into compliance with the Standards for Rehabilitation, which shall be incorporated into project designs to ensure compliance with the Standards. The memorandum shall be submitted to the City for review and approval prior to the issuance of a building permit.</p>						
<b>Mitigation Measure CR-3: Cultural Resources Desktop Analysis</b>						
<p>Prior to demolition, grading, new construction, or underground work such as utility installation, a cultural resources Desktop Analysis, consisting of a review of existing information regarding cultural resources on a given project site, shall be conducted. The Desktop Analysis shall include, but not be limited to, a review of the project description and extent of proposed ground disturbance, a review of recent cultural resources records on file at the California Historical Resources Information System, and a review of available historic maps and aerial photography. If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. If no resource impacts are identified, no further analysis is warranted. If potential impacts to resources are identified, the applicant shall be required to implement Mitigation Measure CR-4. If the desktop analysis identifies that an area has been subject to a Phase I cultural resources study in the previous five years, Measure CR-4 would not be required. If the Desktop Analysis identifies that no further analysis is warranted, the results will be documented in a memorandum for review and approval by the City prior to issuance of a building permit.</p>	<p>Review desktop analysis to ensure compliance.</p>	<p>Prior to issuance of building permits</p>	<p>City of Berkeley                      Department of Planning &amp; Development</p>			
<b>Mitigation Measure CR-4: Phase I Archaeological Resources Study</b>						
<p>If the desktop analysis described in Mitigation Measure CR-3 identifies the potential to encounter cultural resources, a Phase I cultural resources study shall be performed by a qualified professional meeting the Secretary of the Interior's (SOI) Professional Qualifications Standards (PQS) for archaeology (National Park Service 1983). The Phase I cultural resources study shall include a pedestrian survey of the project site and sufficient background research and fieldwork to determine whether archaeological resources may be present. Archival research shall include a records search of the California Historical Resources Information System and a Sacred Lands File search with the Native American Heritage Commission. The report will be submitted to the City for review and approval prior to the issuance of a building permit. Recommendations in the Phase I Report must be implemented prior to and/or during construction to avoid or reduce impacts on archaeological resources.</p>	<p>If applicable, review Phase I report to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley                      Department of Planning &amp; Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>Adherence to recommendations included in the Phase I report shall be documented as appropriate for verification by the City. If the Phase I identifies an archaeological site and/or a high likelihood of subsurface deposits, Measure CR-5 shall be implemented.</p>						
<b>Mitigation Measure CR-5: Extended Phase I Testing</b>						
<p>For any projects proposed within 100 feet of a known archaeological site or in areas that have not been subject to previous archaeological testing, monitoring, or other subsurface investigation, as determined by the Desktop Analysis (Mitigation Measure CR-3) or Phase I Report (Mitigation Measure CR-4), the project applicant shall retain a qualified archaeologist to conduct an Extended Phase I (XPI) study to determine the presence/absence and extent of archaeological resources on the project site. If the boundaries of the archaeological site are already well understood based on previous work and are clearly interpretable as such by a qualified cultural resource professional, or if there is documentation that fill is already present to the depth of the current project, XPI testing will not be required. XPI testing shall include a series of shovel test pits and/or hand augured units and/or mechanical trenching to establish the boundaries of archaeological site(s) on the project site. All archaeological excavation shall be conducted by a qualified archaeologist(s) under the direction of a principal investigator meeting the SOI's PQS for archaeology (National Park Service 1983). The results of the XPI will be documented in a technical report and submitted to the City for review and approval prior to the issuance of a building permit. If the archaeological resource(s) of concern are Native American in origin, the qualified archaeologist shall confer with local California Native American Tribe(s) and, if applicable, a Native American monitor shall be present in accordance with Mitigation Measure TCR-2. Recommendations in the XPI Report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.</p>	<p>If applicable, review XPI study to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley                      Department of Planning &amp; Development and Public Works                      Department</p>			
<b>Mitigation Measure CR-6: Archaeological Site Avoidance</b>						
<p>Avoidance will be the preferred treatment measure for an archaeological site identified on the Bayer campus. Any identified archaeological sites will be avoided by project-related construction activities, to the maximum extent feasible to still be able to fulfill the project objectives as determined by Bayer and confirmed by the City. The determination of feasibility will include an assessment of project redesign options, including but not limited to relocation of a proposed building, realignment of utilities, redesign of building plans to</p>	<p>Review all demolition, grading, and building permits to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits and during construction</p>	<p>City of Berkeley                      Department of Planning &amp; Development and Public Works                      Department</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>build above the existing ground surface and/or to minimize the proposed depth of disturbance, or other options as appropriate for a given project. A barrier (temporary fencing) and flagging will be placed between the work location and any resources within 60 feet of a work location to minimize the potential for inadvertent impacts. The 60-foot avoidance buffer may be reduced as appropriate if recommended by the qualified archaeologist. If the feasibility of avoidance of an archaeological resource of Native American origin is not immediately apparent, Bayer and the City of Berkeley shall contact consulting Tribes to discuss appropriate treatment of the resource, including the implementation of MM CR-7 and CR-8. If, after a good faith effort at resolution, the City, Bayer, and consulting Tribe conclude that agreement is not possible, MM CR-7 shall be implemented.</p>						
<b>Mitigation Measure CR-7: Phase II Site Evaluation</b>						
<p>If the results of the Phase I Report and/or XPI indicate the presence of archaeological resources that cannot be avoided by the project and that have not been adequately evaluated for CRHR listing at the project site, the project applicant shall retain a qualified archaeologist to conduct a Phase II investigation to determine if intact deposits are present and if they may be eligible for the CRHR or qualify as unique archaeological resources.</p> <p>A Phase II evaluation shall include necessary archival research to identify significant historical associations and mapping of surface artifacts, collection of functionally or temporally diagnostic tools and debris, and excavation of a sample of the cultural deposit. The sample excavation will characterize the nature of the site, define the artifact and feature contents, determine horizontal and vertical boundaries, and retrieve representative samples of artifacts and other remains.</p> <p>If the archeologist and, if applicable, a Native American monitor or other interested tribal representative from a locally affiliated Tribe as listed by the Native American Heritage Commission determine it is appropriate, cultural materials collected from the site shall be processed and analyzed in a laboratory according to standard archaeological procedures. The age of the materials shall be determined using radiocarbon dating and/or other appropriate procedures; lithic artifacts, faunal remains, and other cultural materials shall be identified and analyzed according to current professional standards. The significance of the sites shall be evaluated according to the criteria of the CRHR. The results of the investigations shall be presented in a technical report following the standards of the California Office of Historic Preservation publication "Archaeological Resource Management Reports:</p>	<p>If applicable, review the Phase II evaluation to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley                      Department of Planning &amp; Development and Public Works                      Department</p>			



Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>Recommended Content and Format (1990 or latest edition).” The report shall be submitted to the City for review and approval prior to the issuance of any building or engineering permits that could disturb identified resources. Recommendations in the Phase II report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.</p>						
<p><b>Mitigation Measure CR-8: Phase III Data Recovery</b></p>						
<p>If the Phase II site evaluation identifies resources that meet CRHR significance standards and if the resources cannot be avoided, the project applicant shall incorporate recommendations for mitigation of archaeological impacts into the final design as per CR-7 above prior to construction. If the resource is significant for its data potential and if recommended by the archaeologist and approved by consulting Tribes if appropriate, Phase III data recovery may be required, including excavation, to exhaust the data potential of significant archaeological sites, and shall be carried out by a qualified archaeologist meeting the SOI standards for archaeology according to a research design reviewed and approved by the City and prepared in advance of fieldwork and using appropriate archaeological field and laboratory methods consistent with the California Office of Historic Preservation Planning Bulletin 5, Guidelines for Archaeological Research Design (1991 or the latest edition thereof). Methods of artifact disposition may include reburial onsite within a tribal cultural resources easement as identified in TCR-3 or curation. The final Phase III Data Recovery reports shall be submitted to the City of Berkeley prior to issuance of any building permit for grading or construction. Recommendations contained therein shall be implemented throughout all ground disturbance activities.</p>	<p>Review all demolition, grading, and building permits to ensure compliance that all feasible recommendations for mitigation of archaeological impacts are incorporated.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley                      Department of Planning &amp; Development and Public Works                      Department</p>			
<p><b>Mitigation Measure CR-9: Worker’s Environmental Awareness Program</b></p>						
<p>Prior to any ground disturbing activities, the project applicant shall retain an SOI qualified archaeologist to conduct a Worker’s Environmental Awareness Program (WEAP) training. The WEAP training shall be focused on archaeological sensitivity and shall be provided to all construction personnel prior to the commencement of any ground-disturbing activities. The WEAP training shall include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find. Attendance at the WEAP training shall be documented with a sign-in sheet to be submitted to the City for verification of adherence to this measure. This</p>	<p>Monitor compliance with WEAP training.</p>	<p>Prior to ground disturbing activities</p>	<p>City of Berkeley                      Department of Planning &amp; Development</p>			

City of Berkeley

**Bayer HealthCare LLC Development Agreement Amendment Project**

Mitigation Monitoring and Reporting Program

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
WEAP training may be presented in tandem with the training required under TCR-1.						
<b>Mitigation Measure CR-10: Archaeological Monitoring</b>						
If recommended by the Desktop Analysis, Phase I, XPI, Phase II, or Phase III studies, the project applicant shall retain a qualified archaeologist (Monitor) to observe project-related ground-disturbing activities. The Monitor will have the authority to halt and redirect work if any archaeological resources are identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find must be evaluated for listing in the CRHR. Archaeological monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance activity moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.	If applicable, ensure retention of a qualified archaeologist.	Prior to issuance of building and engineering permits	City of Berkeley Department of Planning & Development			
	Monitor ongoing compliance.	Ongoing during construction				
<b>Mitigation Measure CR-11: Unanticipated Discovery of Archaeological Resources</b>						
If archaeological resources are encountered during ground-disturbing activities, whether or not an archaeological monitor is present, work within 60 feet shall be halted. The project applicant shall notify the City and retain an archaeologist meeting the SOI's Professional Qualification Standards for archaeology (National Park Service 1983) to evaluate the find. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for CRHR eligibility. If the discovery proves to be eligible for the CRHR and impacts cannot be avoided, data recovery excavation may be required. Reports prepared to document and/or evaluate unanticipated discoveries and their treatment shall be submitted to the City of Berkeley for review and approval. Recommendations contained therein shall be implemented throughout the remainder of ground disturbance activities.	If applicable, ensure retention of a qualified archaeologist. Monitor compliance with required measures in the event of unanticipated discovery of archaeological resources.	Ongoing during construction.	City of Berkeley Department of Planning & Development			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<b>GEOLOGY AND SOILS</b>						
<b>Mitigation Measure GEO-1: Discovery of Paleontological Resources</b>						
<p>If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. Prior to ground-disturbing activities, the project applicant shall retain a qualified paleontologist to provide on-call services in the event of an unanticipated discovery. A qualified paleontologist is defined by the Society of Vertebrate Paleontology (SVP) standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010). Prior to the start of construction, the qualified paleontologist shall conduct a Paleontological Worker Environmental Awareness Program (WEAP), a training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The WEAP shall be fulfilled at the time of a preconstruction meeting at which a Qualified Paleontologist shall attend.</p> <p>In accordance with SVP (2010) guidelines, all work shall halt in the immediate vicinity of a find and the qualified paleontologist shall evaluate the discovery. The qualified paleontologist shall determine the significance of the discovery and identify whether additional mitigation or treatment is warranted. Measures may include testing, data recovery, reburial, archival review and/or transfer to the appropriate museum or educational institution, such as the University of California Museum of Paleontology. All testing, data recovery, reburial, archival review or transfer to research institutions related to monitoring discoveries shall be determined by the qualified paleontologist and shall be reported to the City. Work in the area of the discovery may resume after the find is properly documented and authorization is given to resume construction work.</p>	<p>Ensure retention of a qualified paleontologist.</p> <p>Monitor compliance with WEAP training and SVP guidelines.</p>	<p>Prior to permit approval.</p> <p>Ongoing during construction.</p>	<p>City of Berkeley                      Department of Planning &amp; Development and Public Works                      Department</p>			
<b>GREENHOUSE GAS EMISSIONS</b>						
<b>Mitigation Measure GHG-1 Renewable Electricity Resources</b>						
<p>Electricity used at the site shall be sourced from 100 percent renewable energy resources by 2030. Bayer shall submit documentation showing as such to the City every five years, or at intervals required by the City, to ensure compliance.</p>	<p>Review documentation of electricity sourced from renewable energy.</p>	<p>Every five years when documentation submitted</p>	<p>City of Berkeley                      Department of Planning &amp; Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<b>HAZARDS AND HAZARDOUS MATERIALS</b>						
<b>Mitigation Measure HAZ-1 Property Assessment – Phase I and II Environmental Site Assessments (ESA)</b>						
<p>The project applicant shall prepare a site-specific Phase I ESA for each development area / Block, in accordance with standard ASTM methodologies, to assess the land use history of the project site. Phase II ESAs (i.e., soil, groundwater, soil vapor subsurface investigations) shall be completed where a building is proposed south of Carleton Street or based on the results of the Phase I ESAs. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas, a Phase II ESA would be conducted to determine whether the soil, groundwater, and/or soil vapor has concentrations exceeding regulatory screening levels for commercial/industrial land uses.</p> <p>If the Phase II ESA concludes that the site is or may be impacted and could affect the planned development, then an assessment, remediation, or corrective action (e.g., removal of contaminated soil, in-situ treatment, capping, engineering controls) shall be conducted prior to or during construction under the oversight of federal, state, and/or local agencies (e.g., USEPA, DTSC, SFB RWQCB, City of Berkeley TMD, Alameda County DEH) and in full compliance with current and applicable federal and state laws and regulations. Additionally, Voluntary Cleanup Agreements may be used for parcels where remediation or long-term monitoring is necessary.</p>	Review Phase I and Phase II ESAs.	Prior to issuance of building or engineering permits	City of Berkeley Department of Planning & Development and Public Works Department			
<b>Mitigation Measure HAZ-2: Regulatory Agency UST Involvement – City of Berkeley TMD and SFB RWQCB</b>						
<p>Because the project site and immediately adjacent properties are associated with open and closed LUST and Cleanup Program cases overseen by the SFB RWQCB, the project applicant shall notify the SFB RWQCB of the following:</p> <ul style="list-style-type: none"> <li>▪ Development plans for each Block located south of Carleton Street and for Block B North east of Fourth Street</li> <li>▪ Completion of subsequent Phase I ESAs</li> <li>▪ Identification of unanticipated stained or odorous soils during demolition, grading, and/or construction activity</li> <li>▪ Identification of additional underground tanks and associated piping, or other underground features such as railroad spurs or ties, unknown piping, cisterns, wells, waste/burn pits, etc., if encountered</li> </ul> <p>Additionally, all onsite UST removals and associated assessment work shall be completed under the direction of the City of Berkeley TMD and/or the SFB RWQCB. To the extent there are any pending LUST and Cleanup Program cases</p>	Review Phase I and Phase II ESAs to ensure compliance. Maintain correspondence with SFB RWQCB throughout development. Maintain correspondence with SFB RWQCB and City of Berkeley TMD throughout construction, as necessary.	Prior to issuance of building or engineering permits and during construction	City of Berkeley Department of Planning & Development and Public Works Department			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>on the project site, the UST closure and agency approval documents shall be reviewed and approved by the City of Berkeley TMD and/or the SFB RWQCB prior to issuance of building permits for grading or any other ground disturbance.</p> <p>Upon identification of stained soil, odorous soil, USTs, or other underground features onsite, City of Berkeley TMD and/or SFB RWQCB could require actions such as: preparation of removal action workplans; obtaining permits for removal of USTs or other underground features; excavation and offsite disposal of soil; assessment of soil and/or groundwater beneath the excavation; and/or completion of UST removal reports or case closure documents.</p>						
<b>Mitigation Measure HAZ-3: Regulatory Agency Subsurface Involvement – ACPWA, SFB RWQCB and City of Berkeley</b>						
<p>The City of Berkeley TMD and the SFB RWQCB shall continue to provide agency oversight of assessment and remediation of the open Cleanup Program case (case #01S0045) on the project site. Additionally, the applicant shall notify the City of Berkeley and SFB RWQCB Cleanup Program project manager of the following:</p> <ul style="list-style-type: none"> <li>▪ Development plans for Block B North east of Fourth Street and development south of Carleton Street</li> <li>▪ Onsite use of 14 hydraulic elevators that may have contained oils containing PCBs (Farallon, 2020)</li> <li>▪ Onsite use of above-ground storage tanks used to store diesel for generators (Farallon, 2020)</li> <li>▪ Other regulatory UST case listings (City of Berkeley and SFB RWQCB) and assessment work that will be completed under the direction of other regulatory agencies</li> <li>▪ All former environmental documents completed for the site of development disturbance, including this SEIR</li> </ul> <p>Upon notification of the information listed above, the City of Berkeley and the SFB RWQCB could require actions such as: preparation of subsurface investigation workplans; completion of soil, soil vapor, and/or groundwater subsurface investigations; installation of soil vapor or groundwater monitoring wells; excavation and offsite disposal of soil; completion of human health risk assessments; and/or completion of remediation reports or case closure documents.</p> <p>If groundwater wells or soil vapor monitoring probes are identified within the construction area during demolition, subsurface demolition, or construction at the project site, they will be abandoned/destroyed under permit from the</p>	<p>Review all demolition, grading, and building permits to ensure oversight by City of Berkeley TMD and the SFB RWQCB.</p> <p>Coordinate with City of Berkeley TMD and the SFB RWQCB to ensure compliance with required measures.</p>	<p>Prior to permit approval.</p> <p>Ongoing during cleanup.</p>	<p>City of Berkeley                      Department of                      Planning &amp;                      Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>Alameda County Public Works Agency (ACPWA). Demolition activities will be documented in a letter report submitted to the ACPWA and SFB RWQCB within 60 days of the completion of abandonment activities. Abandonment of sub-slab vapor points will be completed with SFB RWQCB approval and demolition activities will be documented in a letter report to SFB RWQCB. The SFB RWQCB non-objection, concurrence, no further action, closure, and/or agency approval documents shall be delivered to and reviewed by the City of Berkeley prior to issuance of any building permit authorizing grading or construction on the site. The SFB RWQCB may determine that City of Berkeley TMD or DTSC may be best suited to perform the lead agency duties for assessment and/or remediation at the project site, in which case this and other mitigation measures will still apply.</p>						
<p><b>Mitigation Measure HAZ-4: Soil and Groundwater Management Plan</b></p>						
<p>The project applicant shall implement the recommendations of the Soil and Groundwater Management Plan (SGMP) prepared by Farallon Consulting LLC dated December 28, 2020. The SGMP shall be reviewed by the City of Berkeley Toxics Management Division prior to issuance of permits for grading or other ground disturbance and the report shall be updated if needed. The SGMP recommendations are related to:</p> <ul style="list-style-type: none"> <li>▪ Management of Unanticipated Subsurface Conditions</li> <li>▪ Health and Safety Requirements</li> <li>▪ Onsite Soil Management</li> <li>▪ Groundwater Management</li> <li>▪ Stormwater Management</li> <li>▪ Soil and Groundwater Management Plan Reporting Requirements</li> </ul> <p>Construction workers shall be informed about environmental conditions and measures to mitigate potential risks to the environment, construction workers, and other nearby receptors from potential exposure to hazardous substances that may be associated with unknown conditions or unexpected underground structures, and known contaminated soil or groundwater encountered during construction activities.</p> <p>The SGMP shall be updated and the updated recommendations shall be implemented in the following cases:</p> <ul style="list-style-type: none"> <li>▪ A change in project site uses;</li> <li>▪ Receipt of additional information pertaining to project site environmental conditions;</li> <li>▪ Updated chemical toxicity information for contaminants detected at the project site based on revised regulatory screening levels; or,</li> </ul>	<p>Review and approve updated SGMP and review all demolition, grading, and building permits to ensure compliance.</p>	<p>Prior to issuance of building or engineering permits.</p>	<p>City of Berkeley Department of Planning &amp; Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<ul style="list-style-type: none"> <li>New legal or regulatory soil or groundwater management requirements applicable to the project site.</li> </ul>						
<b>Mitigation Measure HAZ-5: Hazardous Materials Safety Plan (Updated 1991 EIR MM)</b>						
<p>The project applicant shall prepare a Hazardous Materials Safety Plan to address potential issues that may be encountered during project operation involving the use, storage, transport, and disposal of biohazardous and chemical materials. The Hazardous Materials Safety Plan shall be updated annually and reviewed by Berkeley's Toxics Management Division. The Plan shall include, but not be limited to, the following information and measures:</p> <ul style="list-style-type: none"> <li>Documentation of ongoing compliance with all applicable federal, state, and local regulations related to biohazardous safety, storage, transport, and disposal procedures, and emergency response preparedness, including biosafety guidelines published by the NIH and CDC.</li> <li>Documentation that current and future operations would prohibit the use of biohazardous agents within Risk Groups 3 and 4.</li> <li>Documentation of ongoing coordination for emergency preparedness with the City of Berkeley, including preparation of an emergency response plan and an emergency disaster procedures manual for release of hazardous biological materials. The disaster preparedness plan shall include annual training for and coordination with City of Berkeley emergency responders as to the nature of hazards on site, types of organisms likely to be encountered, where to take exposed persons to receive appropriate treatment, and staging semi-annual mock disaster drills.</li> <li>Updates to and continued compliance with the site's Risk Management Prevention Plan (RMPP) for the use of ammonia. The RMPP shall be subject to review and approval by the USEPA.</li> <li>Updates to and continued compliance with the Hazardous Materials Release Response Plan and inventory and Risk Management and Prevention program required by CalEPA.</li> </ul>	Review and approve Hazardous Materials Safety Plan.	Annually	City of Berkeley Department of Planning & Development			
<b>HYDROLOGY AND WATER QUALITY</b>						
<b>Mitigation Measure HWQ-1: Best Management Practices (Updated 1991 MM)</b>						
<p>The project applicant shall prepare documentation of Best Management Practices to minimize the potential for water pollution. Typical elements of such a document would include addressing the possibility of substituting less</p>	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits	City of Berkeley Department of Planning & Development			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
toxic compounds in manufacturing and research and development and proper handling of those toxic compounds used.			and Public Works Department			
<b>Mitigation Measure HWQ-2: Source Control (Updated 1991 MM)</b>						
The project applicant shall manage pollutants on the project site such that they are not easily mobilized and discharged into stormwater runoff. This shall involve configuring fuel storage under roofed areas and preventing on-site runoff from flowing through these areas. Hazardous materials stored in uncovered areas shall be fully contained or covered such that they do not come into contact with rainfall.	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits.	City of Berkeley Department of Planning & Development and Public Works Department			
	Monitor compliance during operation.	Ongoing				
<b>Mitigation Measure HWQ-3: Water Quality Monitoring (Updated 1991 MM)</b>						
The project applicant shall perform sampling and testing of stormwater runoff from the project site four times per year. The extent and location of this monitoring will be based upon the degree of source runoff controls implemented. Monitoring shall be used primarily to ensure source controls are working and to detect any additional or accidental pollutants in stormwater runoff.	Review sampling and testing of stormwater runoff to ensure compliance.	Quarterly	City of Berkeley Department of Planning & Development and Public Works Department			
<b>Mitigation Measure HWQ-4: Pollutant Removal (Updated 1991 MM)</b>						
The project applicant shall install systems to remove pollutants before stormwater runoff leaves the project site. This may involve physical removal or chemical or biological treatment depending on the type of pollutants that would be present. Uncovered parking areas shall receive street sweeping monthly to remove pollutants, oils, and greases before they are mobilized by runoff. Storm drains downstream of hazardous materials storage areas shall be equipped with manual shut-off valves. In the event of a spill, these valves shall be immediately closed, and shall remain closed until clean-up has been completed.	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits.	City of Berkeley Department of Planning & Development and Public Works Department			
	Monitor compliance during operation.	Ongoing				
<b>Mitigation Measure HWQ-5: Management of Underground Tanks (Updated 1991 MM)</b>						
The project applicant shall protect from damage existing wells that monitor potential releases of pollutants from underground tanks and may be required to relocate them if they would be affected by construction. Remediation or excavation of soil contaminated by underground tank releases, if necessary, shall be completed before construction of permanent foundations.	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits	City of Berkeley Department of Planning & Development and Public			



Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
			Works Department			
<b>Mitigation Measure HWQ-6: Monitoring and Remediation of Seepage into Aquatic Park (Updated 1991 MM)</b>						
The project applicant shall contribute to the funding of (as determined by the City), or perform, periodic groundwater sampling and monitoring where groundwater seeps from the 10- to 12-foot high embankment along the western edge of the Southern Pacific Railroad. If the City determines that the Bayer Campus' use of hazardous material has contributed to contamination of groundwater seepage which supports the narrow freshwater wetland between the main lagoon at Aquatic Park and the railroad, Bayer shall contribute to the funding of remediation, if necessary. If the City determines that contamination of groundwater seepage originates from properties outside the Bayer Campus, then the project applicant shall not be responsible for funding remediation of such contamination.	Review results of groundwater sampling and, if applicable, require funding.	Ongoing	City of Berkeley Department of Planning & Development and Public Works Department			
<b>Mitigation Measure HWQ-7: Source Control for Groundwater Contamination (Updated 1991 MM)</b>						
The project applicant shall implement standard safeguards, monitoring, and contingency measures to minimize the potential for future contamination of the local groundwater. Such measures include roofing and/or berming of storage areas, lining storage areas to prevent infiltration, and/or installing shutoff valves in downslope storm drain lines.	Review all demolition, grading, and building permits to ensure compliance and monitor compliance during operation.	Ongoing	City of Berkeley Department of Planning & Development and Public Works Department			
<b>NOISE</b>						
<b>Mitigation Measure N-1: Construction-Related Noise Reduction Measures</b>						
The following measures shall be implemented during construction for the purpose of reducing construction-related noise impacts: <ul style="list-style-type: none"> <li>▪ <b>Neighbor Notification.</b> At least two weeks prior to initiating construction activities requiring the use of two or more pieces of heavy construction equipment at the project site, the applicant shall provide notice to businesses and residents within 500 feet of the project site construction areas, including: (1) a description of the Project; (2) a description of construction activities; (3) a daily construction schedule (i.e., time of day) and expected duration (number of weeks or months); (4) the name and phone number of the "Noise Management Individual" for the Project; (5) a commitment to notify neighbors at least four days in advance of any</li> </ul>	Monitor compliance with noise reduction measures.	Monitoring during construction	City of Berkeley Department of Planning & Development			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
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<p>authorized extended work hours and the reason for extended hours; (6) notice that construction work is about to commence; and (7) the designated "Disturbance Coordinator" responsible for responding to any local complaints about construction noise. The noise manager would determine the cause of the noise complaints (e.g., starting too early, bad muffler) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.</p> <ul style="list-style-type: none"> <li>▪ <b>Disturbance Coordinator.</b> The applicant shall designate a disturbance coordinator who shall be responsible for responding to any local complaints about construction noise. The noise disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall require that reasonable measures warranted to correct the problem be implemented. A telephone number and webpage for the disturbance coordinator shall be conspicuously posted at the construction site outside the gate visible to passersby (the campus is closed).</li> <li>▪ <b>Noise Reduction Program.</b> The applicant shall develop a site-specific construction noise reduction program prepared by a qualified acoustical consultant to reduce construction related noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer or a delegate. The noise reduction program shall include time limits for construction and all technically and economically feasible measures to ensure that construction complies with the City of Berkeley Municipal Code Section 13.40.070. The program shall include, but is not limited to, the following available controls to reduce construction noise levels to as low as practical:                         <ul style="list-style-type: none"> <li>▪ <b>Temporary Noise Barrier.</b> The applicant shall construct eight-foot high solid plywood fences along construction site boundaries adjacent to off-site noise sensitive residences or other noise-sensitive land uses (e.g., school uses) to meet applicable thresholds. These fences shall be outfitted with noise control blanket barriers where necessary to effect reductions that result in compliance with the City's quantified noise construction thresholds, as determined by the noise control plan.</li> <li>▪ <b>Mufflers.</b> Construction equipment shall be properly maintained and all internal combustion engine driven machinery with intake and exhaust mufflers and engine shrouds, as applicable, shall be in good condition and appropriate for the equipment. During</li> </ul> </li> </ul>						

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>construction, all equipment, fixed or mobile, shall be operated with closed engine doors and shall be equipped with properly operating and maintained mufflers, consistent with manufacturers' standards.</p> <ul style="list-style-type: none"> <li>▪ <b>Electrical Power.</b> The applicant shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists. The applicant shall select hydraulically or electrically powered equipment where feasible and avoid pneumatically powered equipment where feasible.</li> <li>▪ <b>Equipment Staging.</b> All stationary noise-generating equipment shall be located as far as possible from sensitive receivers when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.</li> <li>▪ <b>Equipment Idling.</b> Unnecessary idling of internal combustion engines shall be prohibited. Construction equipment that would not be used for more than five minutes should be turned off completely.</li> <li>▪ <b>Construction Vehicles.</b> Construction-related traffic shall be routed along major roadways and away from sensitive receivers, where feasible.</li> <li>▪ <b>Workers' Radios.</b> All noise from workers' radios shall be controlled such that radios are not audible at sensitive receivers near construction activity.</li> <li>▪ <b>Smart Back-up Alarms.</b> Mobile construction equipment shall have smart back-up alarms that automatically adjust the sound level of the alarm in response to ambient noise levels. Alternatively, back-up alarms shall be disabled and replaced with human spotters to ensure safety when mobile construction equipment is moving in the reverse direction.</li> <li>▪ <b>Additional Noise Attenuation Techniques.</b> For development on the portion of the site east of Seventh Street, implement the measures set forth in the Noise Reduction Program and either: (1) erect temporary noise control blanket barriers, where necessary, along building facades facing construction sites; (2) restrict construction to weekdays; or (3) implement other noise reductions alternatives that could feasibly reduce noise to achieve the City's quantified noise construction thresholds.</li> </ul>						
PUBLIC SERVICES						

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<b>Mitigation Measure PS-1 Security Measures (Updated 1991 MM)</b>						
<p>The project applicant shall continue implementing the following measures recommended by the Berkeley Police Department including but not limited to:</p> <ul style="list-style-type: none"> <li>▪ Prepare a Crime Prevention Evaluation Analysis Report in coordination with the Police Department;</li> <li>▪ Employ a highly visible security guard;</li> <li>▪ Provide adequate lighting in parking areas and around buildings in use in the evenings; and</li> <li>▪ Utilize solid walls, burglar alarms, and/or safety glazing on the windows for buildings containing pharmaceuticals.</li> </ul>	Review all demolition, grading, and building permits to ensure implementation of security measures.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development			
<b>RECREATION</b>						
<b>Mitigation Measure REC-1 Aquatic Park Funding (Updated 1991 MM)</b>						
<p>The project applicant shall contribute to park maintenance and improvements related to Aquatic Park through an upfront payment of \$385,000. The contribution shall be paid to the City of Berkeley Parks, Recreation, and Waterfront Department by February 25, 2022.</p>	Require contribution of a fair share of the cost of park maintenance.	Once prior to February 25, 2022	City of Berkeley Department of Planning & Development			
<b>TRANSPORTATION</b>						
<b>Mitigation Measure T-1 Transportation Demand Management Program (Updated 1991 EIR MM)</b>						
<p>The project applicant shall continue to implement and update the Transportation Demand Management (TDM) Program to reduce single-occupant automobile trips generated by the project site. The TDM Program shall be reviewed and approved by the City of Berkeley prior to issuance of building permits for development allowed under the amended DA. In addition, the TDM Program shall be updated by Bayer and approved by the City every five years, or at intervals required by the City, to ensure that services are consistent with best practices to reduce the use of single-occupant automobile trips to and from the project site.</p> <p>The TDM Program may include, but not be limited to, the following information and measures:</p> <ul style="list-style-type: none"> <li>▪ Continued funding and implementation of the West Berkeley Shuttle with regular service and expansion to meet demand;</li> <li>▪ Pre-tax commuter benefits;</li> <li>▪ Travel coordination, via a Transportation Coordinator and regularly disseminated transportation and commute information;</li> <li>▪ On-site amenities such as eating and recreation facilities;</li> </ul>	Review and approve TDM program.	Every five years, or at intervals required by the City of Berkeley Transportation Division	City of Berkeley Department of Planning & Development and Public Works Department (Transportation Division)			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<ul style="list-style-type: none"> <li>▪ Telecommute program; and,</li> <li>▪ Bicycle parking, repair stations and education, as well as employee showers, changing facilities and lockers.</li> </ul>						
<b>TRIBAL CULTURAL RESOURCES</b>						
<b>Mitigation Measure TCR-1 Worker's Environmental Awareness Program</b>						
<p>Prior to ground disturbing activities, the project applicant will retain a locally affiliated tribal member who represents a tribal organization that was contacted as part of Assembly Bill 52 outreach to conduct a Worker's Environmental Awareness Program (WEAP) training. The WEAP training shall be provided to all construction personnel (in conjunction with the cultural resources WEAP) prior to the commencement of ground-disturbing activities. The WEAP training shall include a description of the types of materials that may constitute Tribal Cultural Resources, the reasons for their traditional cultural significance and importance to tribal members, the stop work authority of the Native American monitor, and the proper protocol for the respectful treatment of the resource in the event of an unanticipated discovery. Attendance at the WEAP training shall be documented with a sign-in sheet for submittal to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with the training required under CR-9.</p>	Monitor compliance with WEAP training.	Prior to ground disturbing activities	City of Berkeley Department of Planning & Development			
<b>Mitigation Measure TCR-2 Native American Monitoring</b>						
<p>If recommended by the Desktop Analysis, Phase I, Extended Phase I (XPI), Phase II, or Phase III studies required under Mitigation Measures CR-1 through CR-8, the project applicant shall retain a qualified local Native American monitor to observe all ground disturbance, including archaeological excavation, associated with development facilitated by the project. Native American monitoring shall be provided by a locally affiliated tribal member. Monitors will have the authority to halt and redirect work if any tribal cultural resources are identified during monitoring. If tribal cultural resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find must be evaluated. Native American monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking,</p>	If applicable, confirm a qualified Native American monitor has been retained and review all demolition, grading, and building permits to ensure compliance with required monitoring and measures in the event that tribal cultural resources are identified.	Prior to issuance of building permits.	City of Berkeley Department of Planning & Development			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the lead agency and the California Historical Resources Information System.	Monitor ongoing compliance.	Periodically throughout construction activities, or as determined by the Native American monitor.				
<b>Mitigation Measure TCR-3 Cultural Resources Open Space Easement</b>						
The project applicant will set aside an area that could be used as a Tribal Cultural Resources Open Space Easement in the event that tribal cultural resources are encountered during construction activities and are unable to be avoided. The purpose of the Cultural Resources Open Space Easement will be to provide an onsite location for reinterment of sensitive Native American cultural resources and/or human remains, as well as other associated funerary objects. If said remains are encountered, a Cultural Resource Open Space Easement will be developed and granted by the project applicant in consultation with the identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC as applicable. Should an easement be necessary, the following actions would be prohibited on the land subject to said easement, except as required for the reburial of sensitive cultural resources: grading; excavation; placement of soil, sand, rock, gravel or other material; clearing of vegetation with machinery; construction; erection or placement of a building or structure; vehicular activities; trash dumping; installation of wet or dry infrastructure, such as irrigation systems; or for a purpose other than as open space for tribal use only. Exceptions include the following: <ul style="list-style-type: none"> <li>▪ Placement and reburial of sensitive Native American cultural resources or human remains.</li> <li>▪ Access shall be provided for identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC in perpetuity.</li> <li>▪ Selective clearing of vegetation by hand if required by fire authorities for the purpose of reducing an identified fire hazard or the removal of vegetation using chemicals for vector control purposes where required by the Department of Environmental Health.</li> <li>▪ The installation of a bench, marker, or other amenity if desired by the consulting Tribe(s).</li> </ul>	Confirm area has been identified that could service as a cultural resources open space easement.	Prior to ground disturbing activities	City of Berkeley Department of Planning & Development			

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# **EXHIBIT F**

## **REPORT ON JUSTIFICATION FOR HEIGHTS IN EXCESS OF FORTY-FIVE FEET**

Pursuant to Recital J of the Amended and Restated Development Agreement between the City of Berkeley and Bayer HealthCare LLC, the attached letter from Urban Planning Partners Inc. comprises the engineering, land use, and environmental analyses demonstrating the need for buildings which exceed the standard height limits identified in the current iteration of the West Berkeley Plan and the Berkeley General Plan.



March 29, 2021

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

Dear Ms. Mendez:

Attached you will find our compiled research for the justification and reasoning for building height as it relates to life sciences building height on the Bayer Campus. The following information was compiled by conducting interviews with industry professionals, personal experience, and other research.

## **EXECUTIVE SUMMARY**

Since the Bayer Campus (previously the Miles Inc./Cutter Biological campus) was first developed over 40 years ago, the needs of life sciences campuses have and continues to rapidly evolve. Previously single- and two-story height, but long, warehouse style buildings were seen as the ideal fit for these types of facilities. However, product demand and changing operations for life sciences companies have changed and resulted in different ideologies when constructing these types of structures.

To stay flexible and responsive to demand, life sciences buildings need to be adaptable to whatever uses that might be necessary now, but also other uses in the future – having the appropriate height, both in terms of individual floor design and total building stories, can play a vital role in that adaptability. Height is also necessary for core life sciences operations for equipment, air circulation, and structural integrity.

While much of this discussion highlights some of the operational needs of technical life science buildings, not all buildings will require such demanding physical requirements. Buildings such as those that perform administrative purposes are also required – allowing for additional building height at these facilities plays a pivotal role too. Height plays an indirect, but important role in freeing up the floor area that can result in the development of amenities and open spaces that will provide a social benefit, as well as help attract and retain talent. Lastly, building height, especially in the context of a town such as Berkeley, will help to create a more aesthetically pleasing environment for employees and surrounding communities by breaking up the monotony of low-rise industrial buildings, all the while having little aesthetic impacts.

## **LIFE SCIENCES OPERATIONS**

The operations on the Bayer campus drive height requirements for individual floors and multi-story requirements. Many of the findings described in this section are reflective of Bayer's most recent work related to the development of its CCTC<sub>2/3</sub> building for which future development is likely to be of a similar vein.

### **A. Life Sciences Equipment Accommodation and Maintenance**

Life sciences operations typically require very specialized infrastructure and equipment, and thus require very specialized buildings. Much of the necessary equipment can be quite large and tall and would otherwise not be able to be hosted in buildings with traditional floor to floor heights. As such, life science buildings, especially those that involve production and manufacturing, require the appropriate floor-to-floor heights to not only fit large equipment and machines, but also allow additional space for overhead maintenance and appropriate access to components. All building equipment and systems must undergo routine maintenance, which typically involves replacement of filters, valve elastomers, gaskets, and drive belts in fans and motors, as well as calibration of instruments and collection of samples for quality control. These maintenance requirements necessitate physical access to all systems, instruments, and components that require servicing, which in turn drives space requirements and floor-to-floor heights. This access is critical, as it allows for quick and efficient maintenance during therapy production operations, which are extremely sensitive.

### **B. Flexibility of Multiple Product Types**

At its Berkeley, CA site, Bayer develops and produces commercial biopharmaceuticals that are distributed globally. Bayer intends to develop and market a wide variety of biopharmaceutical products employing an array of technologies/modalities such as protein therapeutics, cell therapy and gene therapy, while maintaining flexibility to respond to shifting product modalities or product volumes driven by patient demand. The range of modalities being considered are consistent with research, development and manufacturing efforts being pursued by biotechnology companies in the San Francisco Bay Area and around the globe.

A robust physical infrastructure is needed in order to develop, manufacture and perform lab testing on the spectrum of products that may be developed and manufactured at the Berkeley site. Future buildings will need several capabilities, including: transportation routes of the campus roads and walkways, site security, utilities, and amenities. The refined site development plan was designed to meet the following needs:

- Manufacturing buildings that handle raw materials, in-process intermediates, drug substance and drug product;
- Facilities to receive and store raw materials to develop, manufacture and test products;

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- Closed processing areas to protect manufacturing personnel and the products being manufactured;
- Environmental controls such as cleanrooms, airlocks, and facility segregation to protect manufacturing personnel and products;
- Laboratories to develop products, processes and analytical methods for various therapy types, and to test the safety of products manufactured in order to release those products to patients;
- Spaces that ensure biosafety measures can be implemented per National Institutes of Health (NIH)/Center for Disease Control (CDC) guidelines (up to Basics of Biosafety Level [BSL] 2);
- Facilities and equipment to produce and distribute utilities, including clean, GMP utilities as well as standard utilities for heating, cooling and electrical power;
- Emergency power generation capability to protect the inventory of work-in-progress and finished goods or critical process steps in progress;
- Workshops and spare parts storage to maintain manufacturing, laboratory and utility equipment and instruments on site;
- Office space for manufacturing, quality control, development, maintenance, quality assurance, engineering, HSES, regulatory affairs, supply chain, procurement, accounting, legal, information technology, human resources, and managerial personnel;
- Storage space for work-in-progress material and finished goods under ambient, refrigerated (+2°C to +8°C) or frozen conditions (-20°C to -196°C); and
- Receiving and shipping facilities to accept truck traffic required to bring raw materials to the site, ship out finished goods or work-in-progress material, and to haul away waste.

One of the critical components required for operation of production facilities is the accommodation of a system that provides flexible modules that can be readily reconfigured to produce a wide variety of therapies in a range of volumes. This flexibility requires that the design of production module floorplates measure a certain size and shape to enable process steps for anticipated cell therapy modules. Another feature that enables the required level of flexibility is stacked production floorplates. This vertical configuration allows future production processes to have unit operations distributed on different levels. The time sensitivity of the performance of certain unit operations, as well as the delicacy of processing materials such as cells (especially refrigeration requirements), drive *intra*-module horizontal proximity and *inter*-module vertical adjacency. This drives the requirement for colocation of the modules in a single facility in a stacked arrangement. These requirements between unit operations are reflected in the design of facilities. The viability and functionality of facilities will be lost if these adjacency requirements are not met

### **C. Flexibility to Pivot**

In contrast to the point above, the ability to produce a single product is also important and is facilitated by building height. When considering the wide range of products under development in cell and gene therapy, it's likely that during development and testing that breakthroughs could lead

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to production efforts shifted to produce a distinct product. Pivoting manufacturing to only one item may require the utilization of production equipment and spaces typically used in another production processes, including cell culture technology (suspension verses adhesion), separation, purification, formulation, and primary packaging.

Technology, modern medicine, and consumer needs are continuously changing and advancing. With this change, life sciences must stay nimble and ready to adapt as necessary. This is especially apparent in COVID times where the global pandemic has prompted possibly the largest and fastest mobilization of the global scientific community we've ever seen. The current crisis demonstrates the importance of life science buildings that can adapt to a wide range of uses where many life sciences companies have had to modify and dedicate their facilities towards finding treatments or producing vaccines to meet demand. Constructing buildings with additional height will help to facilitate built-in flexibility for the future – creating a building that is currently appropriate for production and manufacturing may need to shift products or research purposes (and vice versa). With additional height, since floors are segregated, uses can change quickly on a floor-by-floor basis.

For example, the purpose of the CCTC<sub>2/3</sub> building is to design and construct a building to house facilities for the production of Advanced Therapy Medicinal Products (ATMPs) for use in late-stage clinical trials and in early commercial launch. Specifically, the aim of the facility is to produce both cell therapy and gene therapy products, and to have the flexibility to produce different products in the future with minimal reconfiguration, and even to produce one single product in larger volumes. Floors 1 and 3 would contain manufacturing, inspection, and support functions associated with biopharmaceutical production, along with offices for Bayer production employees. Both floors would contain their own "module" (for a total of 2 modules). The Gene Therapy Module production space would be located on Floor 1 and the Cell Therapy Module production space would be located on Floor 3. After being used to produce a product that shows promise in clinical trials, the CCTC<sub>2/3</sub> building may be modified to focus on producing larger quantities of that product for commercial use. An example of the flexibility incorporated into the CCTC<sub>2/3</sub> building includes some space on the 2<sup>nd</sup> floor and the ground floor module, which can be reconfigured to accommodate a cell maturation step that will enable the building as designed to deliver product to a much larger patient population. Furthermore, the high-level concept is that a module can be constructed and used for a variety of purposes, or even re-purposed after initial fit-out. As shown in the image below, by orienting support spaces such as utility, warehouse/logistics areas, offices, and cleanroom transition airlocks at the building perimeter, a large central process area can be left available so that it can be configured and re-configured to accommodate a desired purpose.

## CCTC Modular Design

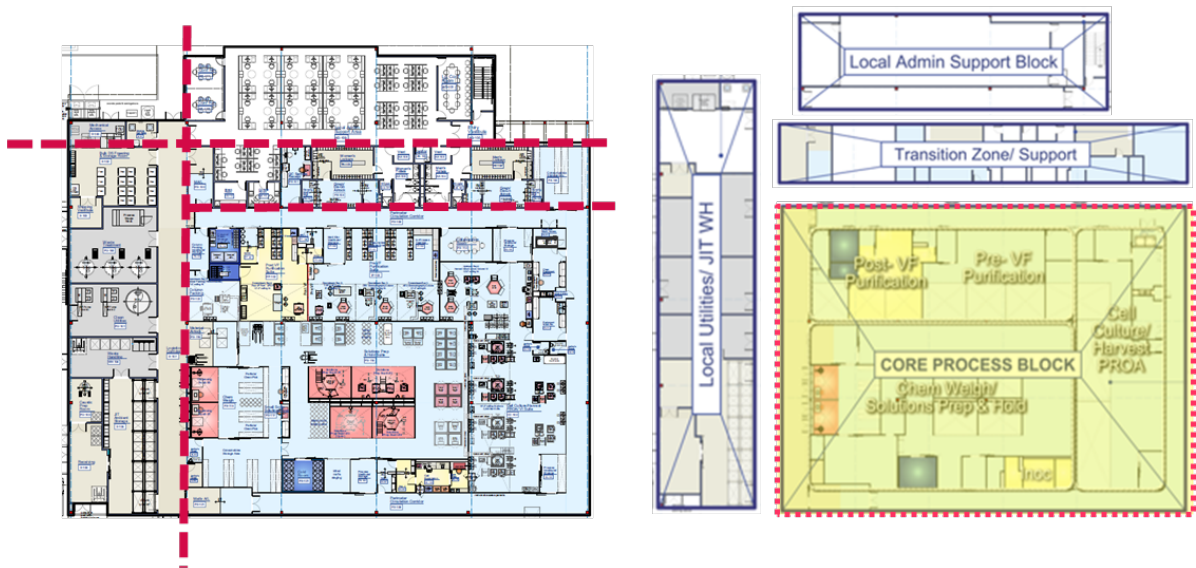


Figure 1: CCTC2/3 Module Configuration

The life sciences field is highly competitive when it comes to acquiring funding and research. Companies that are quickly able to adapt their needs and bring products to market quickly are more successful at acquiring both. Height, as demonstrated throughout, facilitates flexibility and is necessary for an operator to remain competitive and deliver therapies to patients as quickly as possible.

### D. Time Sensitive Testing

During the course of production processes, various “just-in-time” tests are needed to verify the quality of the products being produced. In many cases, there is a critical time sensitivity of these tests which leads to requirements of testing facilities to be located in close proximity to the original production spaces. Given the sensitivity of the products (living cells), several production process constraints must be considered, including:

- Storage conditions, especially temperature;
- Time tolerances for processing steps/transfers;
- Shear force sensitivity;
- Pressure sensitivity; and
- Temperature and light sensitivity during processing.

With these constraints, the physical proximity of two modules and their processing trains becomes critical to ensure complete production capabilities are provided. When considering the need for upstream and/or downstream equipment proximity simultaneously, in concert with other process constraints, the vertical adjacency of the two modules becomes a technical requirement. This vertical arrangement allows the potential use of gravity to manage transfers without damaging cells and the close process step adjacency to manage time/temperature/light constraints. The separate modules allow for routine flexibility with segregated independent operations. The stacked configuration illustrated in Figure 1 allows the facility to ensure future product manufacturing capabilities as well as efficient building design. All these factors dictate the need for production buildings to be taller than 45 feet. Furthermore, by placing testing facilities in the shared 2<sup>nd</sup> floor of the building (as shown in Figure 1 below), the travel time for the test samples is reduced. If these particular facilities were located further away from each other because of horizontal distances, the time required to transfer cells from the cell culture area through the airlocks into a different filling facility would be longer than the time allowed for the cells to be out of refrigeration, which could lead to compromised products. Success or failure of these processes is often a matter of seconds, and adjacency is therefore a key consideration.

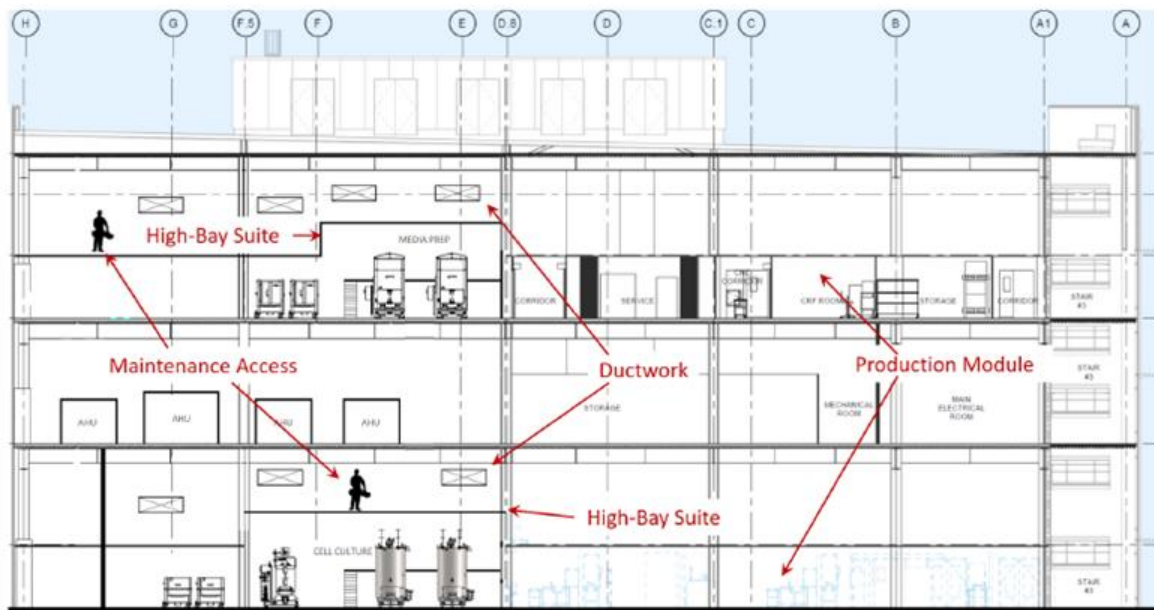


Figure 2: CCTC2/3 Building Configuration

### E. Reduction of Cross-Contamination

Life science operations are moving away from large-scale bulk production of single products to multiproduct facilities as the demand for small-volume, personalized medicines has increased. In other words, the future of therapies for illness will become more personalized, abandoning a "once-



size-fits-all" model. As a result, production of multiple products requires meticulous tracking and increases the potential for cross-contamination; however, increased building height can help to reduce this potential. As previously discussed, future production buildings are anticipated to involve multiple cell culture production suites to be run simultaneously. Because of this, additional measures are required to protect the cells in one suite from incompatible cells or other agents that could be introduced from another suite. While safety protocols are in place to reduce cross-contamination of the various operations occurring in life science manufacturing and production, creating physical separation of modules via verticality creates a clear and obvious physical barrier where separate functions and/or products can be developed on separate floors. Allowing for additional floors allows for multiple product development without out the worry for other separation methods that might otherwise be required if they were on the same floor in a longer and shorter building, which would ultimately increase the needed floor area if it were a single-floored building.

An additional measure to mitigate cross-contamination is the use of dedicated ductwork and HVAC systems on the 2<sup>nd</sup> floor to serve each module, rather than using shared systems. While this results in a greater number of total HVAC systems, its energy impact is offset by the reduced length of airducts due to the close proximity to production areas, as opposed to a longer building which would result in more energy required to push air through longer airduct systems.

#### **F. Other Operational Support Functions**

Another important requirement for life sciences buildings is the need for adequate air circulation. Many buildings follow a "once in, once out" model, where air is circulated into the building, run through the facilities, then filtered and released. This process is vital in ensuring that potential contamination of both operations and outdoor air is eliminated. This requirement for air circulation is much more intensive than traditional office, manufacturing, or research and development needs, and thus requires specialized air conduction systems. An example of this is in the CCTC2/3 building where nearly the entire 2<sup>nd</sup> floor is dedicated to mechanical space that would serve both the 1<sup>st</sup> and 3<sup>rd</sup> floors, which reduces the amount of noise generated that might otherwise be if it were located externally.

For buildings with limited horizontal space, load-bearing floors and vertical height are important structural considerations for life sciences buildings. Based on discussions with industry professionals, floorplates of approximately 30,000 square feet and floor-to-floor heights of 16 feet are seen as instrumental to the operational success of life science buildings. These specifications allow for the structural integrity required of these types of buildings due to internal circulation of people and materials, allow for appropriate load-bearing for large specialized equipment, adequate airflow (as discussed above), and provides for flexibility for the future (as discussed in greater detail below).

## INCREASED OPEN SPACE AND LANDSCAPING

Allowing for increase vertical configuration not only serves the technical demands of life sciences buildings, but also serves many important urban planning goals. Since the original adoption of the Development Agreement in 1991, many of the core ideologies of urban planning have shifted. Many of the benefits of increasing accessibility and open space are essential tenants of “smart-growth” and increasing height for social benefits is now the expectation, not the exception.

The current Development Agreement allows for taller buildings, but in scattered locations throughout the campus. Meanwhile, the Mixed Manufacturing zoning district that would apply in the absence of the Development Agreement only allows for building heights of up to 45 feet, even within interior portions of large properties that are not readily visible from public streets and open spaces. As discussed above, that creates several challenges and inefficiencies, but also limits the available open space on the campus. One of the biggest urban planning benefits to increases in vertical height of buildings is that it increases open space at the ground floor level that would otherwise be occupied by ground floor building area. This freed-up space can in turn be used for other uses, and in this instance, primarily amenities and more open space within and along the edges of the campus. Campuses that provide common spaces for peers help to create a sense of community by creating flexible and adaptable spaces that allow for a variety of working styles and spontaneous interactions with colleagues. Providing such amenities in the biopharmaceutical industry, is necessary to attract and retain top talent, for which there is fervent competition among companies.

Open spaces are important to help create aesthetically-pleasing spaces for not only employees, but the surrounding communities. In the instance of the Bayer Campus, under the Development Agreement Extension, allowing for more building height will allow the campus to be setback further west of Seventh Street than currently plausible, allowing for development of a public promenade, as shown in the visual simulations below.



Figure 3: Current Conditions at the corner of Seventh and Carleton Street, looking southwest



Figure 4: Proposed Conditions at the corner of Seventh and Carleton Street, looking southwest

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As demonstrated, by increasing the height of the building along Seventh Street, the building is allowed to be more setback into the campus, freeing up space between the building and the right-of-way. If approved, this newly generated space is currently planned to be reprogrammed to be used as a promenade that would extend along most of Seventh Street. The open space area along Seventh Street would be expanded to approximately 1.6 acres. Creating additional open space would not only beautify the area, but has also been shown to improve the physical and mental well-being of nearby residents.<sup>1</sup> The majority of Berkeley is transit rich, and known as a very walkable and bikeable area.<sup>2</sup> There are some exceptions to this however, and West Berkeley isn't quite as connected as some other areas. Clearing the ground floor allows Bayer to put in trail networks for employees in campus and along frontages, further enhancing pedestrian and bicycle connectivity for West Berkeley.

This effect can be even more dramatic when looking at the Bayer Campus as a whole. As shown in the images below, by modifying height limits in most of the areas, facilities in existing buildings can be relocated into newer, taller buildings, creating additional free space to be reprogrammed as open space and landscaping. Meanwhile, by carefully locating taller buildings within the campus



Figure 6: Bayer Campus under Baseline Conditions



Figure 5: Bayer Campus under Proposed Conditions

and along east-west axes, this reallocation of space can occur without causing any significant

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<sup>1</sup> Bratman et al, 2012. The impacts of nature experience on human cognitive function and mental health.

<sup>2</sup> According to WalkScore.com, Berkeley has a walk score of 83, transit score of 59, and bike score of 82. See <https://www.walkscore.com/CA/Berkeley> for more information.

aesthetic impacts (discussed in more detail below). The amended DA includes at least nine acres of open space, which would exceed the existing three acres on-site. Open space would consist of fields, sports courts, pedestrian trails, bicycle trails, outdoor eating areas, and landscaping.

## **ACQUIRING AND MAINTAINING TALENT**

The needs for life sciences buildings aren't the only thing that has changed over time – the needs of workers and employees has changed too. One of the key reasons why open space, amenities, state-of-the-art facilities, and a sense of community are important to the life sciences field is the competition for talent. It has also been proven that increasing access to open space can help reduce stress and can improve our physical and emotional well-being, which can be essential for not only attracting talent, but also ensuring that workers are happy.<sup>3</sup> Life sciences companies have always competed with the technology and information sectors for highly skilled workers such as data scientists, programmers and engineers. Now, both life sciences and tech companies are also competing with financial institutions, business and professional services firms, and nearly every other industry as they work to redefine their businesses using data sciences, machine learning and artificial intelligence. Life sciences companies are in an increasingly competitive landscape for access to skilled talent in the fields of science, technology, engineering and mathematics. To draw in high-quality talent, life sciences companies need to take every measure possible to have a competitive edge, which is why having amenities open space that might not otherwise be possible to have without building height, especially for such a small campus such as Bayer's. Open space also helps promote the health of employees through wellness features, such as open green space, pedestrian and bicycle circulation, and other amenities, and create a unified campus with consistent design principles that creates a sense of place within the campus and that integrates with the surrounding community.

To secure and maintain talent, many of the competitors in the life sciences field are taking significant measures and investing in high-quality buildings, open spaces, and amenities. One example of this is at the Gilead Campus in Foster City, where Gilead has proposed to eliminate a surface parking lot to construct a private outdoor park with a promenade, amphitheater, and outdoor garden.

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<sup>3</sup> Song et al, 2016. Association between Urban Greenness and Depressive Symptoms: Evaluation of Greenness Using Various Indicators.



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Figure 7: Gilead's Planned Private Park

Another example of this is the Genentech Campus in South San Francisco, which contains a massive 207-acre campus with numerous open spaces and dedicated facilities for amenities, including cafeterias and gyms.



Figure 8: Genentech Campus in South San Francisco

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Gilead and Genentech are located in suburban communities and are much larger campuses. In comparison, Bayer is located in an urban environment and has a more condensed campus. Given the suburban nature of their campuses, Gilead and Genentech have more flexibility in laying out their campus and providing green/open space and employee amenities throughout the campus. Being in an urban location, Bayer does not have the same opportunities to develop the type of buildings necessary or provide the green space/open space and employee amenities that are necessary to compete with their competitors, who are primarily located in suburban settings, to attract high quality employees without buildings that are taller than 45 feet. Given the urban environment around the campus, it is possible to provide taller buildings in strategic locations within the context of the surrounding neighborhood. Without the ability to “build out”, the only option is to “build up”. By increasing building verticality, additional opportunities for open spaces and amenities are created (as described above). This all plays a vital part in ensuring the best and brightest come to work at Bayer and live in Berkeley.

## **AESTHETICS**

Land use in West Berkeley is characterized by a wider range of activities than in any other section of Berkeley, but is primarily considered Berkeley’s manufacturing and wholesaling district. As such, the areas near the Bayer Campus are primarily occupied with expansive low-rise industrial, manufacturing, and warehouse buildings, which can sometimes occupy the equivalent of entire, or even multiple, city blocks. In doing so, the industrial nature of West Berkeley can create uninviting places and restrict mobility due to sheer amount of ground floor area occupied by industrial land uses and buildings. Areas where these types of buildings are congregated are also usually lacking in visual character and can be an eyesore, especially in the context of such an urban city like Berkeley. By diversifying height and visual character of buildings in the area, a more aesthetically pleasing environment can be facilitated. Furthermore, increasing height can help to create clear sight lines that foster a sense of expansiveness, which might otherwise might not be available, especially in denser urban neighborhoods. Increased height could be perceived as an aesthetic problem in an area where single-floor homes, businesses, and industrial facilities would be located, but being located in a neighborhood with diverse building design and massing lends itself well to a flexibility of building design and massing that might not otherwise be possible.

The buildings with additional height have been strategically located to minimize visual impacts to the community. To illustrate this point, FirstCarbon Solutions (FCS) conducted an analysis to determine if implementation of the Development Agreement Extension Project would create any significant aesthetics impacts. The project site is located in a mixed urban area with office, commercial, and residential uses as well as Aquatic Park. The proposed conditions would not change the visual character of the project site or surrounding areas, and would retain an urban look with implementation of the project. Taller buildings would also not impair views of any protected scenic corridors, nor would it significantly impact other surrounding views, including views from

Aquatic Park, which are mostly already obstructed from views due to the existing landscape (as shown in the images below). Proposed conditions with the taller buildings would retain the baseline visual character by renovating baseline buildings, improving project frontages, and constructing new buildings that better utilize the proposed project for office and commercial uses and use exterior materials that ensure buildings are visually interesting and fit in with the urban environment.

Lastly, there would be a marginal increase in net new shadows cast as the impact would be contained solely on the Bayer Campus, adjacent roadways, and the railroad tracks (also shown below). While the project would cast new shadow on the eastern perimeter of Aquatic Park, it would only cast shadow on areas currently covered in landscaping, of which already causes shading in that respective vicinity. As such, the shading with new buildings will not be significantly different than the existing conditions.



*Figure 9: Existing View of Bayer Campus from Berkeley Hills*



*Figure 10: Proposed View of Bayer Campus from Berkeley Hills*





Figure 11: Existing View from Carleton and Seventh Street



Figure 12: Proposed View from Carleton and Seventh Street



*Figure 13: Existing View from Grayson Street*



*Figure 14: Proposed View from Grayson Street*





*Figure 15: Existing View from Aquatic Park Trail*



*Figure 16: Proposed View from Aquatic Park Trail*



*Figure 17: Existing View from Southern Aquatic Park*



*Figure 18: Proposed View from Southern Aquatic Park*

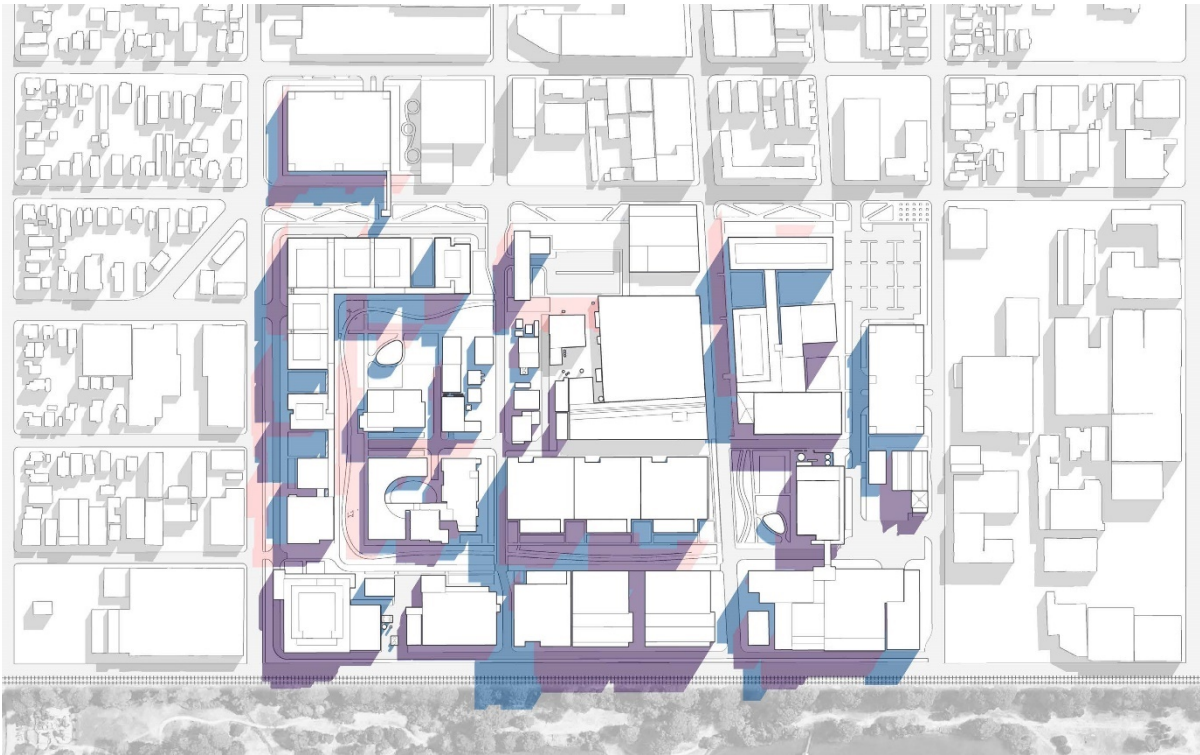




*Figure 19: Existing View from Northern Aquatic Park*



*Figure 20: Proposed View from Northern Aquatic Park*



*Figure 21: Proposed Shadow Conditions*

As demonstrated in the above images, construction of the Bayer Campus at full build out would not significantly impair surrounding views while also creating new opportunities for open spaces, both from within and outside of the campus. The proposed design and land use configuration would, ultimately, confer aesthetic benefits compared to baseline development, and even development under Mixed Manufacturing zoning development standards.

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### DEVELOPMENT AND MANUFACTURING ACTIVITIES, ENVIRONMENTAL SAFETY

- A. Bayer produces commercial and clinical biopharmaceuticals at its Berkeley, California site that are distributed globally. Bayer intends to develop and market a wide variety of biopharmaceutical products employing many different modalities. Site operations shall include the manufacturing and development of products and associated research, and not discovery research. The range of modalities being considered is consistent with development and manufacturing efforts being pursued by biotechnology companies in the San Francisco bay area and around the globe. A number of these products will be developed and manufactured at the Berkeley site since the San Francisco Bay Area is recognized as an important locus for biopharmaceutical technology and innovation. This document will outline the spectrum of products that may be developed and manufactured at the Berkeley site and outline the facilities that will be needed to support the development and manufacture of such products. Bayer will continually modernize and adapt its site to meet business goals and objectives.
- B. As detailed further below, insofar as Bayer introduces new biological agents into site operations, Bayer will only use biological agents that can be contained at Biosafety Levels 1 and 2 (“Levels 1 and 2”), as defined by guidelines published by the National Institutes of Health Recombinant Advisory Committee and the Center for Disease Control. For purposes of clarification, agents requiring Level 1 containment include biological agents that are found in the environment and do not cause disease in healthy humans. Agents requiring Level 2 containment include moderate-risk agents that occur in the community and are associated with human disease of varying severity, and risks associated with such are generally similar to the risks one encounters at an outpatient medical facility. For the past 30 years, Bayer’s work at the site has involved research and manufacture of therapies using agents requiring Level 1 and 2 containment. Consistent with past practice and in satisfaction of mitigation requirements, in handling the foregoing biological agents, Bayer shall follow the standard practices established by the Center for Disease Control, the National Institutes of Health, and the Recombinant DNA Advisory Committee of the National Institutes of Health.
- C. Many of the development and manufacturing activities carried out on the site will utilize methods, technologies, and techniques of biotechnology. Examples of biopharmaceutical products which may be developed and manufactured at the Berkeley site and techniques and technologies that will be used include, but are not limited to, the following:
- a) Cloning and subcloning of existing hybridoma and recombinant cell lines.

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- b) Initiating or enhancing the biosynthesis of potential therapeutic molecules in existing eukaryotic cell lines utilizing established recombinant techniques, the transfer of genetic information will be only into those host systems which, should they be inadvertently released from the culture vessel, would not survive and therefore would pose no practical threat to the surrounding environment.
  - c) The insertion of promoter/enhancer sequences into existing recombinant cell lines.
  - d) Polymerase chain reaction ("PCR") testing, and the construction of probes and sequences related to PCR testing.
  - e) Large- and small-scale cell culture to produce protein therapeutics.
  - f) Creating new cell lines for manufacture of protein therapeutics, viral vectors, or cell therapies using gene editing technologies such as clustered regularly interspaced short palindromic repeats ("CRISPR").
  - g) Manufacture of gene editing reagents. These include short- and long-chain ribonucleic acids ("RNAs"), nucleases, plasmids and synthetic nanoparticles. RNA molecules may be manufactured via chemical synthesis or in vitro transcription methods. Nucleases and plasmids may be manufactured using prokaryotic cells.
  - h) Manufacture of non-replication-competent viral vectors.
  - i) Manufacture of cell therapy products derived from stem cells or other donor cells. Cell therapy products may include engineered tissues for engraftment into humans.
- D. The following are activities that will not be performed at Bayer's Berkeley campus:
- a) Deliberate formation of recombinant deoxyribonucleic acid ("DNA") containing genes for the biosynthesis of toxic molecules lethal to humans, animals and plants, at an LD50 of less than 100 nanograms per kilogram weight of the organism. Examples of such toxins are botulinum toxin, tetanus toxin, diphtheria toxin and Shigella dysenteriae neurotoxin.
  - b) Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally if such acquisition could compromise the use of the drug to control disease agents in human or veterinary medicine or agriculture.
  - c) Insofar as Bayer incorporates new biological agents or materials into site operations, use of biological agents that must be contained at Biosafety Levels 3 and 4 ("Level 3 and Level 4"), as defined by the by the National Institutes of



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Health Recombinant Advisory Committee and the Center for Disease Control, including but not limited to:

- i) Use of agents that must be contained at Level 3 or Level 4 as hosts for recombinant DNA vectors.
  - ii) Use of DNA from agents that must be contained at Level 3 or 4 which have not been demonstrated to be a totally and irreversibly defective fraction of the agents' genome for transfection into a host cell. (Note - Recombinant DNA molecules which contain less than two-thirds of the genome of any eukaryotic virus are considered defective.)
  - iii) Use of defective animal viruses that must be contained at Level 3 or Level 4 in vectors for transfection of eukaryotic cells containing a specific helper virus.
- d) Heritable alterations to the human germline (i.e., embryos, ova, spermatozoa).
- e) Genetic manipulation of viral particles designed to enhance pathogenicity. For the sake of clarity, pathogenicity is defined as the ability to cause disease.
- E. Bayer will require specialized facilities to support its product development and production operations, as well as ancillary facilities to support these operations, set forth in further detail below. All facilities will comply with local, state, and federal regulations governing the operation of such facilities. The following is a non-restrictive list of examples of facilities that Bayer might require to develop and manufacture therapies:
- a) Bayer will require facilities to receive and store raw materials to develop, manufacture and test products as described in sections B and C. Ambient temperature, refrigerated and frozen storage capabilities (-20°C to -196°C) will be required. Bayer will also require the ability to store work-in-progress material and finished goods under refrigerated or frozen conditions. Truck traffic will be required to bring raw materials to the site, ship out finished goods or work-in-progress material, and to haul away waste.
  - b) Bayer will require facilities to manufacture raw materials, in-process intermediates, drug substances and drug products described in Sections B and C. Closed processing will be employed where possible to protect manufacturing personnel and the products being manufactured. Where closed processes are not feasible or provide insufficient protection, environmental controls such as cleanrooms, airlocks and facility segregation may be employed to protect

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manufacturing personnel and products. Personnel protective equipment will be used by manufacturing personnel as specified by government regulations, site procedures and risk assessments.

- c) For some therapies, cells may be irradiated to prevent proliferation after administration to the patient, and Bayer will install up to two fully protected gamma irradiation devices.<sup>1</sup> The Berkeley site may construct facilities to perform such irradiation and will comply with all associated regulations governing such operations.
- d) Bayer will require laboratories to test products manufactured as described in Sections B and C in order to release those products for use. Environmental controls and personnel protective equipment will be employed in the laboratory facilities as specified by government regulations, site procedures and risk assessments. These measures include:
  - i) For all laboratory facilities, standard microbiological standard practices.
  - ii) For Level 2 facilities, personal protective equipment, such as eye protection, gowns, and gloves. Secondary barriers, such as hand washing sinks, self-closing and locking laboratory doors, limited laboratory windows that do not open to the building exterior, use of biological safety cabinets, vacuum lines protected with liquid disinfectant traps, eye-wash stations, and waste decontamination facilities, will be available to reduce potential exposure and release.
- e) Bayer will require laboratories to develop products, processes and analytical methods for therapy types described in Sections B and C Bayer will employ gene editing techniques to develop new cell lines. In order to assess the safety of therapeutics under development, Bayer may use well-characterized animal model viruses in a Level 2 containment facility, as commonly practiced within the biotech industry. Environmental controls and personnel protective equipment will be employed in the laboratory facilities as specified by government regulations, site procedures and risk assessments.
- f) Preclinical development of the biopharmaceutical therapies mentioned in Section CC will require testing in animal models to demonstrate efficacy or a lack of

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<sup>1</sup> Fully protected gamma irradiation devices have a de minimis radiation output at their surface (i.e., a dose rate of less than 3  $\mu$ Sv/h). They require no additional protection measures to reduce radiation output, and no radiation surveillance with dosimeters is required for staff.

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toxicity. Bayer may elect to re-establish a vivarium on its Berkeley site to support such studies.

- g) Bayer will require facilities and equipment to produce and distribute utilities for manufacturing facilities, laboratories and office spaces. These include clean, Good Manufacturing Practice utilities (as identified by the International Society for Pharmaceutical Engineering) or its equivalent, as well as standard utilities for heating, cooling and electrical power. Emergency power generation capability will be required to protect the inventory of work-in-progress and finished goods or critical process steps in progress. Utility systems will be established, operated and maintained in compliance with applicable local, state and federal regulations.
  - h) Bayer will require workshops and spare parts storage to maintain manufacturing, laboratory and utility equipment and instruments on site.
  - i) Bayer will require office space for manufacturing; quality control; development; maintenance; quality assurance; engineering; Health, Safety, Environment, and Security ("HSES"); regulatory affairs; supply chain; procurement; accounting; legal; information technology; human resources; and managerial personnel. Office areas shall also include auditoriums conference rooms to host meetings. Bayer will provide parking for employees commuting to work and will also sponsor programs that encourage employees to use public transportation. Bayer will also provide amenities, such as a cafeteria, for site employees.
- F. Bayer will prepare a Hazard Operability ("HAZOP") Study for the existing phosphoric acid and caustic storage tanks and for the Pilot Plant phosphoric acid tanks. Bayer will also conduct a HAZOP Study and an Off-site Consequence Analysis for any 100,000 gallon fuel storage tank or any future fuel storage tanks of 10,000 gallons or more. Bayer will utilize state-of-the-art safety measures for the construction and operation of all fuel storage tanks. In addition, if Bayer wishes to install a fuel tank larger than 25,000 gallons, Bayer will provide the City with a report of its investigation into the feasibility of obtaining an uninterrupted fuel supply, including an explanation of why the tank is needed if that should be the case. Bayer will consult with the City as to the location of this tank, and the siting of the tank shall be subject to the approval of the City Manager or his designee. Moreover, the location of this tank will be no closer than 200 feet from Dwight Way, Seventh Street and Carleton Street and shall be readily accessible to emergency response vehicles. HAZOP studies will also be conducted for all subsequent facilities containing bulk hazardous chemical storage. Summaries of all HAZOP studies will be provided to the City.
- G. Bayer will implement an Emergency Preparedness Program consisting of the following elements:

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- a) Bayer will prepare an Emergency Response/Business Plan for existing operations which goes beyond current requirements for business plans, including, but not limited to, identification of classes of organisms used in each building on the site.
  - b) Bayer will conduct emergency preparedness training for onsite emergency response teams. Additionally, Bayer will revise its existing Emergency Procedures Manual. Bayer will at all times maintain on-site fire suppression capabilities, as a supplement or back-up to the City system. Bayer and the City Fire Department will jointly assess on-site fire suppression capabilities within 12 months of approval of the Agreement. Should this assessment identify the need for additional on-site fire suppression capability, Bayer will employ measures to meet that capability. These measures may include on-site fire water retention vaults and distribution systems; generators, pumps, and hoses to draw water from Aquatic Park; and chemical suppression systems.
  - c) Bayer will conduct annual on-site training of the City's emergency responders. The training would consist of familiarization with the procedures of the on-site emergency response team; delivery, distribution, and storage of hazardous materials (including radioactive, chemical and bio-hazards); and the site layout. The training will consist of an initial session and annual updates.
- H. Bayer will supply appropriate medical assistance in case of accidental release of viruses.
- I. Bayer will inform suppliers of bulk hazardous materials that carriers must use truck routes that are approved by the City. Bulk hazardous materials carriers are limited to use of the Ashby Avenue exit from I-80 and the use of 7th street and Grayson Street to the Bayer site.
- J. Through coordination with City staff, Bayer will conduct annual Emergency Response Exercises. These Exercises will include participation by City emergency responders, local medical treatment facilities and community members. Prior to implementation, a detailed outline of the Emergency Preparedness Program will be submitted to the City six months after approval of the Amended Development Agreement.
- K. Bayer will implement a seismic safety program for all new buildings. To reduce the potential for damage to structures from ground shaking, Bayer will comply with the following:
- a) New structures will be designed to withstand the effects of ground shaking. This includes compliance with the seismic requirements of the most current Uniform Building Code, incorporation of the best current knowledge about earthquake-resistant design and incorporation of engineering recommendations by a qualified geotechnical engineer.

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- b) All building foundations will be constructed on strong native soil areas, or property engineered fill as approved by a geotechnical engineer.
  - c) All proper engineering procedures are undertaken to reduce the potential for structural damage to the site and foundation preparation from an earthquake during construction.
  - d) Potentially hazardous chemical and industrial processes will be designed with redundant and back-up safety systems.
  - e) A qualified structural engineer will evaluate all existing occupied buildings. A copy of the structural engineer's report shall be filed with the City.
- L. Amendments or modifications to the above restrictions on biological agents and permitted activities will require an amendment to the Development Agreement. Should Bayer request such an amendment, the City may, at its discretion, hire a qualified consultant with credentials as a biosafety officer or other professional biosafety accreditation (e.g. Association for Biosafety and Biosecurity [“ABSA”] Registered Biosafety Professional or ABSA Certified Biosafety Professional), to assist the City in evaluating the request. Bayer will pay the reasonable costs of hiring the consultant. The City's evaluation will determine whether the proposed modification(s) will require a major or minor amendment to the Agreement.



## EXHIBIT H

### TRANSPORTATION DEMAND MANAGEMENT PROGRAM

Bayer will develop and implement a transportation demand management program ("TDM Program") to reduce the use of single-occupant cars and encourage alternative transportation by Bayer employees. This program will have the components listed below in Sections 1 through 5 of this Exhibit I.

1. **Transit Program:** Bayer shall implement the following measures:
  - A. ***Shuttle Program.***
    - a. Bayer will continue to contract for services for an employee shuttle that seats approximately sixteen (16) passengers and is free to employees between the Ashby BART station and the Bayer Campus running on a regular schedule at the A.M. and P.M. peak hours, which as of September 1, 2021 are approximately 6:00 – 10:00 A.M and 3:00 – 7:00 P.M, which coordinate with Bayer's dayshift schedule. Bayer shall change hours of operation to the extent it changes its dayshift schedule.
    - b. Bayer shall expand shuttle service by increasing the frequency of shuttle headways, providing larger shuttles, or increasing bus capacity via other means in the event that bus service capacity, as measured by the difference between maximum bus capacity and Bayer employee ridership (i.e., ridership subtracted from maximum bus capacity), on average during a calendar month falls below ten percent.
    - c. Shuttle service shall be sufficient to provide for headways of no more than approximately twenty (20) minutes unless BART service is reduced during pandemics, emergency, or other circumstances, in which case headways shall be spaced to align with any reduced BART service.
    - d. Shuttle service information shall be disseminated through the communication channels identified in Measure 2.B, below, including information about pick-up location(s) at the Ashby BART station.
    - e. The shuttle service shall make stops at a minimum of two pick-up and drop-off locations, which are currently provided at Seventh Street at Parker Street and Dwight Way at Sixth Street. Bayer may relocate these pick-up and drop-off locations to better serve its employees with the consent of the City. These locations shall be maintained by Bayer so that they are visible, accessible as identified in Section 1.A.f, below, and identified with signage.

- f. The shuttle shall comply with the Americans with Disabilities Act and include bicycle storage/transport to facilitate multi-modal travel. The cost of operating the shuttle can be shared with other Berkeley employers or property owners.

**B. *Pre-Tax Commuter Benefits.***

- a. To the extent permitted by state and federal tax laws, Bayer shall offer pre-tax commuter benefits to allow employees to pay for public transit passes<sup>1</sup> (e.g., train, BART, light rail, bus, and ferry) and related parking expenses if they are a part of their daily commute to work with before-tax payroll deductions. Employees need to enroll and they can determine to opt in/opt out, along with how much to contribute, each month. The maximum contribution limit is determined by the Internal Revenue Service for parking-related expenses and transportation-related expenses.
- b. Bayer shall offer a convenience service that employees may use to purchase stored value cards that are accepted by transit operators (i.e. Clipper, BART, MUNI, AC Transit, Caltrain, and others) directly from their pre-tax commuter dollar contribution account.

**2. *Travel Coordination:*** The following measures shall be undertaken by Bayer or, at Bayer's election, a qualified third-party operator hired by Bayer:

- A. ***Designation of Transportation Coordinator.*** Bayer will appoint or otherwise retain a Transportation Coordinator to be responsible for the vehicle trip reduction and transportation demand management program. The Transportation Coordinator will be a trained transportation professional.
- B. ***Transportation and Commute Information.*** The Transportation Coordinator shall provide information about transportation via an electronic messaging board or other means (e.g., Bayer intranet or other internal digital communications system), which will contain transportation information such as Emergency Ride Home, transit schedules, bike maps, carpooling/ride-matching, taxi/ride-hailing, and real-time transportation information such as transit arrivals and departures, including shuttle arrivals and departures, and shared mobility (short-term rental) service availability (bicycle, electric scooter, and car sharing) to the extent that transit providers make information reasonably available in an accessible format. Information will be updated by the designated Transportation Coordinator when there are service changes. Information will also be provided at the time an employee is hired as part of new employee orientation.

<sup>1</sup> At the time of preparation of this Exhibit, pre-tax benefits for bicycle commuting are not available under applicable tax laws but, insofar as pertinent tax laws allow for such in the future, Bayer shall offer such benefits to its employees.



3. **On-site Amenities:**

- A. ***On-site Eating and Recreation Facilities.*** Bayer will continue to provide on-site eating facilities for employees as part of the trip reduction program. On-site amenities within the Bayer campus shall also include fields, sport courts, pedestrian and bicycle trails, and/or outdoor eating areas.
- B. ***Parking Designated for Carpooling/Car-Sharing.*** Four (4) percent of new parking spaces associated with new or renovated buildings shall be designated/marked for carpooling and/or car-sharing.

4. **Telecommute Program:** Bayer shall encourage telecommuting where feasible, and shall provide its employees with electronic notice of approved telecommuting options during orientation for new hires and otherwise at least once per year. The telecommute program shall include a hybrid offering, where a hybrid model means a mix of work completed on site and work completed at an off-site location convenient to the employee, including the primary residence of an employee. The specific scheduling will vary across roles based on the type of work that is performed. Within these schedules, the number of days spent on site will vary based on the demands and needs of various departments.

5. **Bicycle Measures:**

- A. ***Bicycle Parking.*** Bayer shall provide bicycle parking at a ratio of one (1) space per two thousand (2,000) square feet of gross floor area for new floor area construction and expansions irrespective of land use type. New bicycle parking shall be located within perimeter security fencing and near to entrances to new and renovated buildings. Ten (10) percent of new bicycle parking spaces shall include access to electric outlets for e-bikes. A combination of covered and uncovered bicycle parking, to be located near the entrances of new or renovated buildings, will be evaluated during the architectural design phase and implemented so long as the design does not conflict with site manufacturing requirements (e.g., material deliveries, pedestrian pathways, waste management, and emergency access) as determined within the sole discretion of Bayer engineers.
- B. ***Bicycle Repair Station.*** Bayer shall include on its campus bicycle repair stations consisting of designated, secure areas where bicycle maintenance tools and supplies are readily available on a permanent basis and offered in good condition to encourage bicycling. Bayer currently operates two bicycle repair stations on the campus, which it shall continue to maintain, though relocation of such facilities is permitted, and Bayer shall provide one (1) additional bicycle repair station for every additional five hundred (500) employees above one thousand (1,000 employees) that Bayer adds to the campus, for a maximum total of four bicycle repair stations.
- C. ***On-site Employee Showers/Changing Facilities and Lockers.*** The Bayer campus shall also include changing rooms with showers and lockers for

employees using alternative transportation. For new and renovated buildings, Bayer shall provide one combination changing/shower stall per new or renovated building and one locker per assigned building employee so long as inclusion of changing/shower stalls and lockers does not conflict with site manufacturing requirements (e.g., material deliveries, pedestrian pathways, waste management, and emergency access) as determined within the sole discretion of Bayer engineers. Changing/shower stalls and lockers need not be co-located.

D. ***Bicycle Promotion and Education.***

- a. Bayer shall offer employees the following bicycle-related services: repair clinic, urban riding classes, and memberships to local bicycle organizations.
- b. Bike-share locations and bike supply/service stores within ¼ mile of campus shall be disseminated through the communications channels set forth in Measure 2.B, above.
- c. Bayer sponsored programs to encourage health and wellness initiatives shall include promotion of biking to work.

6. **City Review:**

- A. ***Regular Review.*** Consistent with the terms of this Section 6.A., the TDM Program shall subject to review by the City of Berkeley’s Traffic Engineer every five years, or at a three-year interval if requested by the City, to ensure that services are consistent with best practices to reduce the use of single-occupant automobile trips to and from the project site. As used herein, “best practices” means the selection of TDM Measures necessary, to the extent feasible, to reach a goal whereby 20 percent of total dayshift employees<sup>2</sup> are electing to commute using travel modes other than single occupant vehicles (“SOVs”). If evidence shows the TDM Program is not meeting the foregoing performance standard, the City of Berkeley’s Traffic Engineer may elect to require substitute or additional feasible TDM measures, and any changes shall be memorialized in an updated version of this Exhibit. Such adjustments are within contemplation of the Amended and Restated Development Agreement and shall not require an amendment thereto, but can be administratively adopted by the City of Berkeley’s Traffic Engineer. The City shall not make any changes to the TDM Program if evidence shows the TDM Program is meeting the aforementioned performance standard.
- B. ***Monitoring and Reporting Program.*** As part of its annual review process, as set forth in the Amended and Restated Development Agreement, Bayer shall include in its annual report to the City the following information:

<sup>2</sup> Dayshift employees are those Bayer employees, inclusive of employees electing to telecommute, who are scheduled to work shifts with arrival or departing times during a.m. and p.m. peak hours (i.e., 6:00 a.m. to 10 a.m. and 3:00 p.m. to 7:00 p.m.).

- a. A list of TDM Program measures offered consistent with the measures identified in Sections 1 through 5 of this Exhibit I, as might be updated pursuant to the review process set forth in Section 6.A.
- b. A census of the current number of total Bayer Berkeley employees by shift.
- c. A report of whether the TDM Program is meeting the 20 percent goal, as set forth in Section 6.A, according to gate count information consisting of the number of employees driving to the site for work shifts. If the 20 percent goal is not being met then Bayer shall also report the number of users, by shift, of transportation mode splits. An employee survey or other methodology determined to be appropriate by the Transportation Coordinator may be used to provide this information.
- d. A report of shuttle capacity and average ridership.

**C. *Review Upon Submission of Building Permits.***

- a. Compliance with this TDM Program and the associated monitoring and reporting program shall be subject to a consistency review by the City of Berkeley's Traffic Engineer prior to issuance of building permits for development allowed under the DA. The City shall find there is compliance if Bayer has shown evidence it has offered the TDM Program measures outlined in Sections 1 through 5 of this Exhibit, as might be updated pursuant to the review process set forth in Section 6.A, through use of the checklist provided below.
- b. This consistency review shall not include any update to the TDM Program as contemplated in Section 6.A, but shall be a ministerial review to ensure all TDM Program elements, as identified above, have been incorporated into Bayer operations.<sup>3</sup> The table below, as periodically updated pursuant to Section 6.A, shall be completed and submitted by Bayer as part of its building permit application with reasonably appropriate evidence, and the completed table shall guide the City's ministerial consistency determination.

<sup>3</sup> The process for updating the TDM Program, as set forth in Section 6.A, shall occur separate and independent of the TDM compliance review set forth in this Section 6.C, and the update process in Section 6.A shall not delay the City's processing of building permit or other project-related applications.

TDM Program Compliance Checklist		
Standard	Standard Per DA	Compliance
<b>Transportation Demand Management Standards</b>		
Bicycle parking	1 space per 2,000 square feet	<input type="checkbox"/> Yes <input type="checkbox"/> No
Bicycle repair stations	1 station for every 500 employees	<input type="checkbox"/> Yes <input type="checkbox"/> No
Changing/shower stalls	1 changing/shower stall per new or renovated building (unless confirmed by Bayer engineer in writing that inclusion of amenity would conflict with development and/or manufacturing of therapies)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Lockers	1 lockers per each employee assigned to building (unless confirmed by Bayer engineer in writing that inclusion of amenity would conflict with development and/or manufacturing of therapies)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Current number of Bayer employees	No.: _____	
Number of Bayer employees assigned to subject new or renovated building.	No.: _____	
<b>List of Transportation Demand Management Measures</b>		
Transit Program	<b><i>Shuttle Program</i></b>	
	Employ a shuttle that seats approximately 16 passengers	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Shuttle running on a regular schedule at the A.M. and P.M. peak hours (6-10 am, 3-7 pm)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Regular headways of no more than approximately 20 minutes	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Disseminate shuttle service information through communication channels	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Provide a minimum of two shuttle stops	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Shuttle shall comply with the Americans with Disabilities Act	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Shuttle shall include bicycle storage/transport	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<b><i>Other Transit Support</i></b>	
	Offer pre-tax commuter benefits to pay for transit passes (e.g., train, BART, light rail, bus, and ferry) and related parking expenses.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Offer a convenience service that employees may use to purchase stored value cards that are accepted by transit operators (i.e. Clipper, BART, MUNI, AC Transit, Caltrain, and others) directly from their pre-tax commuter dollar contribution account	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Travel Coordination	Appoint or otherwise retain a Transportation Coordinator	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Provide electronic messaging board or other means containing transportation information; for example: transit schedules, emergency ride home programs, bike maps, carpooling/ridematching, taxi/ride sharing, and/or real-time	<input type="checkbox"/> Yes <input type="checkbox"/> No

	information about transit arrivals and departures to the extent transit providers make information reasonably available in an accessible format		
	Provide electronic messaging board or other means containing information about bike-share locations and bike supply/service stores within 1/4 mile of Bayer site	<input type="checkbox"/> Yes	<input type="checkbox"/> No
On-site Amenities	Provide on-site eating facilities for employees within Bayer campus	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Provide on-site fields, sport courts, pedestrian and bicycle trails, and/or outdoor eating areas within Bayer campus.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Four (4) percent of new parking spaces associated with new or renovated buildings shall be designated/marked for car-pooling and/or car sharing.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Telecommute Program	Incorporate a telecommute program	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Bicycle Measures	New bicycle parking spaces located at secure locations within perimeter security fencing near each entrances to new or renovated building subject to application.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Ten (10) percent of new bicycle parking spaces include access to electric outlets for e-bikes.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Maintain one bicycle repair station per five hundred (500) employees	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Include changing rooms with showers and lockers for employees using alternative transportation as noted above.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Offer employees bicycle-related urban riding classes, bicycle-related repair clinic, and memberships to local bicycle organizations	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Promotion of biking to work	<input type="checkbox"/> Yes	<input type="checkbox"/> No





Office of the City Manager

## Worksession Item

WORKSESSION  
September 21, 2021

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jordan Klein, Director, Planning and Development Department  
Subject: Housing Element Update

### SUMMARY

Berkeley is engaged in an 18-month process to update the Housing Element of the General Plan. This update occurs every eight years and is mandated by State law. The 6<sup>th</sup> Cycle Housing Element Update must be adopted by the City Council, and the statutory deadline for submitting to California's Department of Housing and Community Development (HCD) is January 31, 2023. Berkeley hired a consultant team led by Raimi & Associates to provide the necessary technical expertise and wide-reaching public outreach efforts to ensure that the City delivers a State-compliant Housing Element that reflects Berkeley's diverse character and needs. This report follows the April 28, 2021 memo on the Housing Element (see Link 1), providing more detailed information on the State's Housing Element requirements as well as specifics on the City's approach.

### CURRENT SITUATION AND ITS EFFECTS

The Housing Element Update is a Strategic Plan Priority Project, advancing the City's goal to create affordable housing and housing support services for its most vulnerable community members. The Housing Element Update will serve as the City of Berkeley's housing framework for the eight-year period between 2023-2031 (herein referred to as the "6<sup>th</sup> cycle"). Each jurisdiction in California receives a target number of homes across income levels to plan for called the Regional Housing Needs Allocation (RHNA). State law does not require that jurisdictions *build* or *finance* new housing required by the State's RHNA, but the Housing Element must *plan* to accommodate the allocated units with appropriate land use policies and development regulations.

The Housing Element Update addresses a range of housing issues such as affordability, diversity of housing types, allowable density and project locations, housing for those with special needs, and fair housing for disadvantaged communities of concern. In addition, it establishes goals, policies, and programs that will guide the City's decision-making around the development of housing to address existing and projected needs with a mix of housing opportunities that will serve a range of income levels.

Recent legislation resulted in changes and new requirements for Housing Element Updates that occur in the 6<sup>th</sup> cycle:

1. Higher Allocations. State law requires that HCD update its regional housing methodology to account for unmet existing and future housing needs. This includes an analysis of overcrowding and cost burden, in addition to projected housing needs, which raised the total regional allocation for new units. Overall, the Bay Area must plan for 441,176 new housing units during the 6<sup>th</sup> cycle, compared with 187,990 for the 5<sup>th</sup> cycle (2015-2023). Berkeley's draft 6<sup>th</sup> cycle allocation is 8,934 units, a 202% increase over its 5<sup>th</sup> cycle allocation.
2. Affirmatively Furthering Fair Housing (AFFH). Using HCD's guidance and approach, Housing Elements must now affirmatively further fair housing by examining the identified policies, programs, rules, and practices to ensure that they will promote inclusive communities and prevent poverty concentration and segregation. Berkeley will access technical assistance provided by the Association of Bay Area Governments (ABAG) to ensure its Housing Element Update complies with this new requirement.
3. Site Limitations for Lower Income RHNA. New legislation (AB 1397) sets forth additional criteria for selecting sites that can accommodate the lower income RHNA category, defined as less than 80% Area Median Income (AMI)<sup>1</sup>. Identification of opportunity sites, which is a component of the Housing Element Update, will require consideration of:
  - a. *Reusing sites from prior Housing Element cycles*. Projects with 20 percent of on-site units set aside for lower income households are subject to by-right approval without discretionary review unless rezoned for a higher density prior to the January 31, 2023 statutory deadline.
  - b. *Rezoning*. Sites to be rezoned or upzoned after January 31, 2023 to accommodate the lower income RHNA are subject to by-right approval without discretionary review if projects include 20 percent lower income units. The rezone must also include a minimum density of 20 dwelling units per acre (du/ac) and a maximum density of at least 30 du/ac and be large enough to accommodate at least 16 units on site.
  - c. *Mixed Use*. If more than 50% of the lower income RHNA is to be satisfied on mixed use or nonresidential zoning, then the sites must permit standalone residential and do not require more than 50% of the floor area ratio (FAR) for nonresidential uses.
  - d. *Small or Large Sites*. Additional analysis is required for sites smaller than 0.5 acre and larger than 10 acres for the lower income RHNA category. In

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<sup>1</sup> 2021 income levels by family size are available at <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>



the 5<sup>th</sup> cycle RHNA, over 55% of the opportunity sites identified were less than 0.5 acres. To utilize small sites for lower income RHNA, the City must be able to demonstrate past trends, potential for lot consolidation, and programmatic response to facilitate lot consolidation.

- e. *More than 50 Percent Nonvacant Sites.* If more than 50% of the lower income RHNA is being accommodated on nonvacant sites, the sites are subject to a higher standard of feasibility analysis. In the 5<sup>th</sup> cycle RHNA, nearly 40% of the lower income RHNA was projected to be accommodated on nonvacant sites.
4. Site Limitation for Moderate and Above Moderate Income RHNA Categories. New legislation (AB 725, effective January 1, 2022) requires that 25% of the moderate income RHNA (80-120% AMI) and 25% of the above moderate income RHNA (>120% AMI) be provided on sites that can accommodate at least four units, including accessory dwelling units (ADUs). In Berkeley, this would be applicable on conforming lots in every district except R-1 and ES-R. The State is working on bills to clarify AB 725.
5. No Net Loss. (AB 166) As development occurs, the City must continually monitor its residential sites capacity in accommodating its remaining RHNA throughout the entire eight-year planning period. If development on a specific site results in fewer units (total number and by income category) than assumed in the Housing Element, the City must demonstrate remaining capacity is available for the remaining RHNA. For this reason, HCD recommends utilizing a buffer for the lower and moderate sites inventory that exceeds the RHNA. The project team will analyze past trends of opportunity sites to determine an appropriate buffer.

### **Housing Element Update Scope of Work**

The City Council directed staff to take into consideration seven key principles for the Housing Element Update:

- Robust Community Engagement
- Equity – geographic equity, equity in housing types and access
- Affordability and Community Benefits
- Public Safety
- Transit Proximity and Reducing Vehicle Miles Traveled
- Design, Neighborhood Context, and Historic Preservation
- Tenant Protections, Anti-Displacement, and Anti-Speculation Provisions

City staff and the consultant team will be incorporating these principles, amongst others which may be proposed during the public engagement process, in the analysis and development of the Housing Element. Raimi and Associates' project scope comprises four major tasks and the key principles will be integrated into Tasks 2 through 4.

- Task 1: Project Management
- Task 2: Community Outreach and Engagement
- Task 3: Update the Housing Element of the General Plan
  - Housing Needs Assessment
  - Housing Production Constraints
  - Sites Assessment and Inventory
  - Goals, Policies, and Programs
- Task 4: Environmental Review

Council also directed staff to consider specific rezoning strategies, which will be integrated with the Housing Element's site assessments strategy. Rezoning considerations include:

- Location. Focus on Priority Development Areas (PDAs) and locations near transit and commercial corridors.
- Zoning District. Focus in R-1, R-1A, R-2, and R-2A districts to allow for greater flexibility and variety of housing types beyond single-family residential.
- Residential Use Type. Focus on incentivizing the development of accessory dwelling units (ADUs) and junior ADUs on lots containing single-family residential.

This scope of work will integrate with concurrent land use planning efforts, such as planning at the Ashby and North Berkeley BART stations, Southside Zoning Ordinance amendments, Phase 2 of Zoning Ordinance Revision Project (ZORP) and development of objective development standards.

### **Housing Element Update Schedule**

Due to strict deadlines imposed by the State and severe penalties for missed deadlines, it is extremely important that this project stay on schedule. The Housing Element Update timeline is well-defined and finite: the City must adopt the 6<sup>th</sup> cycle Housing Element and the statutory deadline is January 31, 2023. The majority of the housing needs analysis and assessment and sites inventory must be completed by early 2022 in order to allow for sufficient time to conduct a thorough and legally defensible environmental review (see Figure 1: Housing Element Update Project Timeline).

In addition, Zoning Ordinance and General Plan amendments will be identified in early 2022 and reviewed by Planning Commission in Summer 2022 in order to be adopted by City Council in Fall 2022 prior to the adoption of the Housing Element Update in January 2023. Missing the adoption deadline for the Housing Element would require the City to conduct four-year updates to the Housing Element. Rezoning of sites after the January 31, 2023 deadline would subject the sites that are identified for rezoning to by-right approval. However, reused sites from previous cycles are subject to by-right approval regardless of the adoption date of the Housing Element.

**Figure 1: Housing Element Update Project Timeline**



### Housing Element Update

The key deliverables for the Housing Element Update project include administrative, public, and final HCD-certified drafts of the Housing Element Update, associated environmental review as required by the California Environmental Quality Act (CEQA) and a summary of the outreach and engagement.

The content of the Housing Element and the methodologies used for analyzing constraints and sites inventory are dictated by State law. The Housing Element of the General Plan must include the following:

1. Housing Needs Assessment. Examine demographic, employment and housing trends and conditions and identify existing and projected housing needs of the community, with attention paid to special housing needs (e.g., workforce housing, persons with disabilities). The data package provided by ABAG will form the basis of this section, supplemented by other available data on market conditions, etc.
2. Evaluation of Past Performance. Review the prior Housing Element to measure progress in implementing policies and programs. The City’s Housing Element Annual Progress Reports (APRs) to HCD will form the basis of this evaluation.
3. Housing Sites Inventory. Identify available sites for housing development to ensure there is enough land zoned to meet the future need at all income levels, with consideration of affirmatively furthering fair housing.

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4. Community Engagement. Conduct and summarize a robust community engagement program, reaching out to all economic segments of the community, and especially underrepresented groups.
5. Constraints Analysis. Analyze and recommend remedies for existing and potential governmental and nongovernmental barriers to housing development.
6. Policies and Programs. Establish policies and programs to be carried out during the 2023-2031 planning period to fulfill the identified housing needs.

### **Environmental Review**

A thorough and legally defensible CEQA environmental review is critical for adopting and certifying the Housing Element Update and will serve to avoid or minimize future environmental review of specific housing developments. The environmental review process requires an analysis of the Housing Element Update's potential effects on the environment to ensure that required rezones and associated General Plan updates to accommodate the increased housing allocation will generate the lowest possible environmental impacts. The environmental review includes identifying significant impacts associated with the Housing Element Update, identifying and considering alternatives to the proposed Zoning Ordinance or General Plan amendments, and identifying mitigation measures to avoid or reduce potential environmental impacts. The CEQA process also provides the general public and any interested parties with an opportunity to review and comment on the draft Environmental Impact Report (EIR).

### **Outreach and Engagement**

Outreach and engagement are an integral part of this project from initiation to adoption. As prioritized by City Council's March 25, 2021 recommendations, the project will be informed through a robust public participatory process. The consultant team (Raimi and Associates in conjunction with Surlene Grant of Envirocom Communications) will work with staff to provide expansive and inclusive methods of outreach that are tailored to both inform Berkeley's community members and stakeholders on the Housing Element Update as well as encourage productive feedback that will guide the development of the City's housing framework.

Based on the Council's recommendations, the plan for outreach and engagement is framed by 10 community engagement goals listed in Table 2 below.

**Table 1: Community Engagement Goals and associated Participation Strategies**

<b>Community Engagement Goals</b>	<b>Interviews</b>	<b>Survey</b>	<b>Stakeholder Meetings</b>	<b>Public Workshops</b>	<b>City Council Work Sessions</b>
Tailor engagement strategies and approaches to the local context (equity, needs, history)	X	X	X	X	
Open and transparent process	X	X	X	X	X
Promote and advertise public participation opportunities		X		X	X
Leverage input at various points in the process	X	X	X	X	X
Provide a variety of opportunities for convenience (low tech/high touch and high tech/low touch)	X	X	X	X	
Flexibility, in-person and remote engagement	X	X	X	X	
Communicate clearly and visually, simplify complex concepts	X	X	X	X	
Space for participants to be their authentic selves, speak native language	X	X	X	X	
Specific attention to equity and typically underrepresented	X	X	X		
Maintain positive discourse and dialogue	X	X	X	X	X

The consultant team is conducting a thorough stakeholder analysis. For each vulnerable population and key stakeholder group, the team is identifying interests, contributions, and best practices for outreach and engagement. That analysis is used to confirm how specific engagement strategies are applied to inform each phase of the Housing Element planning process. The strategies include 20 interviews, a communitywide survey, 20 small format meetings, three work sessions with the City Council, and three public workshops.

The workflow of the engagement strategy is as follows:

- Interviews. The Consultant team will begin by conducting 20 interviews with housing stakeholders in the Berkeley community. The information will be used to inform engagement strategies, identify housing needs and production constraints, identify opportunity sites, and solicit ideas for housing strategies to include in the Housing Element.
- Survey. A survey will also be distributed at the start of the outreach process to solicit general community input housing needs, constraints, and opportunities.
- Boards & Commissions. In September 2021, City staff will meet with 10 boards and commissions to provide an overview of the Housing Element, identify stakeholders, and invite members to participate in the planning process.
- Small Format Meetings. Throughout the planning process, the Housing Element team will conduct focus groups, meetings, “pop-ups”, and listening sessions with disadvantaged communities, neighborhood groups, advocacy organizations, industry organizations, and others to ensure inclusive and representative participation.
- Public Workshops. Three public workshops will be conducted at key points during the project: The first workshop will inform the housing needs assessment and production constraints. The second workshop is to inform the site assessment and inventory. The third and final workshop is to invite public review and feedback on the draft Housing Element.

The interviews, meetings, and workshops will adhere to State and local public health guidance in effect at the time of the event. The team anticipates that for Fall 2021 and Winter 2022, the activities will include a mix of online synchronous and asynchronous opportunities (using zoom and other technology platforms for interactive participation) and in-person outdoor events.

The team will rely on use of the city’s website, email lists (City’s GovDelivery account), and flyers and mailings for communication. Other distribution channels include: Community Based Organizations (CBOs), Homeowner Associations (HOAs), schools, community/senior centers, and community hubs such as grocery stores and farmers markets.

## BACKGROUND

Berkeley’s draft 6<sup>th</sup> cycle RHNA is 8,934 residential units<sup>2</sup>. The final target RHNA will be issued by ABAG in December 2021. The City is not required to build housing, but it is required to identify and zone sufficient sites to accommodate the anticipated growth

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<sup>2</sup> May 20, 2021. Final Regional Housing Needs Allocation (RHNA) Methodology and Draft Allocations. ABAG. [https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG\\_2023-2031\\_Draft\\_RHNA\\_Plan.pdf](https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG_2023-2031_Draft_RHNA_Plan.pdf)

over the next eight-year period. If actual housing production is less than the RHNA, certain affordable housing projects are subject to a streamlined approvals process (SB 35).

**Table 2: Berkeley RHNA Allocation, 5<sup>th</sup> & 6<sup>th</sup> Cycles**

<b>Income Level</b>	<b>5<sup>th</sup> Cycle RHNA Units</b>	<b>Units Permitted 2015-2020<sup>3</sup></b>	<b>6<sup>th</sup> Cycle DRAFT RHNA Units</b>
Very Low (< 50% AMI)	532	232	2,446
Low (50 – 80% AMI)	442	41	1,408
Moderate (80 – 120% AMI)	584	91	1,416
Above Moderate (> 120% AMI)	1,401	2,579	3,664
<b>Total</b>	<b>2,959</b>	<b>2,943</b>	<b>8,934</b>

Housing Elements are subject to regulatory oversight by HCD. If the City does not adopt its 6<sup>th</sup> Cycle Housing Element prior to January 31, 2023, it faces a number of penalties and consequences. In addition to facing significant fines of up to \$100,000 per month, the City can be sued by individuals, developers, third parties, or the State. The City would lose the right to deny certain affordable projects and a court may limit local land use decision-making authority until the City brings its Housing Element into compliance.

Failure to comply would also impact Berkeley’s eligibility and competitiveness for federal, state, and regional affordable housing and infrastructure funding sources. Many state and regional grant and loan programs require a compliant Housing Element, including the Affordable Housing and Sustainable Communities Program (AHSC), the Local Housing Trust Fund Program (LHTF), and Metropolitan Transportation Commission’s (MTC) One Bay Area Grant (OBAG) transportation funding.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The Housing Element Update is expected to result in greater infill housing development potential near transit and in employment-rich areas. Prioritizing density and affordable housing in these areas will incentivize community members to use alternative modes of transportation and reduce vehicle miles traveled (VMT), which are critical for reducing greenhouse gas emissions, and will bring the City closer to meeting its Climate Action Plan and Climate Emergency goals.

**POSSIBLE FUTURE ACTION**

In addition to this first work session, the team will make presentations to City Council at two additional work sessions in 2022. The purpose of the work sessions is to inform the Council of the Housing Element Update’s progress, share findings from community and stakeholder input, and receive project direction and recommendations from the Council on the immediate tasks ahead.

<sup>3</sup> Based on revised 2015-2020 APR unit counts, accepted by HCD on July 14, 2021

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### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The total budget allocated for the Housing Element Update is \$540,000. Berkeley has secured \$325,000 in Local Early Action Planning (LEAP) grant funds, \$83,506 in non-competitive Regional Early Action Planning (REAP) grant funds, \$75,000 in competitive REAP grant funds, and \$56,494 in Community Planning Fees.

### CONTACT PERSON

Grace Wu, Senior Planner, Land Use Planning Division, (510) 981-7484

Alene Pearson, Principal Planner, Land Use Planning Division, (510) 981-7489

### LINKS:

1. April 28, 2021. *Housing Element Update and Annual Progress Report*, Off-Agenda Memo from City Manager to Berkeley City Council.  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Housing%20Element%20Update%20042821.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Housing%20Element%20Update%20042821.pdf)
2. March 25, 2021, *Initiation of Public Process and Zoning Concepts for 2023-2031 Housing Element Update*. Report to Berkeley City Council, Councilmember Droste et al.  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%203-25-21.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%203-25-21.pdf)
3. March 25, 2021, *Initiation of Participatory Planning for Berkeley's Regional Housing Needs Allocation (RHNA)*. Supplemental report to Berkeley City Council, Councilmember Hahn et al.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-25\\_\(Special\)\\_Supp\\_2\\_Reports\\_Item\\_2\\_Supp\\_Hahn\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-25_(Special)_Supp_2_Reports_Item_2_Supp_Hahn_pdf.aspx)





## Communication

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**From:** Jay Claiborne <jwcud70@gmail.com>  
**Sent:** Thursday, October 7, 2021 1:47 PM  
**To:** Pearson, Alene  
**Subject:** North Berkeley and Ashby BART Station Area Development Plans

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

I live in North Berkeley approximately two miles from the BART Station on Sacramento between Delaware and Virginia Streets. Until the Covid shut-down, my wife and I very frequently used the location as our hub for rides to various parts of the region related to our work. As an Urban Designer, I have been very involved in planning efforts over many years to create feasible development plans for each of the BART Stations in Berkeley as well as in other parts of the region. I led the effort to plan development, which is now in place and quite vibrant, for the new BART Station in Castro Valley. In short, I understand the potential of BART Station Areas as locations for development concentration, especially that includes housing, that will significantly reduce vehicular traffic and that encourages pedestrian access.

I have been actively involved in discussions of development concepts for both North Berkeley and Ashby BART Station Areas. I support as many units of mixed income housing for both stations as possible and optimizing opportunities for cooperative funding support for housing that supports future residents whose community work is most efficiently served by the station location. For example, the North Berkeley Station is within reasonable walking distance of several public schools and would be an ideal location for teacher residents. The Ashby Station is adjacent to the Oral Roberts facility, making is optimal as a location for a certain percentage of future residence with mobility issues.

As a supposedly “progressive” city in the Bay Area, Berkeley should not continue to not maximize new housing that would benefit form the station locations and reduce the environmental impacts of gas fueled transportation needs.

Sincerely,  
Jay Claiborne

Jay W. Claiborne  
JWC Urban Design  
70 Twain Ave  
Berkeley, CA 94708

510 604 8675  
[jwcud70@gmail.com](mailto:jwcud70@gmail.com)

## Communication

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**From:** yonatan landau <ylandau1@gmail.com>  
**Sent:** Thursday, October 7, 2021 8:36 AM  
**To:** Pearson, Alene <apearson@cityofberkeley.info>  
**Subject:** More North Berkeley housing now

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

I'm a renter in North Berkeley - although home-owners may be louder, our elected officials represent all residents and we NEED more housing to stop the affordability crisis. Homeowners have already seen their assets sky-rocket at the expense of renters and the only path forward to balance is building enough homes to satisfy demand.

Thank you for your consideration,

Yoni Landau,  
California and Lincoln

--

Yoni Landau

Founder  
[Contest Every Race](#)  
CEO  
[Movement Labs](#)

c. 5102073850

Is this email about getting on the phone? Schedule me here: [www.calendly.com/theYoni](http://www.calendly.com/theYoni)

## Communication

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**From:** Phyllis Orrick <poberkeley@gmail.com>  
**Sent:** Thursday, October 7, 2021 3:40 PM  
**To:** Berkeley Mayor's Office; Pearson, Alene; Kesarwani, Rashi; City Council  
**Subject:** Maximize housing at North Berkeley BART station

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Planning commissioners (and Councilmember Kesarwani and Mayor Arreguin),

As a longtime resident of North Berkeley, I urge you to act as rapidly as possible to ensure the maximum amount of housing is built at our North Berkeley BART station.

For all the years I've lived in this neighborhood, I have watched long-time neighbors be priced out (including many people of color) and have watched as the next generation, now establishing families of their own, settle in other parts of the state and beyond because they can't afford to live in Berkeley.

The housing crisis is reaching the point where not even career employees of the school district, the university and the city's public agencies can live here—much less service workers and other low-wage workers. This is not sustainable.

I'm glad to see that "maximize housing" was what the majority of September 1 commenters asked for. Please continue to move this process along so that we can achieve that goal.

Finally, given the imminent transition away from internal combustion engines and private car ownership, please make sure we do not invest scarce housing dollars and space on housing for vehicles, and make sure we provide plenty of secure, protected parking for bicycles, scooters and shared vehicles. Likewise, it's crucial that this development is woven into and enhances the pedestrian environment that was included in the 1970s original BART design.

Sincerely,

Phyllis Orrick

Kains near Virginia

## Communication

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**From:** Anshdeep Chhabra <achhabra2001@gmail.com>  
**Sent:** Wednesday, October 6, 2021 3:09 PM  
**To:** Pearson, Alene <apearson@cityofberkeley.info>  
**Subject:** Letter of Support for Bayer and Biotech Partners

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Alene Pearson,

Please find attached my letter of support for Bayer and the Biotech Partners Organization.

Sincerely,  
Ansh

Members of Planning Commission  
City of Berkeley, Land Use Planning Division  
1947 Center St, Berkeley, CA 94704

**October 1, 2021**

**Re: Recommendation for the Bayer HealthCare LLC Subsequent Environmental Impact Report (SEIR) and Development Agreement Amendment**

Dear Berkeley Planning Commissioners,

My name is Anshdeep Chhabra, and I am a community college student in the Bioscience Career Institute of Biotech Partners. Our organization was established in 1993 as part of a Development Agreement (DA) between Bayer and the City of Berkeley. Biotech Partners helps students, such as myself, and especially students who are from communities underrepresented in STEM fields, attain the personal, academic, and professional development needed for careers in biotech.

Biotech Partners would not exist today without Bayer. Since its inception, we have had 3,900 participants in the program, 15 internship placements per summer at Bayer, as well as 8 year-long co-op jobs provided to our community college program, with nearly \$3.5 million earned collectively since 1993. Eighty-five of our participants fall in the “income challenged” bracket, and 85% identify either as people of color or as female; the students in our programs gain valued professional experience, learning, mentorship, and other wrap-around services. In my Bayer internship, I myself, have learned many skills which have increased my confidence to be a contributor to the biotech workforce in Berkeley. I feel that this program provides a valuable opportunity to advance my career in a STEM field that I would not have otherwise been able to achieve on my own. Our graduates demonstrate the effectiveness of our approach. Many have gone on to lucrative careers at Bayer, other biotech companies, or other scientific fields. Biotech Partners and the support from Bayer have created an excellent pipeline for creating pathways into employment in a growing, lucrative, and meaningful industry born right here in the Bay Area.

I support Bayer’s new development agreement without hesitation because it will continue to give the community more opportunities to grow, develop, and learn in the STEM field, giving Berkeley natives an equitable start and bright future in Biotech. This DA is a great project and a wonderful opportunity for the City to continue working with an entity that truly cares about the community where it is rooted.

Given the decades of value, the amended DA could bring to Berkeley and the region, I urge you to recommend extending Bayer’s DA in Berkeley.

Thank you,

Anshdeep Chhabra

**Communication**

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**From:** Sarmed Anwar <sarmed.anwar@bayer.com>

**Sent:** Wednesday, October 6, 2021 8:35 PM

**To:** Pearson, Alene <apearson@cityofberkeley.info>; Buckley, Steven <StBuckley@cityofberkeley.info>; Klein, Jordan <JKlein@cityofberkeley.info>

**Subject:** Recommendation for the Bayer HealthCare LLC Subsequent Environmental Impact Report (SEIR) and Development Agreement Amendment

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

October 6, 2021

Members of Planning Commission  
City of Berkeley, Land Use Planning Division  
1947 Center St, Berkeley, CA 94704

**Re: Recommendation for the Bayer HealthCare LLC Subsequent Environmental Impact Report (SEIR) and Development Agreement Amendment**

Dear Berkeley Planning Commissioners,

My name is Sarmed Anwar and I work as a senior manager in operations at Bayer. I have lived in Berkeley for 20 years and have worked at Bayer for 18. I am a proud graduate of Biotech Partners and was an intern back in 2003. I am writing today to share my story as well as my support for Bayer's amended DA and SEIR. They should be and continue to be an anchor in Berkeley, and on a broader scale, Bay Area Biotech.

I was part of the Biotech Partners program in 2003, which has impacted my career path greatly. I had amazing experiences in the program and moved into an operations role after the internship. In my trajectory, I have seen the full process of creating medicines, from research and development to production on a commercial scale. Over the years, I've taken advantage of opportunities to move up the corporate ladder and am now Senior Manager in Operations.

The Biotech Partners internship was crucial to building my professional skills. My first supervisor at Bayer played an important mentorship role for me and has guided my career path. All my past managers provided strong one-on-one guidance and a healthy, flexible workplace as well. It has been incredibly rewarding to gain firsthand experience from the ground up. I feel blessed to have a comfortable life here in the Bay Area, and without Biotech Partners, I would probably not be here today.

That being said, Bayer should be in Berkeley. Bayer has a very welcoming philosophy that builds on the behaviors of all employees and feels like a small, connected community. I hope this project is allowed to commence, because Berkeley residents should have the same opportunities in Biotech as I did. Living in the Bay Area isn't easy, so giving our residents a head start in the STEM field should be of utmost priority. I, and my family, have so much to thank Bayer for. They have been good to me and are making a positive difference in many people's lives.

I urge the Planning Commission to support Bayer and this project in its entirety. Thank you.

Respectfully,

**Sarmed Anwar**  
Sr. Manger, CCTC Production



**I'm an Ally**

Bayer U.S. LLC  
Pharmaceuticals  
747 Grayson St.  
Berkeley CA 94710  
United States  
Tel: +1 510 705-4692  
Mobile: +1 510 427-0108  
E-mail: [sarmed.anwar@bayer.com](mailto:sarmed.anwar@bayer.com)  
Web: <http://www.bayer.us>

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**Communication**

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**From:** Gino DiCaro <gdicaro@cmta.net>  
**Sent:** Friday, October 8, 2021 1:17 PM  
**To:** Pearson, Alene; Buckley, Steven; Klein, Jordan  
**Cc:** Morgan Rothenbaum; Jennifer Cogley; Lance Hastings  
**Subject:** Letter of support for Bayer — California Manufacturers & Technology Association  
**Attachments:** Bayer PC Support Letter - CMTA.pdf



**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello Planning Commission Staff,

Attached is the California Manufacturers & Technology Association's letter in support of Bayer's Berkeley expansion project and the Environmental Impact Report.

Please let us know if you have any questions.

Regards,  
Gino DiCaro

	<p><b>Gino DiCaro</b> Senior VP, CMTA + President, CMTA Service Corporation</p> <p><b>p:</b> <a href="tel:916.498.3347">916.498.3347</a> <b>m:</b> <a href="tel:916.730.3443">916.730.3443</a> <b>f:</b> <a href="tel:916.441.5449">916.441.5449</a> <b>a:</b> 1121 L Street, Suite 700, Sacramento, CA 95814 <b>e:</b> <a href="mailto:gdicaro@cmta.net">gdicaro@cmta.net</a> <b>w:</b> <a href="http://www.cmta.net">www.cmta.net</a></p> <p>@GinodMakingca @cmta <b>#MakingCA</b></p>
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**October 8, 2021**

Members of Planning Commission  
City of Berkeley, Land Use Planning Division  
1947 Center St, Berkeley, CA 94704

**Re: Recommendation for the Bayer HealthCare LLC Subsequent Environmental Impact Report (SEIR) and Development Agreement Amendment**

Dear Berkeley Planning Commissioners,

My name is Gino DiCaro, and I am writing to express CMTA's support for Bayer's proposed plan to transform its West Berkeley campus, and to encourage the Planning Commission to approve the environmental impact report (EIR) and development agreement (DA) extension.

As the Sr. Vice President of the California Manufacturers & Technology Association (CMTA), I can attest that when bio-tech manufacturing and research & development co-exist and grow, the local community benefits tremendously. I'd like to mention a few factors I hope you will consider:

- **Economic Growth:** Bayer creates innovating life-improving therapies. Producing them at mass scale in one campus keeps Berkeley at the forefront of biotech leadership and provides the region with unrivaled economic activity. Their campus transformation is said to support 3,800 jobs and generate \$613 million, improving their ability to pivot to new production and development over the next few decades.
- **Careers & Pathways:** California manufacturing jobs pay on average \$85k per year (before benefits), and Bayer's salaries are much higher with an average salary close to \$120k. These jobs open doors and create pathways to success for working families.
- **Competitive Landscape:** As California struggles to provide a competitive environment for new manufacturing, we must foster all the existing and thriving production we can. Over the last decade, California has maintained, not grown, its large manufacturing base, while the rest of the country grew its production jobs by 8%. The reasons for this are many, but other states are throwing incentives at any mass scale production they can because they know, once bolts are in the ground, these operations often support entire communities and regions for a very long time. In a CMTA survey among CEOs and decision makers, tax incentives were the top reason for any site selection decisions. Tax incentives beat out competitive labor costs, energy costs, and overall predictability when CEOs sought to scale up operations and acquire or build production space.

- **Manufacturing Investment:** California lags far behind the rest of the country in bringing new long-term manufacturing—our state attracted less than 1% over the last few years. That is millions of investment dollars lost. On the contrary, this project stands ready to flourish and will be a game-changer for the next 30 years for our community.

CMTA resoundingly and respectfully asks you to support the EIR and DA extension. Thank you for considering the incredible benefits this project brings to Berkeley, the Bay Area, the entire state of California, and a long supply chain.

Thank you,



**Gino DiCaro**  
Sr. Vice President, CMTA  
916-498-3347  
Gdicaro@cmta.net

**Communication**

---

**From:** Chamroen Eng <chamroeneng@berkeley.edu>

**Sent:** Wednesday, October 6, 2021 7:25 PM

**To:** Klein, Jordan <JKlein@cityofberkeley.info>; Buckley, Steven <StBuckley@cityofberkeley.info>; Pearson, Alene <apearson@cityofberkeley.info>

**Subject:** Bayer Support Letter

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To Whom It May Concern,

Thank you for your work on this process. Please consider my support letter below.

Thank you,

Chamroen Eng

Members of Planning Commission  
Land Use Planning Division  
City of Berkeley  
1947 Center St.  
Berkeley, CA 94704

[10/06/2021]

**Re: Recommendation for the Bayer HealthCare LLC Subsequent Environmental Impact Report (SEIR) and Development Agreement Amendment**

Dear Berkeley Planning Commissioners,

My name is **Chamroen Eng**, D.O. Prior to launching my medical career in 2021, I was a former Program Manager of Biotech Partners (2015-2018) and resided with the City of Berkeley.

Biotech Partners was established in 1993, as part of a Development Agreement (DA) between Bayer and the City of Berkeley. The focus of the organization is to support students, especially income challenged students who are from communities underrepresented in STEM fields, attain the personal, academic, and professional development needed to pursue and attain a career in biotech.

It is because of Bayer, that Biotech Partners exists today. During my tenure, Biotech Partners expanded its program services of its legacy school Berkeley High and Oakland Technical to South San Francisco, Antioch High and San Marin High. Bayer reached out and engaged with Biotech Partners annually supporting the program with volunteer classroom speakers, mentors, and 15 paid summer internships for Berkeley High School students.

Eighty-five of our participants fall in the "income challenged" bracket, and 85% identify either as people of color or as female; the students in our programs gain valued professional experience, learning, mentorship, and other wrap-around services. Our graduates demonstrate the effectiveness of our approach; fifty-four (54) have gone on to lucrative careers at Bayer, other biotech companies, or other scientific fields.

I support Bayer's new Development Agreement without hesitation because it will continue to give the community more opportunities to grow, develop, and learn in the STEM field, giving Berkeley natives an equitable start and bright future in Biotech. This Development Agreement is a great project and a wonderful opportunity for the City of Berkeley to continue working with an entity that truly cares about the community where it is rooted.

Given the decades of value the amended Development Agreement could bring to Berkeley and the region, I urge you to recommend extending Bayer's Development Agreement in the City of Berkeley.

Respectfully,



Chamroen Eng, D.O.

## Communication

---

**From:** Darryl Little <DLittle@bayareacouncil.org>  
**Sent:** Thursday, October 7, 2021 1:59 PM  
**To:** Pearson, Alene; Klein, Jordan; Buckley, Steven  
**Subject:** Bayer Support Letter  
**Attachments:** BAC\_Bayer Planning Commission Support Letters.pdf

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Please see attached for the Bay Area Council's letter of support for Bayer.

**Darryl Little Jr.** | Director of Government Relations | **BAYAREA COUNCIL** | 415-946-8783 |  
[dlittle@bayareacouncil.org](mailto:dlittle@bayareacouncil.org) | [www.bayareacouncil.org](http://www.bayareacouncil.org) | twitter: [@bayareacouncil](https://twitter.com/bayareacouncil)





October 7, 2021

Members of Planning Commission  
City of Berkeley, Land Use Planning Division  
1947 Center St, Berkeley, CA 94704

**Re: Recommendation for the Bayer HealthCare LLC Environmental Impact Report and Development Agreement Amendment**

Dear Berkeley Planning Commissioners,

My name is Jim Wunderman, President and CEO at the Bay Area Council, and I am writing in support of Bayer's proposed Development Agreement (DA) Amendment and Environmental Impact Report (EIR) certification.

Bayer is Berkeley's largest private sector employer. The company is an important anchor to the Bay Area's biotechnology and life sciences industry with 30 years of commitment to the local community and investment in the region. Bayer's proposal to Berkeley and the region is exactly the type of investment our region needs—through community benefits, living-wage jobs, upgraded facilities, and more.

I support the amended DA and EIR because:

- Bayer's presence will continue to anchor the Bay Area as a global leader in the Biotech industry, benefitting our region with jobs and increased economic activity.
- The lucrative community benefits package that will support local STEAM, affordable housing, arts, and community resilience initiatives.
- The proposed campus changes will provide improved aesthetics, updated walkways, more green

I urge the Planning Commission to approve the amended DA and EIR and hope to see the plan develop over the next few, 10, and 30 years.

Sincerely,

A handwritten signature in black ink that reads 'Jim Wunderman'.

Jim Wunderman

## Communication

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**From:** De La Pena Medina, Mitzy <mdelapenamedina@biocom.org>  
**Sent:** Thursday, October 7, 2021 5:02 PM  
**To:** Pearson, Alene  
**Cc:** Cohn, Melanie; Buckley, Steven; Klein, Jordan  
**Subject:** Public Comment Letter in Support of Bayer HealthCare LLC's for October 20th Planning Commission Meeting  
**Attachments:** Biocom CA Bayer DA\_ SEIR support letter-10.20.21 (002).pdf

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Hi Alene,

Attached, you will find Biocom Ca. letter of Support for Bayer HealthCare LLC's Development Agreement Amendment and Environmental Impact Report Certification to be included in the upcoming October 20th Planning commission meeting packet.

Please let me know if you need any further information or have any questions.

Thank you,



**Mitzy De La Peña Medina**  
Policy Associate, Bay Area

San Diego | Los Angeles | **Bay Area** | Sacramento | Washington, D.C. | Tokyo

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415.943.9383 | [mdelapenamedina@biocom.org](mailto:mdelapenamedina@biocom.org) | [www.biocom.org](http://www.biocom.org)



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415.943.9375

[BayArea@biocom.org](mailto:BayArea@biocom.org)

1 Tower Place  
Suite 150  
South San Francisco, CA 94080

To:  
Members of the Planning Commission  
City of Berkeley, Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

October 5, 2021

**Subject: Support for the Approval of Bayer HealthCare LLC's Development Agreement Amendment and Environmental Impact Report Certification**

I am writing to express Biocom California's support for the proposed Development Agreement Amendment and Environmental Impact Report (EIR) certification between Bayer and the City of Berkeley.

The Bay Area is known for its life science sector, which has been one of the few sectors to grow in Berkeley during the pandemic. Bayer is an anchor for the local life science community, helping sustain industry growth, supporting external research projects, and off shooting countless new companies to tackle medical and scientific challenges. Bayer also offers a wide range of employment opportunities at all levels of educational attainment and invests in high school and college internships for Berkeley's first-generation students.

The new community benefits package that Bayer agreed to supports STEAM education, affordable housing, and community resiliency efforts like climate action, health equity, and local economic development.

For a project of the scope that Bayer is proposing, potential environmental impacts appear to be limited in scale and duration. Their proposed plans to prioritize pedestrian and bicycle transport, reduce surface parking lots, create more open green space, increase native plantings, and enhance transportation demand management (TDM) measures effectively mitigate greenhouse gas emissions and protect the surrounding environment.

This project provides opportunities for Berkeley residents across the social and economic spectrum in terms of direct benefits, future employment, community amenities, and potential new health treatments.

I respectfully ask the Planning Commission to approve Bayer's amended Development Agreement and Environmental Impact Report. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Panetta".

**Joe Panetta**  
President & CEO

**Communication**

---

**From:** Ajit Smith-Iyer <ajit.smith-iyer@bayer.com>  
**Sent:** Friday, October 8, 2021 2:52 PM  
**To:** Pearson, Alene; Buckley, Steven; Klein, Jordan  
**Subject:** Bayer DA Support Letter  
**Attachments:** Bayer PC Support Letter - Ajit.pdf

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Dear Alene, Steve and Jordan

I am a Berkeley resident and have worked at Bayer. I am writing as a west Berkeley resident in support of the proposed DA.

Thank you

Regards

Freundliche Grüße / Best regards,

**Ajit Smith-Iyer**  
**Sr. Director IOT**



Bayer U.S. LLC  
Pharmaceuticals, Pharmaceuticals  
800 Dwight Way,  
Berkeley CA 94702  
United States  
Tel: +1 510 705-4897  
E-mail: [ajit.smith-iyer@bayer.com](mailto:ajit.smith-iyer@bayer.com)  
Web: <http://www.bayer.us>

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Members of Planning Commission  
City of Berkeley, Land Use Planning Division  
1947 Center St, Berkeley, CA 94704

10-08-2021

**Re: Recommendation for the Bayer HealthCare LLC Subsequent Environmental Impact Report (SEIR) and Development Agreement Amendment**

Dear Berkeley Planning Commissioners,

My name is Ajit Smith-Iyer, director of process automation at Bayer. I've lived in Berkeley for 15+ years, having worked at Bayer for the same amount of time. My team ensures that our automation systems work properly to support our manufacturing operations on site, but beyond that, I am deeply entrenched in Berkeley's community. I have two kids in the Berkeley Unified School District. My eldest attends Dr. Martin Luther King Jr. Middle School and my younger child attends Jefferson Elementary School.

I am writing in support for Bayer, and respectfully request the Planning Commission to approve the amended DA and SEIR and keep Bayer in Berkeley. Bayer is doing great things in our labs, and in the community. The medicines we make in Berkeley the world, improve the quality of life for patients around the globe. As a Bayer employee, I'm proud of being part of a process that changes the lives of patients and am even more proud that this is happening right in my community and backyard.

We are a biking family; my kids bike to school regularly, and we feel lucky to have so many dedicated bike lanes and bike paths. I commute to work via bike almost daily. Bayer has a great program that encourages not only biking to work, but also use of mass transit with a shuttle from the BART station at Ashby and also pre-tax commuter benefits. Those who bike to Bayer have access to resources such as shower facilities and repair stations. Sustainable transportation is important to me, and value the incentives we receive to get to work and maintain a healthy lifestyle while reducing carbon transmissions. In this era of sheltering in place, my colleagues and I have also benefitted from Bayer's extended work from home policies, which eliminates commute footprints entirely. We all expect expanded work from home patterns after the resolution of the current pandemic.

I support the amended DA and SEIR because:

- The proposed changes will provide improved aesthetics, updated walkways, more green space, and an expanded area accessible by the public to enjoy.
- The support for sustainable commute options is important to me.
- This project provides more room, literally and figuratively, to engage with the community, and to continue having a positive presence in Berkeley.

I am proud to be a Bayer employee. Please approve the amended DA and EIR so that people like me and my colleagues can continue our important work here.

Respectfully,

*Ajit Smith-Iyer*  
Ajit Smith-Iyer

## Communication

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**From:** Rob Stoker <RobS@smw104.org>  
**Sent:** Friday, October 8, 2021 3:01 PM  
**To:** Pearson, Alene; Buckley, Steven; Klein, Jordan  
**Subject:** Bayer

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Members of Planning Commission  
City of Berkeley, Land Use Planning Division  
1947 Center St, Berkeley, CA 94704

**Re: Recommendation for the Bayer HealthCare LLC Environmental Impact Report and Development Agreement Amendment**

**Dear Berkeley Planning Commissioners,**

The Building and Construction Trades Council of Alameda County is proud to support Bayer's proposed Development Agreement (DA) extension and Environmental Impact Report (EIR) certification.

For decades now, Bayer has managed their operations in a way that makes community benefits a built-in core function. Their focus on creating opportunity for the least advantaged residents from communities such as industrial West Berkeley where they are located is particularly noteworthy.

They have invested in local STEAM education for disadvantaged youth, and then provided apprenticeship opportunities that allow kids to practice their STEM skills in a professional setting. Bayer has in turn made this a key part of their overall employee recruitment program. Data from Bayer also shows that 68% of Bayer's Berkeley employees identify as a person of color.

They have turned philanthropy into good business and have made investment in diversity a strength. This is good for Bayer, the city and for us.

Our apprenticeship programs have intensive math requirements too and draw from the same diverse populations that their Biotech Partners program does. Accordingly, their investment in STEAM education has helped populate our apprenticeship programs with people of color with the skills needed to thrive. In addition, Bayer's consistent use of union contractors has assured that local union construction apprentices have opportunities to practice their new skills alongside union journeymen on a steady stream of local construction projects.

If we could recruit more companies like Bayer to locate in Berkeley, we would. The easiest way to accomplish this is to encourage Bayer itself to grow. The Development Agreement will give them the tools they need to expand their operations with all of the benefits that that brings to the community.

We urge your support for approval of both the Development Agreement and the EIR.

Respectfully,

Rob Stoker  
President  
Building and Construction Trades Council  
of Alameda County

Communications  
Planning Commission  
October 20, 2021

**Rob Stoker**

S.M.A.R.T. California Sheet Metal Workers'  
Local Union No. 104  
Political & Public Relations Director  
President  
Building & Construction Trades Council  
of Alameda County  
3232 Constitution Dr.  
Livermore, CA 94551  
Phone (925) 314-8600 ext. 1009

**Representing Sheet Metal Workers in 49 of California's 58 Counties!**



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## Communication

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**From:** Noreen Weeden <nweeden@goldengateaudubon.org>  
**Sent:** Thursday, October 7, 2021 10:30 AM  
**To:** Pearson, Alene  
**Cc:** Lapiro, Katrina; Laura Cremin; Burns, Anne M; Ben Gould  
**Subject:** Re: Bird Safe Berkeley ordinance status inquiry - no response to August inquiry  
**Attachments:** CEAC FINAL Bird Safety Ordinance\_081319.pdf; 2019-11-12 Item 32 Bird Safe Berkeley Requirements.pdf

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Hi Alene, Anne and Berkeley Planning Commissioners,  
Please let me know the status of the Design Review Committee work on Standards for Bird Safe Buildings in Berkeley. On August 27, 2021 a status was requested and we have not had any response.

The Berkeley Community Environmental Advisory Commission and Berkeley City Council approved the Bird Safe Berkeley standards in 2019. This item was first on the Berkeley Planning Commission schedule as an Informational Item in **November 2019, Bird Safety Requirements** then on the **August 5, 2020 Planning Commission Meeting** which was cancelled. The August 19, 2020 Planning Commission meeting was also cancelled. Due to the pandemic and social justice issues the priority has justly been focused on these areas and there have been virtual meeting technology glitches. Attached is a copy of the proposed bird safe building ordinance and the Planning Commission agenda for the meeting that was cancelled.

Other San Francisco Bay cities have passed Bird Safe Building ordinances: San Francisco 2011, Oakland 2012, Richmond 2016, Alameda 2018, Emeryville 2020. Cities all over the US and Canada are implementing Bird Safe Building ordinances.

Why is this positive step for our environment being delayed in Berkeley?

Golden Gate Audubon can provide information and answer questions on bird safe buildings. Development in Berkeley is continuing and these guidelines are important for future planning.

Noreen Weeden  
**Golden Gate Audubon**  
415-252-1039 cell phone  
[nweeden@goldengateaudubon.org](mailto:nweeden@goldengateaudubon.org)

On Fri, Aug 27, 2021 at 7:28 PM Noreen Weeden <[nweeden@goldengateaudubon.org](mailto:nweeden@goldengateaudubon.org)> wrote:

Hi Anne,

Please let me know the status of the Design Review Committee work on Standards for Bird Safe Buildings in Berkeley.

The Berkeley Community Environmental Advisory Commission and Berkeley City Council approved the Bird Safe Berkeley standards in 2019. It was first on the Berkeley Planning Commission schedule as an Informational Item in **November 2019, Bird Safety Requirements** then on the **August 5, 2020 Planning Commission Meeting** which was cancelled. The August 19, 2020 Planning Commission meeting was also cancelled. Due to the pandemic and social justice issues the priority has justly been focused on these areas and there have been virtual meeting technology glitches. Attached is a copy of the proposed bird safe building ordinance and the Planning Commission agenda for the meeting that was cancelled.

Other San Francisco Bay cities have passed Bird Safe Building ordinances: San Francisco 2011, Oakland 2012, Richmond 2016, Alameda 2018, Emeryville 2020

Golden Gate Audubon can provide information and answer questions on bird safe buildings. Development in Berkeley is continuing and these guidelines are important for future planning.

Thank you,

Noreen Weeden

**Golden Gate Audubon**

415-252-1039 cell phone

[nweeden@goldengateaudubon.org](mailto:nweeden@goldengateaudubon.org)

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Community Environmental Advisory Commission

[CONSENT OR ACTION]

CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Ben Gould, Chairperson, CEAC  
Subject: Bird Safe Berkeley Requirements

RECOMMENDATION:

Refer to the Planning Commission and the City Attorney the attached ordinance amending Berkeley Municipal Code Title 23C, adding a new Chapter 23C.27 establishing bird safety requirements for new construction and significant renovations and a new Chapter 23C.28 establishing a dark skies ordinance, for review and approval.

FISCAL IMPACTS OF RECOMMENDATION:

Potential for small additional ongoing costs associated with slightly increased requirements for staff review of new construction proposals to ensure compliance.

CURRENT SITUATION AND ITS EFFECTS

Bird safety is aligned with the City of Berkeley's Strategic Plan, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

According to the Audobon Society, bird collisions with windows is a leading cause of human-induced bird deaths (second only to outdoor house cats). Berkeley is located in the midst of the Pacific Flyway, a major migratory route for birds including hummingbirds, robins, blackbirds, numerous shorebirds, raptors, and more. When these birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death.

At present, there are no bird safety measures required for new construction or renovations. As a result, it is possible that new and existing buildings may incorporate features which pose preventable hazards to local and migratory birds.



Unfettered outdoor lighting also poses known risks to birds, as well as generating unwanted light pollution. The City of Berkeley's Downtown Area Plan<sup>1</sup>, as well as Southside zoning regulations (BMC 23E.52.070.F.7), provide guidance or limitations on outdoor lighting, but no general policy exists citywide to prevent excessive light pollution from outdoor lighting.

## BACKGROUND

Berkeley is in the midst of the Pacific Flyway, a major migratory route for birds. The city is also adjacent to San Francisco Bay, one of North America's most ecologically important estuaries and a site of Western Hemispheric importance for shorebirds and waterfowl. Alameda County has recorded 407 species of resident and migratory bird species, including least terns, Ridgway's rails, and a variety of other uniquely local and/or threatened species.

New buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics – in fact, many of the compliance methods in the attached ordinance can be incorporated into design or construction with virtually no additional cost or difficulty for architects or engineers, and in some cases facilitate achieving other environmental goals (like improved building energy efficiency).

Several other Bay Area cities have adopted bird safety ordinances, including San Francisco, Oakland, Alameda, and Richmond. The attached proposed ordinance is developed from the City of Alameda's adopted ordinance.

In addition, birds are drawn to light, whether from the moon or artificial lights, and lights affixed to buildings or structures pose a risk that birds may crash into them. A special danger comes from very bright lights, as well as lights aimed upward.

## ENVIRONMENTAL SUSTAINABILITY

Implementing the Bird Safe Berkeley ordinance will ensure new construction does not pose undue hazards to local and migratory birds, thereby reducing human impact and benefiting the environment.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed amendment to BMC Title 23C is categorically exempt from CEQA under CEQA Guidelines Sections 15061(b)(3), 15307, and 15308.

## RATIONALE FOR RECOMMENDATION

Berkeley's strategic plan calls for being a global leader in protecting the environment. The bird-safe glazing design standards contained within have been found to be effective at reducing or eliminating bird deaths, and can be implemented with little or no

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<sup>1</sup> Lighting, City of Berkeley Downtown Area Plan. Accessed August 2019:  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_DAP/Chapter%2012%20Lighting.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/Chapter%2012%20Lighting.pdf)

additional costs. The window size threshold for requiring implementation is the most stringent in the nation, and as a result adopting this policy strongly aligns with Berkeley's strategic plan. The dark skies ordinance is straightforward and simple, yet effective at reducing excessive and unwanted light pollution while conserving energy.

#### ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action on bird safety standards, but concluded that the environmental benefits substantially outweighed the burden imposed. CEAC also considered a less stringent window size requirement (of twenty-four (24) square feet instead of eight (8) square feet), but determined that window size was not a significant factor in either bird safety or cost or ease of compliance.

CEAC considered taking no action on dark skies, but concluded that the environmental benefits outweighed the burden imposed. CEAC also considered a more stringent dark skies ordinance, but concluded it would be unnecessarily difficult to enforce with minimal additional benefits.

#### CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report. [OR] Refer to the budget process.

#### CONTACT PERSON

Ben Gould, Chairperson, CEAC, 510-725-9176

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 23C TO ESTABLISH GENERAL REQUIREMENTS FOR BIRD SAFETY IN BUILDINGS AND EXTERIOR LIGHTING FIXTURES; ADDING CHAPTER 23C.27 AND CHAPTER 23C.28

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code Chapter 23C.27 is added to read as follows:

**Chapter 23C.27  
BIRD SAFETY**

**Sections:**

**23C.27.010 Purpose**

**23C.27.020 Applicability**

**23C.27.030 Exemptions**

**23C.27.040 Standards**

23C.27.010 Purpose

The purposes of the Bird Safety related regulations contained in this Chapter is to reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.

23C.27.020 Applicability

The bird-safe building standards apply to the following types of projects when such projects require a building permit:

A. New Construction. New buildings with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade.

B. Window Replacement. On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced.

C. New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

#### 23C.27.030 Exemptions

The bird-safe building standards shall not apply to the following:

A. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

B. Glazing on the ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.

#### 23C.27.040 Standards

A. Bird-Safe Glazing Requirement. At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied by using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit:

1. External screens installed permanently over glass windows such that the windows do not appear reflective.
2. Light-colored blinds or curtains.
3. Opaque glass, translucent glass, or opaque or translucent window film.
4. Paned glass with mullions on the exterior of the glass.
5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one-eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the "two-by-four rule").
6. Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule.
7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review.

B. Alternative Glazing Compliance. As an alternative to meeting subsection 4(a), Bird-Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with the application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination:

1. Layering and recessing glazed surfaces.
2. Angled or faceted glazing that minimizes reflectivity and transparency.
3. Louvres.
4. Overhangs and awnings.
5. Glass block.
6. Bird netting with openings one (1) square centimeter or smaller.
7. Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.
8. Glass embedded with photovoltaic cells.
9. Placement of landscaping in such a way as to minimize bird collisions.

Section 2. That the Berkeley Municipal Code Chapter 23C.28 is added to read as follows:

### **Chapter 23C.28 DARK SKIES**

#### **Sections:**

**23C.28.010 Purpose**

**23C.28.020 Applicability**

**23C.28.030 Exemptions**

**23C.28.040 Standards**

#### 23C.28.010 Purpose

The purpose of the Dark Skies ordinance is to ensure exterior light fixtures are pointed downwards and turn off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds, while ensuring adequate illumination for safety, security, and the enjoyment of outdoor areas, including travel on public roads.

#### 23C.28.020 Applicability

The dark skies ordinance applies to any project that requires a building permit or electrical permit for:

A. New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or

B. Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures.

#### 23C.28.030 Exemptions

The following types of lighting are exempt from the requirements of this subsection:

A. Emergency lighting. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.

B. Construction lighting. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure.

C. Lighting Required by Building Code or Other Regulations. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies.

D. Signs. Signs and sign lighting.

E. Athletic Field Lights. Athletic field lights used within a school campus or public or private park.

F. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton.

G. Water Features. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features.

H. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag.

I. Holiday Displays. Seasonal and holiday lighting.

J. Temporary Lighting. Temporary lighting allowed under a permit.

K. Historic Fixtures. Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director.

L. Architecture, Historic Structures, and Public Art. Lighting on historic structures, special architectural features, public art, monuments, and other similar objects of

interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

M. Low-Voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.

#### 23C.28.040 Standards

To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:

- A. Outdoor lighting shall be no brighter than 3000 Kelvin.
- B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.
- C. Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.
- D. Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.



Community Environmental Advisory Commission

ACTION CALENDAR  
November 12, 2019

To: Honorable Mayor and Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Ben Gould, Chairperson, CEAC  
Subject: Bird Safe Berkeley Requirements

RECOMMENDATION:

Refer to the Planning Commission and the City Attorney the attached ordinance amending Berkeley Municipal Code Title 23C, adding a new Chapter 23C.27 establishing bird safety requirements for new construction and significant renovations and a new Chapter 23C.28 establishing a dark skies ordinance, for review and approval.

FISCAL IMPACTS OF RECOMMENDATION:

Potential for small additional ongoing costs associated with slightly increased requirements for staff review of new construction proposals to ensure compliance.

CURRENT SITUATION AND ITS EFFECTS

Bird safety is aligned with the City of Berkeley's Strategic Plan, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

According to the Audubon Society, bird collisions with windows is a leading cause of human-induced bird deaths (second only to outdoor house cats). Berkeley is located in the midst of the Pacific Flyway, a major migratory route for birds including hummingbirds, robins, blackbirds, numerous shorebirds, raptors, and more. When these birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death.

At present, there are no bird safety measures required for new construction or renovations. As a result, it is possible that new and existing buildings may incorporate features which pose preventable hazards to local and migratory birds.

Unfettered outdoor lighting also poses known risks to birds, as well as generating unwanted light pollution. The City of Berkeley's Downtown Area Plan<sup>1</sup>, as well as

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<sup>1</sup> Lighting, City of Berkeley Downtown Area Plan. Accessed August 2019:  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_DAP/Chapter%2012%20Lighting.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/Chapter%2012%20Lighting.pdf)



Southside zoning regulations (BMC 23E.52.070.F.7), provide guidance or limitations on outdoor lighting, but no general policy exists citywide to prevent excessive light pollution from outdoor lighting.

At its September 12, 2019 meeting, the Community Environmental Advisory Commission voted to recommend the adoption of Bird Safe Berkeley requirements. Moved by Goldhaber, second by Hetzel, carried 6-0-0-2 (Ayes: Simmons, Ticconi, Hetzel, De Leon, Goldhaber, Gould. Noes: None. Abstained: None. Absent: Varnhagen, De Leon).

### BACKGROUND

Berkeley is in the midst of the Pacific Flyway, a major migratory route for birds. The city is also adjacent to San Francisco Bay, one of North America's most ecologically important estuaries and a site of Western Hemispheric importance for shorebirds and waterfowl. Alameda County has recorded 407 species of resident and migratory bird species, including least terns, Ridgway's rails, and a variety of other uniquely local and/or threatened species.

New buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics – in fact, many of the compliance methods in the attached ordinance can be incorporated into design or construction with virtually no additional cost or difficulty for architects or engineers, and in some cases facilitate achieving other environmental goals (like improved building energy efficiency).

Several other Bay Area cities have adopted bird safety ordinances, including San Francisco, Oakland, Alameda, and Richmond. The attached proposed ordinance is developed from the City of Alameda's adopted ordinance.

In addition, birds are drawn to light, whether from the moon or artificial lights, and lights affixed to buildings or structures pose a risk that birds may crash into them. A special danger comes from very bright lights, as well as lights aimed upward.

### ENVIRONMENTAL SUSTAINABILITY

Implementing the Bird Safe Berkeley ordinance will ensure new construction does not pose undue hazards to local and migratory birds, thereby reducing human impact and benefiting the environment.

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed amendment to BMC Title 23C is categorically exempt from CEQA under CEQA Guidelines Sections 15061(b)(3), 15307, and 15308.

### RATIONALE FOR RECOMMENDATION

Berkeley's strategic plan calls for being a global leader in protecting the environment. The bird-safe glazing design standards contained within have been found to be effective at reducing or eliminating bird deaths, and can be implemented with little or no additional costs. The window size threshold for requiring implementation is the most stringent in the nation, and as a result adopting this policy strongly aligns with Berkeley's strategic plan. The dark skies ordinance is straightforward and simple, yet effective at reducing excessive and unwanted light pollution while conserving energy.

#### ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action on bird safety standards, but concluded that the environmental benefits substantially outweighed the burden imposed. CEAC also considered a less stringent window size requirement (of twenty-four (24) square feet instead of eight (8) square feet), but determined that window size was not a significant factor in either bird safety or cost or ease of compliance.

CEAC considered taking no action on dark skies, but concluded that the environmental benefits outweighed the burden imposed. CEAC also considered a more stringent dark skies ordinance, but concluded it would be unnecessarily difficult to enforce with minimal additional benefits.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Ben Gould, Chairperson, CEAC, 510-725-9176

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 23C TO ESTABLISH GENERAL REQUIREMENTS FOR BIRD SAFETY IN BUILDINGS AND EXTERIOR LIGHTING FIXTURES; ADDING CHAPTER 23C.27 AND CHAPTER 23C.28

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code Chapter 23C.27 is added to read as follows:

**Chapter 23C.27  
BIRD SAFETY**

**Sections:**

**23C.27.010 Purpose**  
**23C.27.020 Applicability**  
**23C.27.030 Exemptions**  
**23C.27.040 Standards**

23C.27.010 Purpose

The purposes of the Bird Safety related regulations contained in this Chapter is to reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.

23C.27.020 Applicability

The bird-safe building standards apply to the following types of projects when such projects require a building permit:

A. New Construction. New buildings with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade.

B. Window Replacement. On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced.

C. New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

#### 23C.27.030 Exemptions

The bird-safe building standards shall not apply to the following:

A. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

B. Glazing on the ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.

#### 23C.27.040 Standards

A. Bird-Safe Glazing Requirement. At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied by using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit:

1. External screens installed permanently over glass windows such that the windows do not appear reflective.
2. Light-colored blinds or curtains.
3. Opaque glass, translucent glass, or opaque or translucent window film.
4. Paned glass with mullions on the exterior of the glass.
5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one-eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the "two-by-four rule").
6. Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule.
7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review.

B. Alternative Glazing Compliance. As an alternative to meeting subsection 4(a), Bird-Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with the application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination:

1. Layering and recessing glazed surfaces.
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4. Overhangs and awnings.
5. Glass block.
6. Bird netting with openings one (1) square centimeter or smaller.
7. Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.
8. Glass embedded with photovoltaic cells.
9. Placement of landscaping in such a way as to minimize bird collisions.

Section 2. That the Berkeley Municipal Code Chapter 23C.28 is added to read as follows:

### **Chapter 23C.28 DARK SKIES**

#### **Sections:**

- 23C.28.010 Purpose**
- 23C.28.020 Applicability**
- 23C.28.030 Exemptions**
- 23C.28.040 Standards**

#### **23C.28.010 Purpose**

The purpose of the Dark Skies ordinance is to ensure exterior light fixtures are pointed downwards and turn off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds, while ensuring adequate illumination for safety, security, and the enjoyment of outdoor areas, including travel on public roads.

#### **23C.28.020 Applicability**

The dark skies ordinance applies to any project that requires a building permit or electrical permit for:

A. New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or

B. Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures.

#### 23C.28.030 Exemptions

The following types of lighting are exempt from the requirements of this subsection:

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B. Construction lighting. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure.

C. Lighting Required by Building Code or Other Regulations. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies.

D. Signs. Signs and sign lighting.

E. Athletic Field Lights. Athletic field lights used within a school campus or public or private park.

F. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton.

G. Water Features. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features.

H. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag.

I. Holiday Displays. Seasonal and holiday lighting.

J. Temporary Lighting. Temporary lighting allowed under a permit.

K. Historic Fixtures. Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director.

L. Architecture, Historic Structures, and Public Art. Lighting on historic structures, special architectural features, public art, monuments, and other similar objects of

interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

M. Low-Voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.

#### 23C.28.040 Standards

To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:

- A. Outdoor lighting shall be no brighter than 3000 Kelvin.
- B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.
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## Communication

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**From:** Wesley Jackson <wjackson@gmail.com>  
**Sent:** Wednesday, October 6, 2021 3:00 PM  
**To:** Pearson, Alene <apearson@cityofberkeley.info>  
**Subject:** Public Comment to the Planning Commission

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

October 6, 2021

To the Berkeley Planning Commission:

My name is Wesley Jackson, and I am the CEO of an emerging-stage biotechnology company located in West Berkeley. We are developing novel therapeutics that can improve the lives of patients with vision-threatening ophthalmic diseases, mobility-threatening joint inflammation diseases, and life-threatening cancers. I began my career in Berkeley as an undergraduate and graduate student at UC Berkeley, and having spent my formative years as a young adult in the City of Berkeley, I believe the values associated with this community have impacted the way I live my life and the way I manage my business.

As a graduate student, I was dismayed to see how so many technologies that were invented at UC Berkeley were relocated to Emeryville or the South Bay to be translated into highly impactful companies. Especially since so many of these technologies also appear consistent with the City of Berkeley's values to fight climate change, reduce waste, improve human health, and eliminate inequality. I assumed these other cities must be offering incredible incentives to relocate, or that their workforce did not want to work in the City of Berkeley.

Now, I am a business owner with a plan to expand my footprint, and I am finding all my assumptions were incorrect. Like managers at other early-stage technology companies, I place a high value on staying in Berkeley where my values and the values of my company will be aligned with my community. All of my employees appreciate our location where we can interact with people across multiple industries and walks of life. All my employees enjoy working in a city that puts a priority on non-single rider vehicle commute options, and many of us ride our bikes to work. So clearly there is a demand from business and employees to work in the City of Berkeley and to develop technologies that are aligned with its values.

Nor is it entirely a supply problem. I frequently encounter vacant buildings that are available for rent. However, the permitted uses for those spaces do not meet our needs as an emerging biotechnology company. Thus, we are forced to look elsewhere.



I felt compelled to share this experience because it is consistent with so many other deep-tech companies with world changing technologies that have move their business out of Berkeley. At the R&D stage, these companies are getting forced out of Berkeley and forced to grow their roots in a nearby community. This is damaging to the City of Berkeley, as these are not given the opportunity to thrive in Berkeley, and it is damaging to its reputation as it does not foster the next generation of technologies that are poised to solve this generation's biggest problems. And it heartbreaking to Berkeley innovators who are forced to leave the City they love in order to implement the changes that City has inspired.

I am thrilled that the Berkeley Planning Commission is considering the proposed change to permitted R&D uses and will enable a new generation of Berkeley Innovators to start making an impact that starts right here.

Sincerely,

Wesley M. Jackson, PhD

Chief Executive Officer, Valitor



Wesley M. Jackson, Ph.D.  
820 Heinz Avenue  
Berkeley, CA 94710-2737  
wjackson@valitorbio.com

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Sincerely,

A handwritten signature in black ink, appearing to read "Wesley M. Jackson".

Wesley M. Jackson, PhD  
Chief Executive Officer, Valitor