

# Law of the Links: by Lawrence Savell, Attorney ON PAR WITH NATURE!

One of the greatest attractions of the game of golf is the opportunity it offers to enjoy nature: a panorama of grass, trees, hills, and water.

Although course designers try to preserve and incorporate each location's natural properties, some modifications or enhancements are usually necessary. On occasion, such alterations, as well as the new (and increased) use of the area and its resources, prompt some individuals and groups to express concerns about the potential environmental impact of a proposed development. Sometimes these concerns result in litigation, as was the case in *Sierra Club v. Hatch*, recently decided by the United States District Court for the District of Colorado.

The Hatch case involved the planning and construction of Fox Hollow at Lakewood Golf Course in Lakewood, CO. The course was to be located on 450 acres in Bear Creek Lake Park, home to foxes, deer, great horned owls, blue herons, coyotes, and other birds and animals. The plaintiff organizations (which included the Denver Audubon Society) filed a complaint and applied for a preliminary injunction to block the construction of the course on environmental grounds. Specifically, the plaintiffs complained that the project had a potential negative impact on: 1) wildlife, in particular a small herd of elk and a nest of red-tailed hawks; 2) various threatened and endangered species; and 3) ground and surface water quality due to runoff of pesticides and chemicals from the course.

However, the District Court, agreeing with the prior recommendation of a magistrate judge who had held a hearing and received evidence on the matter, denied that application for an injunction.

Tracing the history of the project, the court noted that the U. S. Army Corps of Engineers had examined the situation and issued a Finding of No Significant Impact (FONSI) regarding the proposed construction and operation of the course. The FONSI, based in part on an environmental assessment done by the Corps, concluded that the planned use would not have any significant adverse effects on the environment.

The court found that the Corps had not acted in an "arbitrary or capricious" manner in reaching their conclusion, but had taken the required "hard look" at the environmental consequences of the proposed action. The evidence indicated that the project would not adversely impact the area's wildlife, threatened or endangered species, or ground or surface water. Indeed, using language that could apply to human hackers as well as hawks, the court observed that "in certain cases, the project construction and associated mitigation measures would

enhance the attractiveness of the area to certain species." The evidence also reflected that the developers had put into place a pesticide and fertilizer management plan (including use of products specifically registered by the EPA for golf course turf grass) and a soil and water quality protection program which would adequately protect those resources.

Moreover, the plaintiffs had not shown that the course would cause "irreparable harm" to the environment. As the court noted, "The evidence, in fact, would show some benefit to small animals and fowl by the watering ponds and turf in an area which is now dry."

Finally, the court found that granting the injunction would be against the public interest, as defined by the actions of the Lakewood City Council which had long and consistently approved the project.

The plaintiffs appealed the ruling and sought an injunction pending such appeal from the Tenth Circuit Court of Appeals. When that injunction was denied, allowing work on the course to continue, the plaintiffs elected not to pursue the lawsuit further.

Subsequent events have apparently confirmed the soundness of the district court's decision. Even before Fox Hollow officially opened in August 1993, the Golf Course Superintendents Association of America awarded the 27-hole course one of its national Environmental Stewards Awards, in recognition of Fox Hollow's environmentally-sensitive design and construction. Course rules keep disturbance of the Park's "residents" and their natural habitat to a minimum, including barring golfers from foraging for lost balls in certain areas. □

*This column provides general information and cannot substitute for consultation with a lawyer.*

**For information about golf courses and the environment, write or call:**

**Nancy P. Sadlon, Environmental Specialist, U.S. Golf Association, Golf House, P.O. Box 708, Far Hills, NJ 07931; (908) 234-2300.**

## **Share these tips with your superintendent to help create a natural balance on your course.**

- **Use native plants and let them grow to provide natural food sources and cover for animals.**
- **Plant wildflower meadows and hang bird feeders to assist plant and animal survival.**
- **Adopt-a-hole programs for clean up and beautification are becoming popular. Expand the care to watching and helping the wildlife survive.**
- **Urge the superintendent not to overwater and to cut down on pesticide use. Don't press the superintendent to spray every time you see a few insects.**
- **Analyze ponds to see if they have natural vegetation which acts as a filter to pesticides.**
- **Plant communities and animal habitats can be sensitive. Try to stay away from areas that have been established as sanctuaries.**