

THE RECORDER

116TH YEAR NO. 239

www.callaw.com

FRIDAY, DECEMBER 11, 1992

ALM

TURNING TRASH INTO CASH

Citation Homes' push for a housing development on a San Leandro toxic dump is a model of persistence, strategy and politicking

By Jorge Aquino

RECORDER STAFF WRITER

Roberts Landing might not exactly strike you as a sure-fire development opportunity.

For 65 years, this marshy, 480-acre stretch of land on San Leandro's bayfront was home to an explosives factory. Roberts Landing also has been used to dispose of dredge soil from the city's marina and as an illegal garbage dump. Not surprisingly, it has toxics problems.

The site is also a habitat for the salt marsh harvest mouse, which is listed as an endangered species.

"We joked about it around the office," says Stephen Emslie, planning manager for San Leandro. Roberts Landing "is a real planner's thesis because it's got every conceivable problem -- toxics, endangered species, wetlands, noise from air traffic at Oakland International Airport."

Yet **Citation Homes** Central, a Santa Clara-based home builder, has taken on all these problems -- and years of furious opposition from residents and the Sierra Club, which has sued the developer -- in an attempt to build 750 homes and townhouses on the site.

After 13 years of effort, Citation is closing in on permits from a plethora of federal, state and local agencies. And although the development still faces formidable hurdles -- including a long-



awaited report from Citation's consultant on toxic wastes and cleanup measures at Roberts Landing -- even its detractors give it a good chance of coming to fruition.

Without the opposition of environmentalists, "it would go through, I'm sure of it," says solo practitioner Hannah Bentley, who is representing the Sierra Club. "It's going to take a sustained effort on a lot of fronts to stop it."

If Roberts Landing is a textbook planning-agency problem, Citation's campaign to win approvals is a model of persistence, strategizing, and the effective marshaling of technical and le-

gal expertise, as well as political support from the city of San Leandro.

The developer still has several layers of approval to survive, and is facing a Sierra Club suit that claims the city's environmental impact report did not adequately consider possible toxics problems or the destruction of harvest mouse habitat on the site. The suit, which charges violations of the California Environmental Quality Act, is scheduled for a hearing Dec. 16.

Still, Sierra Club counsel Bentley acknowledges the suit can do little more than slow down the project. "CEQA's not going to stop the project on its

own," she says. "But it hopefully will require a more honest environmental document."

John Briscoe, of the San Francisco environmental firm of Washburn, Briscoe & McCarthy, says the suit is little more than a "frustrating" environmental harassment action.

"[Citation] has gotten a bunch of approvals already," Briscoe says. "I think we're pretty much getting down to the wire."

Briscoe's firm has worked on the project since 1986. He says he sees construction beginning on the site possibly in one or two years.

ANTICIPATING OBJECTIONS

By most accounts, the development has been deftly managed by Citation vice president Citation vice president Edward Alvarez, who is the project manager. Alvarez practiced real estate law before becoming a developer.

"I think he's very sophisticated," says Peter Straub, a community planner with the U.S. Army Corps of Engineers. "Compared with other developers, he's gone out of his way to hire consulting expertise" to address the wildlife and toxics impacts in the Roberts Landing project.

Alvarez has garnered environmental approvals -- from San Leandro, the State Water Resources Board, the U.S. Fish & Wildlife Service and the California Department of Fish & Game

-- by anticipating possible objections to his project.

Regulators say he painstakingly explored alternative development proposals in innumerable inter-agency meetings long before submitting permit applications. Alvarez estimates Citation has spent around \$2 million on consultants, attorneys and other helpers.

The company has used Harding Lawson & Associates of Concord for toxics review, Philip Williams & Associates of San Francisco for water studies, and environmental consulting firm LSA & Associates of Richmond, among others.

"In comparison with some of the other project applicants we deal with, [Alvarez] has been very cooperative and he has done a reasonably good job of accommodating our request for project changes," says Karen Miller, an endangered species biologist with U.S. Fish and Wildlife Service. Miller prepared a biological opinion analyzing the impact of a proposed wetlands fill on the harvest mouse.

Citation's staying power on the Roberts Landing project may be attributable in great measure to the developer's low cost basis.

The company bought the 480-acre property in 1979 for roughly \$5.5 million in cash -- about 26 cents per square foot. A developer with a higher cost basis might have been forced to drop out by now.

Although around 400 acres will eventually be upgraded and deeded to governmental agencies as public open space, the low price should enable Citation to earn hefty profits on the project, even after all the consultants have been paid and the environmental concerns addressed.

Citation has also harvested strong support among San Leandro city officials, who have received a cornucopia of Roberts Landing land dedications for public uses.

One of the more controversial deals was Citation's agreement to sell the city a parcel for use as a dredge disposal site, something the city needs to maintain its marina. Under a 1990 memorandum of understanding, the site's price varies according to the city's treatment of Citation's bid for approvals. If the city had

bought the disposal area before rezoning Roberts Landing for residential uses, the price would have been \$1.1 million. If the city had bought after the rezoning but before approving the project, it would have paid \$500,000. But if the city exercises its option after the project is approved, it will pay only \$1.

The Sierra Club has pointed to that deal as evidence that the city has let the project through without adequate environmental reviews because it was beholden to Citation.

City planning manager Emslie acknowledges that the deal is a quid pro quo. But he says dedications of land for public uses in exchange for approvals are common in planned unit developments all over the country.

He also notes that Citation has made huge concessions on environmental mitigation. In response to measures proposed by the city, the developer has agreed to restore 132 acres of contaminated and degraded land and to mitigate damage to the salt marsh harvest mouse that occurs because of the development.

Citation would "create" 16 new acres of wetland habitat to replace the 13.2 acres removed and convert an additional 17 acres on top of the illegal garbage dump to new salt marsh habitat. Federal and state agencies reviewing the Citation's application for a fill permit have made their own lengthy mitigation recommendations in addition.

CHANGING PLANS

It's clear, nevertheless, that San Leandro has accorded **Citation Homes** exceptional treatment.

The city council, at Citation's bidding, rewrote San Leandro's general plan to designate Roberts Landing as a site for residential development. It had been designated industrial.

The city later rezoned the site residential and then approved an unusual general development plan that allows Citation to proceed on one of two alternative development scenarios.

"We've had strong political support from the beginning of this project," Citation's Alvarez says.

In the more lucrative development scenario, Citation would fill 13.2 acres of sensitive wetlands and build 500 sin-

gle-family detached homes and 250 townhouses in another parcel on the southeastern corner of Roberts Landing. Under a second, "no-fill" option, Citation would build 350 single-family homes and 400 townhomes, without filling in any wetlands.

Ironically, the so-called fill option is widely considered more environmentally sound than the no-fill alternative, which would damage or destroy 35 acres of the harvest mouse's habitat, possibly decimating its population.

The fill alternative also is more lucrative. Calculating what Citation expects to charge for its product, the fill alternative would produce homes with potential sales of more than \$180 million, compared with \$166 million under the no-fill alternative.

In addition, the no-fill development would be harder to sell because it would cost more to build -- around \$125,000 per unit more, according to Citation attorney Briscoe -- because of the odd configuration of the approved site.

But under the dual-option general development plan, Citation is virtually assured of being able to develop under the no-fill option, even as it pursues approvals for the potentially more profitable fill option. The plan also gives Citation added muscle in its bid to win a permit from the U.S. Army Corps of Engineers for wetlands fill.

Getting a permit from the corps is not a sure thing, especially since Citation must prove that toxics problems on the site can be remedied. Sampling surveys made public earlier this year by the California Regional Water Quality Control Board showed high concentrations of lead and other heavy metals in several spots on the site. From the turn of the century until 1965, Roberts Landing was home to the Trojan Powder Works, an explosives factory. The property also contains the Blue Bird Dump, an illegal garbage dump.

The regional water board's findings are inconclusive until the developer completes a broader study, according to a board spokesman. The corps considers the developer's pending toxics study a critical element in its decision on filling the Roberts Landing wetlands.

But even if Citation fails to win the federal and state approvals for the fill option, it could still build under the no-fill option without corps approval. In that case it needs only a final permit -- called a "Precise Development Plan" -- from the city of San Leandro.

Sierra Club attorney Bentley charges that **Citation Homes** developed the dual-option plan, with cooperation from city planners, to intimidate federal regulators with the fear that a rejection of the fill alternative would spur greater environmental damage by development of the no-fill site.

"The fact that the city approved the no-fill alternative is really a threat to them," she said. "The city approved two options quite deliberately in order to force the agencies to be more lenient with the 13.2-acre fill plan."

A city official, an official of the Army Corps of Engineers and an attorney for **Citation Homes** disputed the description of the dual development scenario as a "threat."

They all agreed that **Citation Homes** was encouraged in its inter-agency meetings to present a fill alternative proposal to San Leandro after it was recognized that the no-fill option could destroy harvest mouse habitat.

But San Leandro's chief planner did suggest in an interview that the corps should consider the downside of rejecting the fill alternative.

"I would hope that that line of logic would figure into [the corps'] analysis," Emslie says. "They know if they turn this down, the developer can go ahead and build on the uplands. If they're not considering that, I've got some serious

questions as to how they're making their decision."

And Citation attorney Jo Lynn Lambert of Washburn, Briscoe acknowledged that having approvals for an environmentally less desirable development alternative "gives you a little more leverage when you're trying to get things done on the other one."

Miller, the U.S. Fish and Wildlife biologist, said the prospect of the no-fill option "was a big factor" in her agency's decision to conditionally approve the fill alternative.

"I would rather avoid any fill in wetlands that we can, since wetlands are in short supply in this state," Miller says. "But I'm a realist and I realize it's going to happen. So we do the best we can to accommodate projects as they are and to protect fish and wildlife where we can."

The no-fill option will destroy up to 90 percent of the Roberts Landing uplands. The dry, grassy uplands are a critical part of the harvest mouse's habitat. Biologists say the mouse uses the uplands as refuge from high water and predators, and for food.

SIERRA'S SUIT

The fate of the mouse, the California least tern, (a threatened bird that nests seasonally in Roberts Landing), and the toxics problems are at the center of the Sierra Club's lawsuit.

The suit seeks a writ of mandamus requiring that the city rescind its preliminary approval of the development. It contends the city deferred analysis of the problems for later studies, and that the city must rewrite its "superficial" environmental impact report of Citation's general development plan application.

Washburn, Briscoe is defending the suit. The two sides have been jousting over the admissibility of new evidence the Sierra Club has presented on toxics and on the harvest mouse's habitat.

Alameda County Superior Court Judge Joanne Parrilli has turned down motions to dismiss the evidence, which Briscoe and Lambert claim is inadmissible in an administrative mandamus hearing. Parrilli, however, plans to revisit those motions at the beginning of the Dec. 16 hearing.

No one expects a Sierra Club victory to stop the development of Roberts Landing, although it could delay the project considerably beyond the 12- to 24- month approval window Briscoe otherwise foresees.

Apparently the question of toxics is the last major issue on which no one -- except perhaps **Citation Homes** -- has a handle. Barring any bad news there, Citation seems intent on sticking to its strategy of meeting the concerns of regulators and trying to sew up approvals.

"There's been a lot of interaction" between the regulators and **Citation Homes**, says attorney Lambert. "It would be surprising to have something else come up that would just blow the project away."

"This is definitely the most difficult project I have ever encountered in the 25 years I've been in the business," says Citation vice president Alvarez. "There's been an extremely intense amount of opposition that has actually been small in terms of numbers [of people]. . . . We've been at this for 13 years. So we're committed to the project."

HANNAH BENTLEY, ESQ.
1500 ROSECRANS AVE., SUITE 500
MANHATTAN BEACH, CA 90266
310-697-3996 OFFICE
310-706-4078 OFFICE FAX
310-496-1591 EFAX
BENTLEY.ESQUIRE@YAHOO.COM