

Supplemental Communications (1)

(The following are communications received after packet was published on **May 27**, by noon, **June 2**.)

Communication

From: Marcy Darnovsky <darnovsky@geneticsandsociety.org>
Sent: Wednesday, June 2, 2021 11:06 AM
To: Pearson, Alene <apearson@cityofberkeley.info>
Subject: Comment for meeting of June 2, 2021

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.

To the Berkeley Planning Commission,

I am writing with concerns that the materials you have received with regard to the proposed Bayer development agreement - the Draft Subsequent Environmental Impact Report included in the agenda for this evening's meeting - seem to omit any mention of a number of serious concerns that have been raised by Berkeley residents and public interest organizations.

These concerns are related to research activities in the proposed laboratories that could 1) pose grave risks to the safety of area residents and lab workers, and 2) further the prospect of heritable human genome editing, which is currently the focus of widespread international controversy, and [illegal in some 70 countries around the world](#).

We believe that these activities should be specifically ruled out by the development agreement. At a meeting last fall, a Bayer spokesperson suggested that the company would be willing to include provisions in the development agreement that would preclude any research on "gain of function" in microbial agents, and on genetic modifications or cellular engineering involving human embryos or gametes. These inclusions would be a good starting point. We would also recommend that the City of Berkeley carefully investigate related areas of concern.

For convenience, I have attached the letter of November 14, 2020 to the Planning Commission from the Center for Genetics and Society, which gives some additional information about these topics.

With thanks for your work and consideration,
Marcy Darnovsky

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Marcy Darnovsky, PhD
Executive Director
[Center for Genetics and Society](#)
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tel: 510.665.7760 ext 305



CENTER FOR
GENETICS
AND SOCIETY

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November 14, 2020

To the Berkeley Planning Commission:

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

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

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

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

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

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

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

Thank you,
Marcy Darnovsky, PhD
Executive Director

Communication

From: Isabelle Gaston <isabelle.gaston@gmail.com>

Sent: Wednesday, June 2, 2021 11:20 AM

To: Pearson, Alene <apearson@cityofberkeley.info>

Subject: Public Comment Item 9 (Draft Subsequent EIR for the Bayer HealthCare LLC Development Agreement Amendment)

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I would like to thank the Land Use Planning Division for their comprehensive report to the Members of the Planning Commission. I would also like to express my strong support for the proposed Development Agreement.

For a project of this scope, the potential environmental impacts appear to be limited in scale and duration with the majority occurring during the demolition of existing structures and subsequent construction. As such, this project is comparable to many redevelopment projects occurring throughout our city.

The proposed mitigation measures to avoid greenhouse gas emissions, protect birds, flora, water quality and the ambient environment appear well thought out and effective. In some instances, such as an increase in native plantings, with the potential to enhance existing environment quality. I therefore understand why the report concludes: *all environmental effects in those areas were found to be less than significant or less than significant with mitigation incorporated.*

I also encourage the commissioners to reflect on the enormous value this plan represents in terms of enhancing Berkeley's social and economic environment by providing opportunities for residents across the social and economic spectrum both in terms of direct project benefits and a Community Benefit Plan. Finally, and perhaps most importantly, the enormous value to society that could result from the successful development of new treatments for devastating diseases that Bayer aims to address directly.

Thank you.

Sincerely,

Isabelle

Isabelle Gaston, PhD

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Berkeley, Ca.

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(District 6)

Communications

From: Tina Stevens <tstevens@humanebiotech.org>

Sent: Wednesday, June 2, 2021 12:31 AM

To: Pearson, Alene <apearson@cityofberkeley.info>

Subject: Submission for June 2, 2021 meeting

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.

June 2, 2021

Dear Berkeley Planning Commission:

In November of last year, Alliance for Humane Biotechnology (AHB) submitted a letter to the Planning Commission concerning lab development in Berkeley, in particular, plans submitted by Bayer. At that time, AHB and other organizations and individuals offered important information about lab safety as well as on controversial research agenda that is the focus of intense national and international debate: human genetic engineering research and 'gain of function' research.

Unfortunately, the Commission's present agenda, documentation, and attachments for the City's June 2 meeting reflects no indication that letters and call-ins about these issues had ever been brought to the City's attention. In the hope that a reminder will ignite the serious attention these issues deserve please find, attached again, AHB's November 16, 2020 letter to the Berkeley Planning Commission. The City of Berkeley would, indeed, be remiss should it ignore matters of material concern to its residents and to citizens around the globe.

Best Regards,

Tina Stevens, PhD
Alliance for Humane
Biotechnology

Director,



Alliance for Humane Biotechnology

www.humanebiotech.org

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

November 16, 2020

Dear Berkeley Planning Commission:

I am writing not only as the director of a national non-profit dedicated to raising public awareness about the ethics and social implications of biotechnologies but also as a graduate of UC Berkeley and a Berkeley resident. As the City of Berkeley considers permitting laboratory construction in civic areas, hopefully city administrators will consider it important to insist that companies, in this case Bayer, not only present information on what biosafety level labs the company intends to site and how the labs will comply with federal regulations but also take an interest in what kind of research will be possible to conduct in such labs. The City of Berkeley has a unique opportunity and responsibility to explicitly reject “techno-eugenic” research, that is, human germline genetic engineering, from being undertaken in labs for which it approves siting. Either Bayer’s request to lift present research restrictions should be denied or Bayer must agree not to undertake research involving human heritable genetic manipulation.

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

Insisting that this border not be breached cannot be left to the self-regulation of bio-researchers. There is an unmistakable increase in the number of bioentrepreneurial scientists seeking to normalize human germline manipulations. When in 2018 the scientist He Jiankui announced that he had genetically modified twin infants, he was met with broad censure nationally and internationally. Since then, however, the tone of professional discussion has moved steadily toward acceptance of germline genetic manipulations. Rather than calling for decisive prohibition, science organizations have asked merely for “more discussion,” mildly cautioning that further implementation must await increased skill. This is not the case with civil institutions, however. Around the globe, out of 106 countries recently surveyed, 75 explicitly prohibit heritable human genome editing.

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

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

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

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

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040SR20

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

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

<https://news.berkeley.edu/2020/10/26/berkeley-public-health-announces-plans-to-rename-repurpose-former-eugenics-fund/>

This positive development is one that rejection of techno-eugenics in the contemporary context will reinforce.

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

Sincerely,

Tina Stevens, PhD

Berkeley Resident

Director, Alliance for Humane Biotechnology

Communication

RE: 6/01/21 Planning Commission Discussion - Business Support Zoning Amendment Referrals – Research and Development

WEBAIC has one simple word addition suggestion to staff's R&D definition. This is to place the word "**ancillary**" before the word "offices" in the definition's last sentence.

If ancillary is not satisfactory for a particular reason we believe the word "**accessory**" would also adequately fulfill the same function, or if necessary a third choice would be "**associated**."

This simple change would allow office use and functions as part of Research and Development, but clarify in a way that we believe is not adequately communicated that office uses would be supportive of the primary function of the use of the space - but not the primary function. This addition would satisfy WEBAIC's concerns and we believe such a change would benefit counter staff by further clarifying the definition. Below is a brief commentary on the three suggested words.

Pros & cons of the three word choices:

1.) "Ancillary" is already defined in the Definitions section of the Zoning Code as:

Ancillary Use: A use that is both dependent on and commonly associated with the principal permitted use of a lot and/or building and that does not result in different or greater impacts than the principal use.

WEBAIC commentary: WEBAIC doesn't know if the potentially different parking standards for office use and R&D use would "result in different or greater impacts than the principal use." We assume since it would all be under the R&D designation this provision would not be triggered.

2.) "Accessory" is also defined in the Definitions section:

Accessory Use: A use that is of the same nature as or complementary to the principal use of a lot or a building located on the same lot, and that is not independent of the principal use.

WEBAIC commentary: As "accessory" is defined in the Zoning Code as being "complementary to the principal use", but not the primary use, we believe this would be a good choice. It adequately conveys the West Berkeley Plan's clear intentions (as expressed in its Rationale and Goal and Policy directives) to primarily have protected industrial space occupied by industry and arts, not office uses.

3.) **Associated Use:**

WEBAIC commentary: "Associated" is not defined in the Zoning Code and thus is not as good a word, but if either of the other two words have important structural and semantic barriers to their use, "associated" could be a reasonable substitute.

WEBAIC additionally believes these modifying words could actually make the job of the officer at the zoning counter easier since it helps to further clarify the definition that office use - while allowed - is not the primary use. Our long experience is that anything that helps to clarify use descriptions makes the job of planner easier in their decisions as to whether to approve or deny a use permit or where to advise an applicant which is the appropriate zone to locate.

Thank you,
Rick Auerbach
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webaic.org

Communication

From: Chris Barlow <CBarlow@warehamdevelopment.com>
Sent: Tuesday, June 1, 2021 8:22 AM
To: Pearson, Alene <apearson@cityofberkeley.info>
Cc: Lisa Vogel <LVogel@warehamdevelopment.com>; John Gooding <gooding@quadricgroup.com>
Subject: R&D Definition

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.

Please forward the following comments on the proposed changes to the definition of Research and Development to the Planning Commissioners in advance of the Commission Meeting on June 2, 2021:

As noted in the staff report, Wareham Development is one of the largest owners and operators of scientific and technology facilities in the City of Berkeley. Our West Berkeley portfolio consists of 20 buildings, totaling close to 1,000,000 square feet, all located in the MU-LI zoning district.

Our Berkeley tenant base is heavily involved in both research and development activities, from two-person micro-companies located in the QB3 East Bay Innovation Center through small and medium sized life science/food-tech/ag-tech enterprises to major bio-pharmaceutical multi-nationals. We have similar large multi-building campuses focused on research and development in Emeryville, Richmond and Palo Alto.

We have read the staff report on the proposed changes to the definition of Research and Development and find it to be well-researched and well-presented.

With the exception of one drafting refinement (noted below), we are supportive of staff's proposed changes to the definition of the Research and Development Use. We believe that the proposed changes improve clarity and reflect the nature of modern research and development activities.

However, to avoid any confusion for companies seeking to occupy space designated Research and Development, we believe that it is important for the proposed definition to be refined to clarify that any of the listed research and development activities would be permitted in R&D space.

That concept is clearly stated in the current Zoning Ordinance definition of R&D; in the proposed language referred to the Planning Commission by the Mayor's office in early 2020; and in the clarifications provided in the current staff report on page 46.

As currently drafted, the word "and" at the end of first bullet point in the proposed definition could be misinterpreted to mean that occupants of Research and Development space must be engaged in both research and development activities. This could confuse or deter potential occupants as many organizations separate their research and development activities in different buildings or locations. Some organizations might only be engaged in research activities at the time they are seeking premises.

One simple way to achieve this important clarification would be to change the word "and" at the end of the first bullet point to "and/or"

Thank you for your consideration of this matter.

Chris Barlow
Wareham Development
(415) 457 4964