



## Planning and Development Department

Land Use Planning Division

### Staff Report

**To:** Planning Commission  
**From:** Erin Dando, AICP  
Associate Planner, Secretary to the Creeks Task Force  
**Date:** January 11, 2006  
**Subject:** Creeks Task Force Background

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#### Recommendation

That the Planning Commission (PC):

1. review the information provided in this report and the attached material in preparation for the January 25<sup>th</sup> workshop where the Creeks Task Force (CTF) Chair and Staff will present the CTF's preliminary policy recommendations regarding changes to the BMC 17.08, Preservation and Restoration of Natural Watercourses, also known as the Creeks Ordinance (Attachment 1);
2. Review and provide feedback on PC schedule for considering CTF recommendations and proposed Public Hearing.

#### Background

##### 1. History of the Creeks Ordinance

Berkeley's Creeks Ordinance was first adopted by the City Council in 1989, at the recommendation of the Parks and Recreation Commission (PRC), in collaboration with the Urban Creeks Council, the State Department of Water Resources, and the Public Works and Planning Commissions, as reported by the PRC. Over the years City Staff has requested interpretation of the intent of the Ordinance in order to administer it appropriately. The City Attorney's Office prepared a report for the Creeks Task Force reviewing all of the opinions, interpretations and modifications relating to this Ordinance since its inception, provided in Attachment 2. The City Attorney's memorandum, included in this report, contains several attachments, A-H, documenting various aspects of the Ordinance's history.

##### 2. Recent Developments

In 2003, community members began petitioning the City Council with the desire to update and possibly revise the Creeks Ordinance, with the understanding that current conditions and knowledge of the science of creeks has evolved since 1989. During this effort, the City began utilizing GIS (Geographic Information Systems) to map the regulated creeks and identify

affected parcels, completing the map in 2004. While the Ordinance at one time incorporated a map, no current map or tool existed to assist staff with the administration of the Ordinance or for the public's use in determining what parcels were generally subject to the Ordinance. Once the GIS map was created, the City and public better understood the application of the Ordinance. The City Council, prior to taking any new action on the review of the Creeks Ordinance, scheduled a Public Hearing on the matter on September 28, 2004. With the GIS technology, the City Manager had the ability for the first time to notify over 2,000 property owners affected by the Ordinance. The City Manager's letter (Attachment 3) to affected property owners included information about the Ordinance as well as notification of the hearing. It is believed that this was the first formal outreach to property owners to notify them of the Ordinance, which had been in effect for 15 years. The data used for the GIS map is based on the City's best available information including internal and external records, maps and other creek related data. The City continues to refine the map as new information is obtained.

Several hundred concerned citizens attended the September Public Hearing and many expressed frustration with the Ordinance. Hearing these concerns, the City Council modified the Ordinance, adding subsection BMC 17.08.055, which states that a building may be rebuilt to generally the same extent, configuration, footprint, etc. in the event that the building is destroyed by a disaster. Regardless of this change, the building is still subject to all Building and Zoning regulations, which may include a requirement for a Use Permit if the records show that one was not previously approved. At the September 28, 2004 meeting the Council also requested the City Manager to provide alternatives for a more extensive review of the Creeks Ordinance at a future meeting (Attachment 4). After deliberation, the Council established a temporary Creeks Task Force to review and make recommendations on the Creeks Ordinance on November 9, 2004. The Council prescribed the composition of the Task Force, its scope of work and deadlines for work products. The Resolution establishing the CTF is found in Attachment 5.

### **3. Creeks Task Force**

The Task Force consists of 15 members, nine appointed by the Mayor and City Council, four members appointed by the Planning Commission, Parks and Recreation Commission, Public Works Commission and Community Environmental Advisory Commission (one member each), one member appointed by Neighbors on Urban Creeks and one member by the Creeks Community. The Mayor appointed Helen Burke as the Chair. The Task Force Members are Joshua Bradt (Anderson), Helen Burke (Planning Commission), Diane Crowley (Wozniak), Drew Goetting (Spring), Richard Harris (CEAC), Nancy Holland (Moore), Tom Kelly (Creek Community), Mischa Lorraine (Neighbors on Urban Creeks), Jana Olson (Olds), Phillip Price (Parks and Recreation Commission), John Roberts (Capitelli), Carole Schemmerling (Worthington), Mary Selkirk (Maio), Carlene St. John (Public Works Commission), and Jon Streeter (Bates).

The Council Resolution provides the scope of work for the Task Force and two deadlines, the first for a work plan and budget by April 2005 and the second for recommendations on Ordinance revisions by May 2006. The Council included a sunset provision to the existing Ordinance if recommendations are not made by the CTF, whereby the regulations for setbacks applied to creek culverts will be removed on May 1, 2006. The Resolution states that the CTF is specifically prohibited from making recommendations on the issue of liability for repairing culverts on private property, due to pending litigation. The Council also required that all

recommendations from the CTF first go to the Planning Commission prior to the Council's review. The CTF and PC followed this protocol with the work plan this past April and the CTF intends to meet the May 2006 deadline, providing recommendations to the Commission in late March/early April.

### **3.1 Work Plan, Timeline and Budget**

The Task Force first began meeting weekly in February 2005 through April, developing a work plan, timeline and budget (Attachment 6). The Planning Commission approved this document unanimously on April 13<sup>th</sup>, forwarding it to the Council, which approved the work plan and timeline on May 10<sup>th</sup>. The \$100,000 budget request was approved as part of the City budget in June.

### **3.2 Data Collection**

With the work plan approved, the CTF began meeting twice monthly in May through September focusing the meetings on educating members on creek issues. The Task Force heard from a number of experts on topical areas including state and federal water regulations, environmental law, and the science of creeks including engineering, hydrological and biological information. In addition the CTF invited and heard from two major community groups, Neighbors on Urban Creeks and Juliet Lamont, representing of several creek advocacy groups, including Live Oak/Codornices Creek Neighborhood Association (LOCCNA), Urban Creeks Council, Strawberry Creek Lodge Restoration Project, and Committee to Restore Strawberry Creek Plaza.

With the approval of the \$100,000 budget, Planning Department staff, along with input from three members appointed by the CTF, interviewed and selected a consultant team to perform the work deemed necessary to better understand Berkeley's creeks during the decision making process. Balance Hydrologics has been retained by the City and has begun Task A in their scope of work (Attachment 7). Task A focuses on field work geared toward providing data on the current conditions in Berkeley creeks and watersheds and development adjacent to creeks. The CTF met with the consultant team and provided input on the type of field data to be obtained. The consultants began sampling sites throughout the City and provided a sample of preliminary results to the CTF in November. Field data reports will include information on open creeks and creek culverts relating to the existing setbacks of major structures, minor structures, and impermeable surfaces; cross-sections of each sampling site; and biological data. The Task Force expects a full report on Balance Hydrologics' findings on January 9<sup>th</sup>. The Task Force has identified other data and tasks for the consultant team to undertake; however, no additional work has been authorized at the time of this report. The scope of work provides greater detail about the tasks the consultant team may complete.

### **3.3 Consensus Building**

The Task Force utilized its meetings over the past few months to discuss in more detail the key issues relating to the Creeks Ordinance. These issues include setbacks and their application, the treatment of creek culverts vs. open creeks, daylighting priorities, creek definitions, and the types of structures to be regulated. While the Task Force has made some preliminary decisions, the CTF will spend most of the time at its three January meetings making further conclusions. The Task Force generally operates with the intent to reach a consensus on its recommendations; however, in some cases it may use a majority rules approach if unanimous consensus cannot be reached.

To date the Task Force has agreed to the following statements:

- Creeks are a community asset that should be protected and enhanced.
- The Ordinance should include an incentives program to encourage daylighting and restoration of existing open creek channels.
- There will be financial costs associated with creek restoration, storm drain repair, and overall watershed management so the City will have to look for additional funding.
- Daylighting on private property should be voluntary.
- Daylighting should be encouraged and appropriate segments for potential daylighting on public and semi-public/institutional property should be identified by the City.
- Creeks are part of an interconnected and integrated water management system and a holistic analysis is needed.

### **3.4 Position Paper and Preliminary Recommendations**

While the Creeks Task Force has not finalized its preliminary recommendations, progress has been made in developing a draft position paper to capture the CTF's decisions and understanding of the issues to date. CTF Member Jon Streeter volunteered to draft the position paper outlining the history and background of the Creeks Ordinance, what the Task Force has learned from other communities and experts in the field, what dominating viewpoints exist in the City with regards to the Ordinance, and finally the preliminary recommendations for revisions to the Ordinance. Attached is the draft position paper outline as of December 12, 2005. The CTF spent two meetings in December reviewing, discussing and expanding this outline. Attachment 8 is the most recent version of this document; although, a revised version is expected for the CTF's January 9<sup>th</sup> meeting and will be forwarded to the Commission as soon as possible. Please note that the draft is a work in progress.

### **3.5 Task Force Schedule**

The CTF schedule was previously distributed to the PC at the December 14, 2005 meeting and is attached as Attachment 9. In summary:

1. The CTF intends to complete its preliminary recommendations in January/February 2006.
2. The Task Force will forward the preliminary recommendations for information to the Planning Commission and hold a Public Hearing on February 15<sup>th</sup>.
3. The CTF then will finalize its recommendations for a second hearing in March.
4. The Task Force intends to hold the second hearing jointly with the Planning Commission. By the end of March, the CTF will make any necessary modifications and forward its report to the Planning Commission, tentatively scheduled for late March or early April.
5. If additional meeting time is required for other pertinent recommendations, the CTF has scheduled meetings through April.

### **3.6 Planning Commission Involvement**

The Planning Commission is tasked by resolution (see Attachment 5) to provide comments on the Creeks Task Force's recommendations. The Commission previously received a report and presentation on the Creeks Task Force and the issues it faces in April, when the CTF Work Plan was reviewed and approved by the CTF. Attachment 10 includes the original report to the Commission.

In an effort to utilize the Planning Commission and its members' time efficiently and effectively, this background material is being provided prior to the January 25<sup>th</sup> workshop. To afford significant time for comprehension of the vast issues surrounding this effort, the CTF believes the policy recommendations should be provided to the Commission in advance of the public hearings and final report from the Task Force.

### **3.6.1 January Planning Commission Workshop**

The CTF Chair and Staff intend to provide greater details on the CTF's preliminary consensus items and recommendations at the January 25<sup>th</sup> workshop. The workshop is designed to provide the Commission with an in depth review of the policy recommendations and decisions the CTF will be developing prior to those recommendations going to a Public Hearing. The workshop is an opportunity for the Task Force to update the Commission as well as answer any questions that members may have about the issues and the Task Force's proposal.

### **3.6.2 Joint Public Hearing**

While the CTF intends to hold a public hearing on its preliminary recommendations on February 15<sup>th</sup>, the Task Force currently intends to hold a second hearing jointly with the Planning Commission. This would afford the PC an opportunity to hear directly from the community on the recommendations. The Council Resolution requires one hearing in this process; however, the CTF desires two hearings to increase the community's input and allow the CTF to respond to comments from the public early in the decision making process.

The CTF has not yet set a joint hearing date in late March or early April and will rely on staff from the Task Force and Commission to coordinate a hearing with the Commission's agreement.

### **3.7 CTF Public Outreach**

During the Task Force's work, some CTF members and members of the public raised concern about the lack of notification of stake holders, primarily property owners with land subject to the Creeks Ordinance, on the original adoption of the Ordinance as well as any legal opinions and revisions made over the years. With a goal of a transparent process, the Task Force continues to hold all meetings open to the public, plans to hold two public hearings, and continues to encourage community members to attend and participate in its meetings. To encourage more participation, the CTF changed its meeting venue for two meetings to South Berkeley and West Berkeley, sending special invitation by email and mail to neighborhood groups encouraging them to attend the meetings.

The Task Force is the first Berkeley advisory body to post all agenda packet materials online, second only to the City Council itself. Staff believes this encourages more participation and public awareness of the CTF's activities. Information, presentations and reports will continue to be posted on the Task Force's website as recommendations are formalized. Commissioners are encouraged to review the website for specific details on the Task Force's activities. The web address is: <http://www.cityofberkeley.info/planning/landuse/Creeks>.

For the February and March Public Hearings, Staff will notify all affected property owners, as identified in the current Creeks Map, by mail, utilize print media as well as the City's website and CTF's email list serves.