



235 Montgomery St., #400, San Francisco, CA. 94104 * 415-290-5718 * info@sfpUBLICgolf.com

July 8, 2013

**Federal Judge Administers Big Haircut,
Calls Anti-Golf Lawsuit at Sharp Park
"Excessive" and "Grossly Inefficient,"
But Awards Plaintiffs 25% of Requested Legal Fees.**

In the most recent development in the long-running legal battle between anti-golf groups, golfers, and the City of San Francisco over the historic Alister-MacKenzie-designed Sharp Park Golf Course, Federal Judge Susan Illston on July 1 issued an order awarding \$326,600 in legal fees to the plaintiffs in Wild Equity Institute, Center for Biological Diversity, et al vs. City and County of San Francisco, N.D.Cal., No. C 11-009958 SI (the "Lawsuit"). In December, 2012, Judge Illston dismissed the Lawsuit, and the Plaintiffs filed an appeal. The fee award was 25 percent of the more than \$1.3 Million sought by the plaintiffs.

Explaining her ruling in a 9-page written Order¹, Judge Illston noted that "Plaintiffs lost every single motion," including a motion for a preliminary injunction to halt golf operations. Nevertheless, the Judge explained, the Endangered Species Act authorizes attorney fee awards "whenever the court determines such award is appropriate." In this case, a fee award was "appropriate" because, the Judge said, the Lawsuit - which Plaintiffs filed in March, 2011 -- spurred the City to apply to the US Fish and Wildlife Service, which in August 2012 issued an Incidental Take Statement sanctioning limited amounts of "take" at Sharp Park of the federally-protected California red-legged frog and San Francisco garter snake. The Fish and Wildlife Service concluded that golf at Sharp Park is not a likely threat to the survival of the two species.

Led by the Tucson-based Center for Biological Diversity and its offshoot Wild Equity, the Plaintiffs then moved for an award of legal fees and costs, under a citizen-suit provision of the Endangered Species Act. Judge Illston ruled that the fact that

¹ <http://www.sfpUBLICgolf.com/LiteratureRetrieve.aspx?ID=123196>

Plaintiffs' case was dismissed, after they lost every motion, was evidence that "a large majority of the time spent was 'excessive, redundant, or otherwise unnecessary,' and therefore should not be compensated." Furthermore, the Judge's Order cited the Plaintiffs' "grossly inefficient" case-handling, including "unwarranted" allocation of more than one-half the lawyers' hours in a "simple ESA action" where "most of the issues were not complex," to Washington D.C.-based attorneys with billing rates of \$700 per hour and more.

Finally, Judge Illston's Order asks the question: "did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?" The Order answers the question this way: "... the answer to this question requires significantly decreasing the fee award. Although the Court finds the plaintiffs' lawsuit spurred defendants into obtaining the necessary authorization for their take of the Frogs and Snakes, little else has substantially changed in the management of Sharp Park... . Thus, when looking at the larger picture, little seems to have been gained by Plaintiffs except [speeding-up the City's application for US Fish & Wildlife Service authorization, which] at oral argument Plaintiffs conceded. . . would likely have happened eventually."

Judge Illston's bottom-line was that Plaintiffs' fee request should be reduced by 75 percent, from \$1,306,400 to \$326,600.00, which she ordered the City and County of San Francisco to pay, together with an additional \$59,209 in costs.

Plaintiffs' lead attorney Brent Plater took the occasion to renew his call for San Francisco to close the golf course and turn Sharp Park over to the Golden Gate National Recreation Area for conversion to a wildlife sanctuary. Mr. Plater is also Executive Director of the lead plaintiff Wild Equity and former staff attorney for Center for Biological Diversity, which two organizations have led a 5-year political campaign to close the golf course. "We look forward to working with the City to implement today's order and craft a new public park at Sharp Park," Mr. Plater said in a Wild Equity press release.² If not, "depending on what the City does next it's possible that they could be involved in litigation for 10 years," he told the SF Weekly.³

² Wild Equity Press Release, July 2, 2013: <http://wildequity.org/entries/3302>

³ SF Weekly, July 2, 2013: http://blogs.sfweekly.com/thesnitch/2013/07/judge_orders_city_to_pay_fine.php

Pacifica resident and Sharp Park women's club member Lisa Villasenor was not pleased. "Sharp Park is a landmark which has for more than 80 years been a beloved, affordable public recreation resource for the region, with unanimous support from both the Pacifica City Council and the San Mateo County Board of Supervisors," Ms. Villasenor said. "And it's an odd law, or an odd decision, or both, when the plaintiffs' lawsuit is dismissed and the judge finds their legal practices wasteful and says the suit did not change things much, yet still awards the plaintiffs any fees at all."

Clarence Bryant, a retired San Francisco aviation engineer, wondered why the plaintiffs were not required to pay the City for having to defend a 75 percent wasteful lawsuit. "Where's the justice in requiring San Francisco taxpayers to pay the plaintiffs anything for bringing a lawsuit that the judge found to be mostly excessive and inefficient," Mr. Bryant asked. "And now these profiteers are threatening to bring more wasteful lawsuits if people don't just knuckle-under? People need to stand up against this kind of bullying." Mr. Bryant has been golfing at Sharp Park since 1955, when he played the course in the inaugural tournament of the Western States Golf Association, one of the country's oldest and largest African-American golfing societies.

Ms. Villasenor and Mr. Bryant are members of the San Francisco Public Golf Alliance, which intervened in the Lawsuit, and has led the golfers' fight to save the popular public course. Attorney Chris Carr of the Morrison-Foerster law firm, which represented the Alliance, voiced concern about implications of the Court's order. "While Plaintiffs' exorbitant fee request was slapped-down, the fact that the Judge awarded any fees at all just shows how vulnerable to abuse the Endangered Species Act has become," Carr said.

Contact:
San Francisco Public Golf Alliance

Richard Harris
Richard@erskinetulley.com
415-290-5718

Bo Links
bo@slotelaw.com
415-393-8099