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Judge tosses suit against Forest Service

By Megan Blaney
Staff Writer

A federal judge Monday dismissed a San Diego developer's lawsuit claiming an abuse of power within the U.S. Forest Service in the San Bernardino National Forest.

Marina Point Development Associates said National Forest Supervisor Gene Zimmerman and Forest Service biologists Scott and Robin Eliason abused their positions to prevent the company from building about 100 condominiums on 12.5 acres on Grout Bay on the north shore of Big Bear Lake in Fawnskin.

The lawsuit also contends the three forestry employees conspired with Sandy Steers, executive director of Friends of Fawnskin, to derail the multimillion-dollar project. The decision was made by Judge Manuel Real in the U.S. District Court in Los Angeles.

The developer has not been able to move forward on the project since early 2004, when a judge issued an injunction after Friends of Fawnskin and an environmental group, the Center for Biological Diversity, sued the developer on grounds of violating the habitat of the bald eagle, an endangered species, and the clean water act.

Marina Point's lawsuit, filed in November, originally claimed the three government workers violated the Racketeer Influenced and Corrupt Organizations Act by using their government positions to further their own interests. Zimmerman lives nearby in Sugar Loaf and the Eliasons are members of Friends of Fawnskin.

"We're very pleased. All three of the individuals are very well-respected, hard-working employees," Forest Service spokeswoman Ruth Wenstrom said.

The three employees were removed from the suit earlier this year when the U.S. Attorney certified the forest service employees were acting within the scope of their employment and should be replaced by their employer, the United States.

Since the government cannot be sued under the RICO act, the lawsuit fell under the Federal Tort Claims Act, which requires the plaintiff to file an administrative claim.

"We have provided them with paperwork to do so and they never have," said Thom Mrozek, spokesman for the U.S. Attorney's Office. "They have to file a claim saying, 'Hey, I was wronged, and I

want money,' and they haven't done that."

Friends of Fawnskin attorney Everett DeLano said the dismissal of the suit held a greater significance for area activists.

"These suits SLAPP suits are intended to intimidate and they should be run out of town," he said. "And today it was."

SLAPP stands for Strategic Lawsuit Against Public Participation, and such lawsuits are illegal.

The developer still has 10 days to amend the complaint. During that time, the developer's attorney could file the required administrative claim or file a new lawsuit, Mrozek said.

"I don't know how they're going to move forward from this point," he said Monday evening.

Developer's attorney Wayne Rosenbaum could not be reached for comment and his voicemail said he would be out of town for the next few days. He has previously denied the lawsuit was a SLAPP suit.

Defendant Sandy Steers said she was "incredibly relieved" that the suit against her was dismissed. The judge's ruling does not allow the developer any chance to refile the suit against Steers.

Steers said she was sued in retaliation to the lawsuits her group

and the Center for Biological Diversity filed against the developer. One lawsuit against Marina Point cites environmental violations and the other cites lack of proper permits.

"I would just like to stress for everybody out there who is being active this shows them ... we have to stay involved,' she said.

The ruling gave Adam Keats, staff attorney for the center, hope for his group's two lawsuits against Marina Point.

"I consider the fact they lost the motion to be a significant moral victory for us," Keats said Monday.
"The only defense they've articulated so far is this conspiracy this harebrained conspiracy that got shot down today in this ruling."