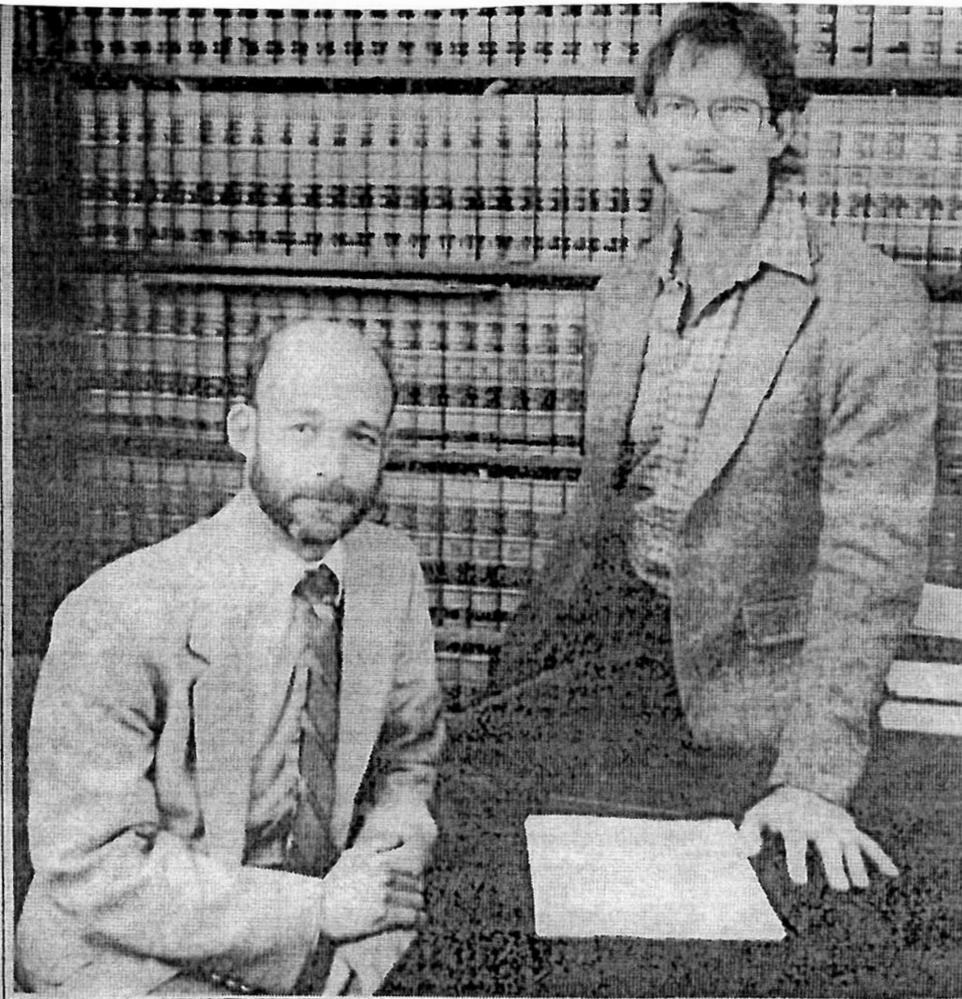


Alameda Co. Bar News
See Back Page

Monday, July 25, 1988



MAX RAMIREZ / Daily Journal

Stuart Flashman, left, is the man behind a lawsuit seeking a closer look at plans to develop a biotechnology facility in Emeryville. He is represented by attorney Michael Freund, right

Bay Area
Northern California

Former Councilman Has Message With Lawsuit Over Biotech Plan

By DAVID OLTMAN

In a lawsuit that could require more stringent review of facilities for California's growing biotechnology industry, a consultant in the field is seeking to halt an Alameda County project until its environmental impact can be determined.

The suit, *Flashman v. City of Emeryville*, 64115-0, filed Thursday in Alameda County Superior Court, challenges the city's finding that a project proposed by the Chiron Corp. would have no adverse environmental impact.

"We hope this lawsuit will serve as a precedent to tell cities that they cannot just rubber stamp these types of project," Stuart Flashman, a biotechnology consultant said Friday at a news conference in Berkeley announcing the suit.

Flashman, a former Emeryville city council member, is plaintiff in the suit. He was not on the council when the project was considered and finally approved in June of this year.

Injunction Sought

The lawsuit seeks an injunction to stop construction of proposed office park and manufacturing plant by the Chiron Corp. on a site in an industrial area of the city near High-

facturing at its proposed plant location, Flashman said.

However, the pilot plant will produce large amounts of genetically engineered organisms, and the risks of an accident from the work that will be done there should have been considered when the project was reviewed by the city, Flashman said.

"This is not a project that will be going on in an isolated area without any people living or working nearby," Flashman said. "There are a lot of people who could be adversely affected if something went wrong with this project."

In the suit, Flashman claims there were numerous procedural violations of state environmental law, specifically a failure by city officials to fully inform the public and various regulatory agencies about the project.

"A lot of agencies that could have had and probably would have had significant comment on this project were not notified," Flashman said.

Those agencies include Caltrans, which has expressed concerns about traffic in the area near the proposed plant site, the East Bay Municipal Utilities District, and the state Department of Health Services and Regional Air Quality Management Board.

Flashman said that city officials were

way 80.

Specifically, the suit asks the city and its redevelopment agency to prepare an Environmental Impact Report as required under provisions of the California Environmental Quality Act.

"By preparing a negative declaration for this project, the city has circumvented an environmental review process established by CEQA that requires an environmental impact report," said Berkeley attorney Michael Freund, who is representing Flashman in the suit.

"The goal is not necessarily to stop biotechnology from developing because there are a lot of beneficial aspects to that field," Freund said. "But we want to make this a safe and as good and sound a project environmentally as we can get."

Flashman, who teaches a course on biotechnology for the University of California Extension Service, said he is not attempting to stop biotechnology development in Emeryville, but wants the city to take a closer look at such projects and their potential impact on the environment.

"I am not opposed to biotechnology, but I think the city should be taking more care in approving projects with potential hazards," Flashman said.

The Chiron company, which has two existing research facilities in Emeryville, has not indicated specifically what it will be manu-

placed under intense pressure by developers of the business park where the Chiron plant is proposed to have them approve the project.

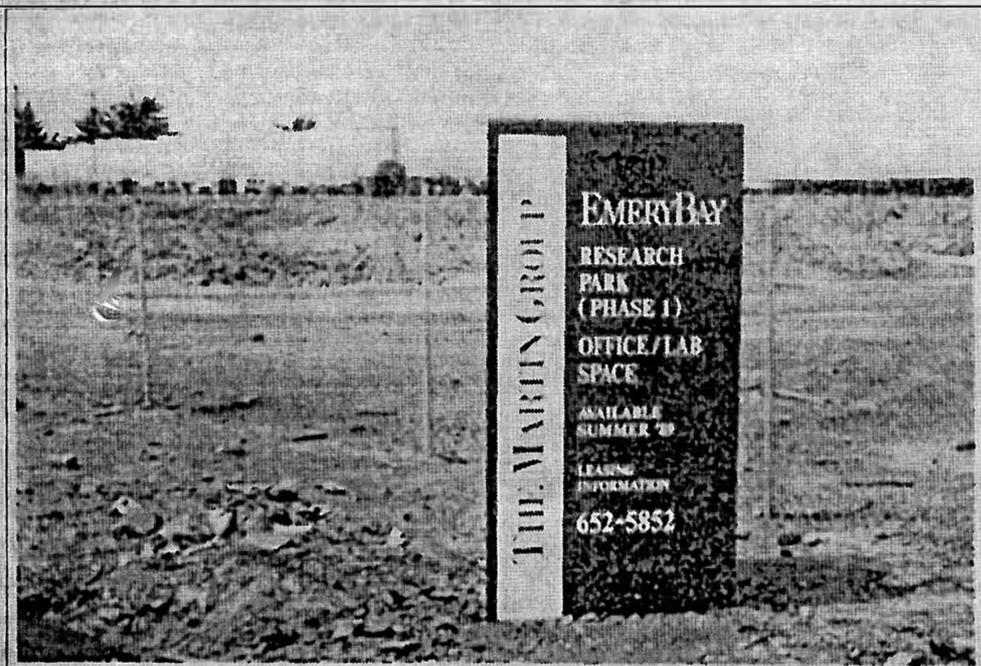
"The initial environmental checklist that was prepared by the planning department staff recommended that the project have an EIR," Flashman said. "After the checklist was prepared, the developer intervened and started putting pressure on the city."

Eventually, the recommendation for an EIR on the project was scrapped and the finding of a negative environmental impact was filed.

"The city has been trying to circumvent the law, rather than complying with it," Flashman said. "The Legislature passed these environmental laws precisely to avoid this kind of slap-dash decision making."

In addition to allegations of a failure to comply with the state's environmental quality act, the suit claims that the finding of a negative declaration on the project was not sent to the state clearinghouse. That action would have resulted in notification of various state regulatory agencies about the finding, the suit claims.

Flashman said he is hopeful that, faced with the lawsuit, the Chiron company and developers for the proposed site will comply with a request for an EIR for the project and that lengthy litigation on the matter can be avoided.



MAX RAMIREZ / Daily Journal

A lawsuit demands a stricter review of plans to develop a biotechnology facility at this site in Emeryville.

Bay Area
Northern California

ACLU Honors Parks
See Back Page

Tuesday, December 13, 1988

Biotech Suit Settlement Requires EIR, Called a First

By DAVID OLTMAN

In what is being hailed as the first settlement of its kind in the nation, an agreement has been reached in a lawsuit that seeks completion of an Environmental Impact Report for a biotechnology plant in Emeryville.

The Alameda County Superior Court suit, *Flashman v. City of Emeryville*, 64115-0, was filed in July to challenge a finding by the Emeryville officials that completion of a proposed Chiron Corp. plant in an industrial area near Highway 80 would not hurt the environment.

Settlement Terms

The settlement means that an EIR must be filed for the plant as outlined under provisions of the California Environmental Quality Act, according to Berkeley environmental attorney Michael Freund, who represented the plaintiff, Stuart Flashman.

In the suit, Flashman, a biotechnology instructor at the University of California at Berkeley, alleged that a declaration claiming no impact on the environment originally filed on the Chiron project circumvented provisions of the state's Environmental Quality Act.

"This is an important settlement — we are not aware of any other EIR that has ever been done in this country for a biotech manufacturing facility," Freund said. "If one has been filed, we are not aware of it."

Freund said the settlement was reached following negotiations between his office, the City of Emeryville and legal counsel for Chiron Corp., which has two existing research facilities in the city.

Plans call for Chiron to build a pilot manufacturing plant and two other structures that will be used initially as offices.

The settlement will require an EIR focused on the biotech uses within the pilot plant and a general EIR on the two office buildings, Freund said.

"The focused report will discuss the environmental impacts from such things as hazardous material use, storage and disposal," Freund said. "It will also focus on the accidental release of biological, radiological or chemical hazards into the environment."

Freund said he believes that a settlement in this case will send a message to other biotech firms and local government agencies that such projects must be subject to a careful review process.

"I think the message is that it is important to discuss environmental impacts and to implement mitigation measures to lessen significant impact where needed," Freund said.

Susan Adams, acting city attorney for Emeryville, said she believes the settlement is fair and that all requirements for filing an EIR on the project will be met before construction on the new facility can begin.

"Our major concern was that we did not want to be open to litigation in the future," Adams said. "We are now on much more solid ground for the Chiron plant and for any future challenges to the process."

Larry Kurtz, a spokesman for Chiron Corp., said the company is pleased with the settlement and hopes to complete an EIR filed on the project within six months. Construction of the manufacturing plant at the proposed site could then begin sometime in mid-1989, he said.

"We attempted to resolve the enormous concerns of Stuart Flashman with Chiron's need to construct a manufacturing facility and with the interests of other parties who want to keep biotechnology in the Bay Area," Kurtz said.

Manufacturing Plant

The plant at the proposed site would be used to manufacture a number of materials now in the "clinical trial" stage, Kurtz said. Those materials include growth factors and antigens used in company-produced vaccines and diagnostic products, he said.

Kurtz said that the company will initially focus on completion of an EIR for the manufacturing plant. Any conversion of the office buildings at the site to laboratories would require additional EIR statements, he said.

In the suit, Flashman, a biotechnology instructor at the University of California at Berkeley, claimed that a negative declaration originally filed on the Chiron project circumvented provisions of the state's Environmental Quality Act.