



## Committee for Green Foothills NEWS RELEASE

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### Committee for Green Foothills wins lawsuit against Los Gatos streamside development; implications for other cities

PALO ALTO, CA -- Santa Clara County Superior Court Judge Leslie Nichols ruled in favor of Committee for Green Foothills' lawsuit alleging the City of Los Gatos violated the California Environmental Quality Act when the city approved a development encroaching on Ross Creek, a decision that could have implications on other Santa Clara County cities that have made similar promises to protect their streams. The court action was brought by Los Gatos residents in cooperation with the Committee for Green Foothills, a non-profit environmental advocacy group in Santa Clara and San Mateo Counties. Plaintiffs are represented by Rachel Howlett of the law firm Provencher & Flatt, LLP.

"Los Gatos, along with most other Santa Clara County cities, had promised that it would protect riparian and streamside areas so the Santa Clara Valley Water District would stay out of the way, but the City proceeded to ignore its promises," said Brian Schmidt of CGF. "The City had adopted Streamside Guidelines and Standards so its streamside development would be exempt from Water District regulation, but Los Gatos then allowed development that contradicted the standards. While Judge Nichols didn't rule directly regarding the issue of whether Streamside Guidelines were mandatory and had been violated, his ruling accepted that the City had contradicted the usual understanding of a larger setback needed, when a ten-foot riparian set back was applied by the City. He also accepted that the City contradicted the usual and more expansive definition of a 'top of bank' for purposes of determining a construction setback. These contradictions mean that a much more in-depth environmental evaluation will be required, and we expect better environmental protections will also occur."

Other Santa Clara County cities have adopted similar Streamside Guidelines, so similar decisions in other cities to ignore or artificially constrain the protection from their guidelines could make them legally vulnerable as well.

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**Proposed Development on Ross Creek.** The project proposed to build a seven home subdivision on approximately two acres adjacent to Ross Creek in Los Gatos. The Los Gatos Planning Commission, relying on the project maps for accurate information about the location of the creek bank, approved the project on October 10, 2007. However, later analysis by the Guadalupe-Coyote Resource Conservation District (GCRCD) showed that the project maps did not document the true extent of the creek's floodplain. The GCRCD found that the proposed sanitary sewer line, storm drain and retaining walls were in the floodplain

of the creek and the town's consulting civil engineer ultimately reported that, during heavy rains, the creek could grow over 20 feet wider than the bank shown on the plans. In two extensive reports, the GCRCDC argued that the project would unnecessarily destroy the creek's best remaining habitat, threaten the stability of the creek bank and add significant neighborhood run-off into the already swollen creek.

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**Water-Resources Collaborative.** In February 2007, Los Gatos, along with a Collaborative of 26 other municipalities and county agencies, adopted water-resource regulations aimed at improving local stream environments. The water-resource Collaborative regulations warn that the old practice of "maximizing lot yield by placing the back fences of individual lots directly onto streambanks" has "restricted access to streams, reduced the value of stream-related open space to the community, degraded water quality, damaged streams and streamside resources and limited design options for flood protection measures." In the development proposal considered by the court, four of the seven lots back directly up to the creek with back yards as narrow as 10 feet.

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#### **About the Committee for Green Foothills**

Committee for Green Foothills is a regional grassroots organization working to establish and maintain land-use policies that protect the environment throughout San Mateo and Santa Clara Counties. Committee for Green Foothills, established in 1962, is a Bay Area leader in the continuing effort to protect open space and the natural environment of our Peninsula. For more information about the Committee for Green Foothills or about our work on this issue, visit [www.GreenFoothills.org](http://www.GreenFoothills.org).