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Larry Kolvoord ^{2006 AMERICAN STATESMAN}
Pepper Morris, left, and Dot Streeby are Lick Creek-area residents who say they had never seen algae before West Cypress Hills was built.

Lick Creek pollution suit settled

Subdivision to pay for
cleanup of waterway,
adhere to stricter
environmental rules

By Marty Toohey
AMERICAN STATESMAN STAFF

A subdivision in western Travis County sued for polluting Lick Creek has agreed to pay for a cleanup of the creek and follow environmental rules similar to Austin's, which are more strict than regulations in the unincorporated parts of the county.

The settlement between the subdivision's financiers and the residents who filed the lawsuit ends a three-year dispute. The plaintiffs said runoff from the West Cypress Hills subdivision dumped sediment into the creek that turned it from crystal clear to milky white.

The settlement calls for Alan Topfer's investment group, which is underwriting the 1,100-acre development, to pay \$386,671.15, with \$35,635 set aside for sucking sediment out of the creek and the rest going toward reimbursement of plaintiffs' legal fees and paying individual plaintiffs. Topfer's group also

On statesman.com: Previous reports with this story online.

agreed to monitor water quality in the creek.

The settlement does not include an admission of guilt.

"This spells out what happens when you don't do things right the first time," said Richard Scroggins, president of the Guardians of Lick Creek, a group of 32 residents who sued the subdivision. "It should be a real message for developers out there."

Topfer said concerns about the project have been addressed and West Cypress Hills will be environmentally sensitive.

"When the problems became apparent, I ultimately made the decision to hire a new developer and new engineer," Topfer said. "We have spent a great deal of money shoring up the project so we can move forward with what we consider a best-in-class development."

West Cypress Hills is off Texas 71 West, near the Pedernales River.

Construction is in the early stages, with 53 homes built, Topfer said. When finished, the

See **SETTLE, B3**

SETTLE: Building runoff made creek cloudy, suit said

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subdivision will have about 1,500 homes, he said. The settlement, which came after both sides agreed to dismiss the lawsuit Nov. 3, reduced the number of homes by about 250, he added.

The terms of the settlement apply to the entire development and will increase the minimum distances between houses and such environmental features as the creek. The settlement will also mean less impervious cover — concrete, roofs and other obstructions to water soaking into the ground — for all future parts of the subdivision.

Building on steep slopes is also restricted. Phillip Poplin, the Guardians of Lick Creek's lawyer, said that provision was important because the area's steep terrain makes runoff, even from responsibly built projects, more likely to wind up in nearby

waterways.

Each Sunday for the past two years, the Guardians of Lick Creek have picketed the subdivision's front entrance. They can no longer do so under the terms of the settlement.

The dispute began in August 2003, when residents noticed the creek becoming cloudy. They filed the lawsuit in late 2004, about the same time investigators from the Lower Colorado River Authority imposed a rare \$5,000 fine against the development and ordered construction to be temporarily halted.

The LCRA concluded that a dam the developer built on Lick Creek was causing pollution. Rainwater overflowed the dam's spillway and poured directly into the creek, carrying perhaps tons of sediment with it, officials and witnesses said.

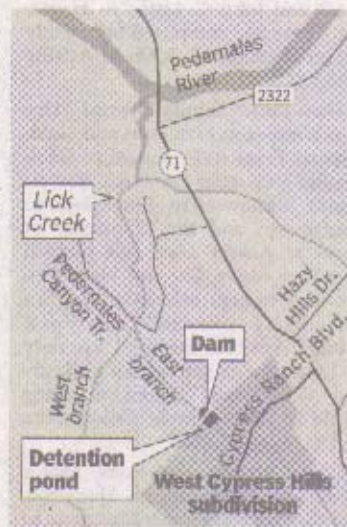
Topfer declined to say how much it will cost his group to



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follow the new rules, but he said a profitable project still "is our hope and our expectation."

Largely in response to the Lick Creek dispute, Travis County initiated a series of talks among developers, residents, landowners and environmentalists to strengthen the nearly nonexistent environmental regulations in the county's unincorporated areas.



The Southwest Travis County Growth Dialogue resulted in interim development rules, and county officials said they expect to begin discussing a long-term set of regulations in January. mtoohy@statesman.com; 445-3673