

# WILD Equity INSTITUTE

*Building a healthy and sustainable global community for people  
and the plants and animals that accompany us on Earth*

December 14, 2009

General Manager Phil Ginsburg  
San Francisco Recreation and Park Department  
501 Stanyan Street  
San Francisco, CA 94117

Secretary Ken Salazar  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

## **RE: 60-DAY NOTICE OF INTENT TO SUE FOR VIOLATING THE ENDANGERED SPECIES ACT**

Dear General Manager Ginsburg and Secretary Salazar:

On behalf of the Wild Equity Institute (“WEI”), I write to inform you of the San Francisco Recreation and Park Department’s (“SFRPD”) ongoing violations of the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, and provide official notice pursuant to 16 U.S.C. § 1540(g) of WEI’s intent to file suit in federal court if these violations are not remedied within the next 60 days.

As you know, Sharp Park Golf Course—owned by the City and County of San Francisco, operated by SFRPD, but located in Pacifica, California—has been harming two of the Bay Area’s most wondrous and imperiled animals for several years: the threatened California red-legged frog, *Rana draytonii*, and the endangered San Francisco garter snake, *Thamnophis sirtalis tetrataenia*. Specifically, SFRPD has killed California red-legged frogs by pumping freshwater from the frog’s aquatic habitats during the breeding season, exposing the species’ egg masses to the air and killing the eggs. SFRPD has also killed the San Francisco garter snake by mowing the species’ upland habitats, resulting in the actual death or injury of individual snakes. The United States Fish and Wildlife Service have documented both of these forms of take, and both plainly violate the ESA.

Despite these violations, SFRPD has failed to finalize a plan to come into compliance with the ESA; it has failed to implement measures in its final draft compliance plan; and it is proposing to move forward with an 18-hole golf alternative at Sharp Park that will, if implemented, result in significant modification and degradation of existing habitat for both species.

By authorizing and committing activities that result in take of these species, SFRPD is in violation of Section 9 of the ESA, which prohibits the taking of listed species. Moreover, if SFRPD continues to pursue an 18-hole golf alternative at Sharp Park, the required habitat modifications will result in illegal harm to the species through modification or degradation of existing habitats. This would not only constitute illegal take under the ESA, but will also jeopardize the long-term recovery of both species. SFRPD must therefore cease harmful activities at Sharp Park, reconsider future land management at the property, and come into compliance with the law.

## I. BACKGROUND

### A. The California red-legged frog, *Rana draytonii*

The California red-legged frog is the largest frog native to the western United States. For many years, it was considered one of two subspecies of the red-legged frog, *Rana aurora*, with the boundary between the two subspecies just north of the Golden Gate National Parks: for example, Point Reyes National Seashore can have individuals from both subspecies, as well as intergrades of the two. However, recent studies indicate that the California red-legged frog is its own species, *Rana draytonii*, and that the boundary between it and *Rana aurora* is much farther north.

The California red-legged frog has been intertwined with California history and the lore of the West in several surprising ways. Made famous as the title character of Mark Twain's tale "The Celebrated Jumping Frog of Calaveras County," it was a favorite competitor in jumping frog competitions—until the species was displaced by species imported from other parts of the world. It became a staple of the diet of the forty-niners during the California Gold Rush, and eventually became an item on the menu of San Francisco's finest dining establishments.

Unfortunately, the California red-legged frog has now been lost from over 70% of its historic range. It is currently only found in select coastal drainages from Marin County south to Baja California, with a few isolated populations in the Sierra Nevada and the Transverse ranges. In 1996, the United States Fish and Wildlife Service listed the California red-Legged frog as a threatened species under the Endangered Species Act.

The threats facing the frog are numerous, and correspond to a global decline in amphibian species: urban encroachment on existing habitats; the construction of reservoirs and water diversions that destroy feeding and breeding habitats; pesticide runoff and drift disrupting the species' endocrine systems; livestock grazing; and the introduction of invasive, colonial species that compete—and sometimes eat—the California red-legged frog.

At Sharp Park, SFRPD's operation and management of the golf course is causing take of the California red-legged frog in numerous ways. First, by pumping water out of the species' aquatic habitats during the frog's breeding season, SFRPD strands California red-legged frog egg masses, causing these eggs to desiccate and die. From 2003-05, SFRPD observed stranded egg masses after pumping operations in Horse Stable Pond, where the pump house is located. Although pumping protocols were implemented to prevent egg mass standings, these protocols have not been effective: in 2008 SFRPD contractors observed "several" stranded egg masses after pumping operations, despite these protocols.

Second, by pumping water out of Laguna Salada, Sanchez Creek, and Horse Stable Pond during any time of the year, SFRPD is reducing the availability of aquatic habitat for the species. These aquatic habitats are essential for breeding, feeding, and sheltering, and by significantly modifying and destroying these habitats through pumping operations SFRPD is illegally causing harm to the species.

Third, SFRPD uses significant amounts of fertilizers and other chemical compounds to operate and maintain Sharp Park Golf Course, and these compounds directly or indirectly enter aquatic habitat features used by the California red-legged frog. These compounds degrade habitat quality,

significantly modifying these habitats and harming the species. The compounds may also be directly toxic to amphibians.

Fourth, the California red-legged frog uses animal burrows for cover, and these burrows are essential elements of the species' upland habitat requirements. SFRPD destroys animal burrows and actively traps animals to prevent them from burrowing on the property. By reducing the availability of burrows, RPD is significantly modifying and degrading the species' habitats at Sharp Park, causing illegal harm to the species. Moreover, the traps themselves can cause death or injury to the California red-legged frog.

Fifth, SFRPD has failed to provide adequate protections from sea level rise for the California red-legged frogs at Sharp Park. As sea levels rise and SFRPD invests more resources into armoring the existing sea wall, California red-legged frog habitats at Sharp Park will be below sea level, and combined with ongoing pumping of freshwater from the Lagoon, this will inevitably result in seepage of saline water through the groundwater buffers into Laguna Salada. As the salinity gradient increases, the habitat will become adversely modified and degraded, resulting in harm to the species.

Sixth, SFRPD pumping operations and impinge and entrain California red-legged frog eggs and tadpoles. Recent expansion of pumping outflow at Sharp Park has already caused other species such as crayfish to become entrained by pumping operations, killing the animals. SFRPD biologists have noted that a similar fate may occur to California red-legged frogs.

## **B. The San Francisco garter snake, *Thamnophis sirtalis tetrataenia***

The San Francisco garter snake has been called North America's most beautiful serpent. A fantastically colored species that does justice to its moniker, it is identified by its reddish-orange head with red, black, and blue racing stripes on its sides and back.

Unfortunately this harmless and gorgeous critter isn't easily seen, in part because it is on the brink of extinction. Restricted primarily to San Mateo County, the species' preferred habitats—wet and marshy habitats with access to upland areas—have been modified and destroyed by agricultural, residential, commercial, and even recreational development. There may be only one to two thousand individuals remaining in the wild today.

The San Francisco garter snake was protected as an endangered species under the Federal Endangered Species Act when the Act was passed in 1973. Since that time great effort has gone into conserving the species, including the creation of a recovery plan and controlling developments to ensure that the species' habitats aren't adversely modified. However, many obstacles still remain to the species survival. Indeed, it is even starting to lose its favored prey: the California red-legged frog is itself threatened with extinction by development and other threats.

At Sharp Park, SFRPD's operation and management of the golf course is causing take of the San Francisco garter snake in numerous ways. First, mowing has led to the direct death of at least one San Francisco garter snake at Sharp Park, and ongoing mowing operations continue to pose a risk of direct take of the species. Moreover, ongoing mowing operations significantly degrade and modify potential habitats for the species, causing harm in violation of the ESA.

Second, by pumping water out of Laguna Salada, Sanchez Creek, and Horse Stable Pond during any time of the year, SFRPD is reducing the availability of aquatic habitat for the species. These aquatic habitats are essential for breeding, feeding, and sheltering, and by significantly modifying and destroying these habitats through pumping operations SFRPD is illegally causing harm to the species.

Third, SFRPD uses significant amounts of fertilizers and other chemical compounds to operate and maintain Sharp Park Golf Course, and these compounds directly or indirectly enter aquatic habitat features used by the San Francisco garter snake. These compounds degrade habitat quality, significantly modifying these habitats and harming the species. These compounds may also be directly toxic to reptiles.

Fourth, the San Francisco garter snake uses animal burrows for cover, and these burrows are essential elements of the species' upland habitat requirements. SFRPD destroys rodent burrows and actively traps animals to prevent them from burrowing on the property. By reducing the availability of burrows, RPD is significantly modifying and degrading the species' habitats at Sharp Park, causing illegal harm to the species. Moreover, the traps themselves can cause death or injury to the San Francisco garter snake.

Fifth, SFRPD has failed to provide adequate protections from sea level rise for the California red-legged frog at Sharp Park. As sea levels rise and SFRPD invests more resources into armoring the existing sea wall, San Francisco garter snake habitats at Sharp Park will be below sea level, and combined with ongoing pumping of freshwater from the Lagoon, this will inevitably result in seepage of saline water through groundwater buffers into Laguna Salada. As the salinity gradient increases, the habitat will become adversely modified and degraded, resulting in harm to the species.

Sixth, golf cart asphalt pathways and other upland areas are used as basking habitats for San Francisco garter snakes. SFRPD-leased golf carts operating on these pathways may directly kill or injure San Francisco garter snakes basking in the sun or absorbing warmth from the dark pathways. Golf cart leasing operations that cause take are impermissible under the ESA.

## **II. REMEDIAL MEASURES**

SFRPD must take remedial measures to eliminate the risk of take caused by the operations and maintenance of Sharp Park Golf Course. To provide effective, sustainable resolution of these legal violations, Sharp Park's existing land use patterns must be reconfigured to eliminate existing threats to the species and to prepare Sharp Park for changes wrought by climate change.

Sharp Park Golf Course currently impinges on Laguna Salada's historic footprint: the golf course's construction filled-in the lagoon's best habitats for the endangered species while preventing natural freshwater outflow to the ocean. Today the lagoon is surrounded by an eroding sea wall and a low-quality golf course that impairs the lagoon's ability to adapt to changing conditions.

But as climate change causes sea levels to rise, the pressure on the sea wall will increase the probability of a catastrophic flooding event that might harm both endangered species and the surrounding communities.

Restoring wetlands and upland habitats while allowing the natural barrier lagoon system to migrate inland and upland in concert with sea level rise will be the most sustainable method for preventing and reducing flood risks while improving habitat conditions for the endangered species on the property. This will not only reduce the probability of a catastrophic flooding event, it will also reduce the nature of any harm a flooding event might cause. Restored wetlands will reduce the wave energy of flooding events, absorb water, and ultimately ensure that flood waters do not extend to the inland reaches of Sharp Park, narrowing the band of land that might be affected if a flooding event occurs.

### III. NOTICE OF VIOLATION OF SECTION 9 OF THE ESA

Section 9 of the ESA prohibits the take of any species listed under the ESA. 16 U.S.C. § 1538. SFRPD is violating Section 9 of the ESA. It is committing illegal, ongoing take of the California red-legged frog and the San Francisco garter snake. There is documented evidence of past and recent take of both species, directly and through significant habitat modification and degradation. It is reasonably certain that imminent harm will continue at Sharp Park under existing and proposed management activities. This violates the ESA, and WEI will pursue legal remedies in federal court if these harms are not remedied within 60-days of receipt of this letter.

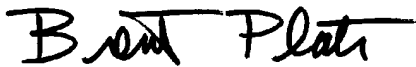
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If SFRPD has any questions about this notice letter, or wishes to discuss this matter further, please feel free to contact me at the number listed on this letterhead.

Sincerely,



Brent Plater