



Item 10

February 8, 2006

Planning and Development Department

Land Use Planning Division

Staff Report

To: Planning Commission
From: Erin Dando, AICP
Secretary to the Creeks Task Force
Date: February 8, 2006
Subject: **Creeks Task Force Preliminary Options for Potential Revisions to the Creeks Ordinance**

At the Planning Commission's January 11th and 25th meetings, staff provided background material on the Creeks Task Force, a description of the existing Creeks Ordinance (Berkeley Municipal Code 17.08 - the Preservation and Restoration of Natural Watercourses), and the results of field analysis by Balance Hydrologics on existing conditions of development along Berkeley's creeks. The Creeks Task Force has continued to meet and develop preliminary options for review by the public at the first of two public hearings on February 15th.

The Task Force's preliminary options are detailed in Attachment A, which has been mailed to all property owners identified by the City as affected by the Creeks Ordinance. These preliminary options will be presented as information to the Commission at its February 8 meeting.



Item 10, Attachment A
Planning Commission
February 8, 2006

Public Hearing Notice
February 15th
March 22nd

Planning and Development Department
Land Use Division

February 1, 2006

Dear Property Owner:

A Task Force appointed by the City Council has been considering modifications to the City's ordinance related to the protection of creeks. It has prepared preliminary options and is holding two Public Hearings to receive comments. The City is mailing this notice to you because you are a property owner of a parcel of land identified by our mapping system as within approximately 30 feet of a regulated creek. The Creeks Task Force options are still preliminary and somewhat conceptual, but are likely to lead in changes to regulations affecting your property. The public hearings are as follows:

Public Hearings

February 15, 2006 @ 7:00 PM

North Berkeley Senior Center, Multipurpose Room
1901 Hearst Avenue
Hosted by the Creeks Task Force

Subject: The Creeks Task Force's Preliminary Options for Revisions to the Creeks Ordinance

March 22, 2006 @ 7:00 PM

North Berkeley Senior Center, Multipurpose Room
1901 Hearst Avenue

Jointly hosted by the Creeks Task Force and the Planning Commission

Subject: The Creeks Task Force's Recommendations for Revisions to the Creeks Ordinance

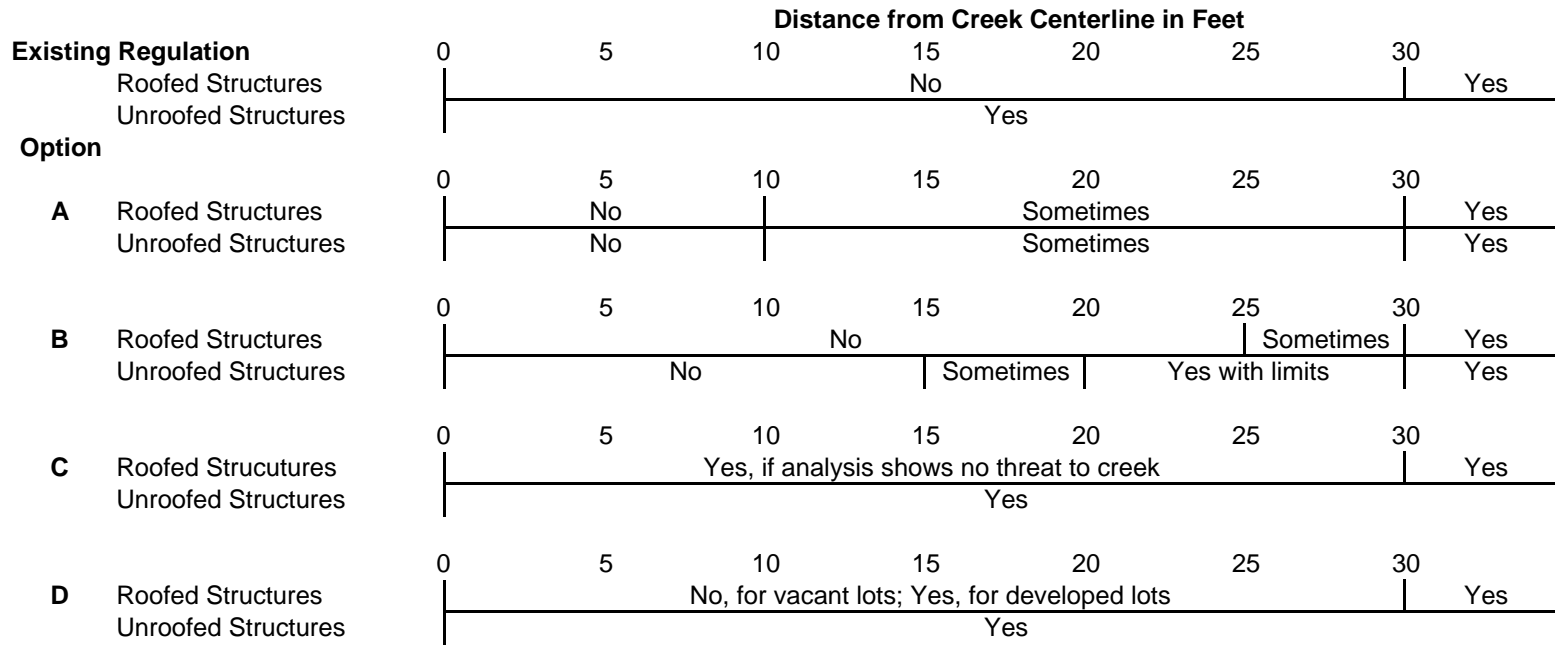
Attached are the preliminary options developed by the Creeks Task Force and additional background information.

Sincerely,

Dan Marks, AICP
Berkeley Planning & Development Director

Helen Burke, Chair
Berkeley Creeks Task Force

Figure 1. Comparison of Open Creek Options



Unroofed Structures generally includes patios, decks and other impermeable surfaces.

No means no development is allowed without approval of a Variance.

Sometimes means that development is discouraged; however, it can be approved through discretionary review in certain situations and with mitigations.

Yes means development is allowed without discretionary review under the Creeks Ordinance.

Yes with limits allows development, but there are limits to total square footage.

Potential Options for Review

While the Berkeley Creeks Task Force (CTF) has not finalized its recommendations, it has developed preliminary options for potential revisions to the Creeks Ordinance. The Task Force has developed four options for the treatment of open creeks and two primary options for culverted creeks. These options have not been voted on nor are there official preferences by the Task Force. The CTF is interested in hearing from the public on the various options as well as other comments specifically tied to the regulation of open creeks, culverted creeks, setbacks and regulated structures.

All options detailed below were developed with the following overarching goal for the Creeks Ordinance:

To protect and restore natural creek functions as achievable over time in an urban environment while recognizing the importance of property rights.

The Berkeley Creeks Task Force has agreed to the following statements:

- Creeks are a community asset that should be protected and enhanced.
- Creeks are part of an interconnected and integrated water management system and a holistic analysis is needed.
- Culverted creeks should be regulated differently than open creeks.
- Daylighting creek culverts on private property should be voluntary.
- The Ordinance should include an incentives program to encourage daylighting creek culverts and restoration of existing open creek channels.
- Daylighting creek culverts should be encouraged and appropriate segments for potential daylighting on public and semi-public/institutional property should be identified by the City.
- 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.

Open Creeks

The following bullets provide general details depicting the requirements of the existing Creeks Ordinance along with the four options developed by the Creeks Task Force for open creeks. These options are in the conceptual phase and more details will be required prior to any final recommendations from the Task Force. The public is asked to respond to these conceptual options at the hearing on February 15th.

Please note all distances are measured from the creek centerline. Additionally, all options would continue to prevent culverting of open creeks as well as placement of riprap, gabions or other hardened materials in the creek channel, as the existing Ordinance prohibits. Figure 1 compares the existing Ordinance and four options. Further explanation of discretionary review and permits follows the option descriptions.

Existing Ordinance

- 30' setback from creek centerline where no roofed structures are allowed. No new construction allowed without a Variance. Development beyond 30' from the creek is allowed subject to all other building and zoning requirements.

- In rare cases where a single family addition meets nine prescribed findings, a Use Permit may be granted within the 30' setback by Zoning Adjustments Board to allow for expansion.
- Unroofed structures and decks, patios and other impermeable surfaces are not regulated under the existing Ordinance.
- Structures may be rebuilt after they are destroyed by a disaster, subject to any requirements under the Zoning Ordinance (which typically requires a Use Permit).

Option A

- 10' no build zone from the creek centerline in which no roofed structures, unroofed structures and decks, patios and other impermeable surfaces are allowed, except by Variance.
- Development is discouraged between 10' and 30' from the creek. However, new development or modifications to existing roofed structures, unroofed structures and decks, patios and other impermeable surfaces would be allowed via an Administrative Use Permit procedure provided that impacts to the creek from construction are mitigated. Expansions within the existing footprint would be allowed without discretionary review.
- Rebuild after disaster is acceptable between 10' and 30' of the creek within the existing footprint.

Option B

- No new roofed structures within 30' of the creek centerline. The setback may be reduced to 25' from the creek centerline if creek or site improvements are implemented; this will require discretionary review.
- No new development except for fences, footpaths, or pedestrian bridges is allowed within 20' of the centerline of the creek. This distance may be reduced to 15' if certain creek or site improvements are made; this will require discretionary review.
- New unroofed structures and decks, patios and other impermeable surfaces are allowed outside the 15' to 20' creekside zone described in the previous bullet, subject to limits on the area of impervious surface.
- Modifications and repair of existing structures is allowed (including upward or downward expansion), but only within the current footprint if the structure does not conform to setback requirements.
- Rebuilding after a structure is damaged or destroyed is allowed. The structure must be made to conform to the setback requirement as much as physically and economically feasible. City to offer incentives to promote conformance. If it is not feasible to relocate away from the creek, rebuilding on the existing footprint is allowed.

Option C

- Roofed structures larger than 120 sq. ft. (those which require a building permit) proposed within 30' of a creek would be allowed on a case by case basis subject to an administrative determination that the project would not cause any harm to the creek. Analysis of these large scale projects would include both soils and structural engineers' recommendations, which will ensure that buildings are located safely away from the creek.

- 120 sq. ft. unroofed structures and decks, patios and other impermeable surfaces are allowed near creeks, providing they follow all other existing zoning and building regulations.
- The City may adopt certain rules governing the design of structures within the properties designated as creekside properties. This may include requiring most paving to be permeable, water collected off roofs to be collected in sumps, incentives to create native plantings, etc., which would mitigate the additional structures.
- Remodeling, repair, and other construction within existing footprint of roofed structures to be allowed by right including excavations for basements or garages, and increase in height as allowed by existing ordinances.
- Rebuilding a portion or all of an existing roofed structure due to loss or damage in the same location, to the same height and bulk as the original, would be allowed by right without requiring a Use Permit, as is typically required by the Zoning Ordinance.

Option D

- No new roofed structures within 30' of an open creek on a vacant lot are allowed without a Variance. New roofed structures on developed lots are allowed by right, subject to other zoning regulations.
- Unroofed structures and decks, patios and other impermeable surfaces are unregulated with respect to creeks.
- Existing structures not meeting the 30' setback can be expanded, repaired and replaced by right.

Discretionary Review

Discretionary Review is the process by which the Berkeley Zoning Officer (City Staff) or the Zoning Adjustments Board (ZAB) can weigh the circumstances of a project and the site conditions to make decisions for approval, approval with conditions or denial of certain projects.

- **Administrative Use Permit (AUP):** AUPs allows discretionary staff approval under specific guidelines. Decisions are appealable to the ZAB. Current base fee is \$1,364.70 with a 3 month or more processing time.
- **Use Permit (UP):** UPs require a Public Hearing and approval by the ZAB, which is appealable to the City Council. Current base fee is \$3,086.15 for existing structure or \$5,156.15 for a new main building with a 6 month or more processing time.
- **Variance:** Variances are the most restrictive of the regulatory procedures and the most difficult to receive. It requires a Public Hearing, ZAB approval and is appealable to the City Council. Generally Variances are only approved in cases that need the variation from the regulation to make the parcel economically developable. Current base fee is \$5,543 with a 6 month or more processing time.

Creek Culverts

The Creeks Task Force has clearly expressed an interest in treating creek culverts differently than open creeks, where generally a lesser setback would apply to creek culverts than to open creeks. Creek culverts are defined as culverts located in the historic creek channel. The following primary options are under consideration:

1. Whether creek culverts should be regulated under
 - a. the Creeks Ordinance, or

- b. as a part of the City's Stormwater Drainage System.
2. Whether setbacks for maintenance, repair and safety should
 - a. be established through a standard setback as determined by the Director of Public Works;
 - b. be determined on a case by case basis by the Public Works Director; or
 - c. follow a standard setback as a guideline, which could be modified by the Director of Public Works if necessary.

Additional Issues

It is anticipated that the Creeks Task Force will more clearly develop options for the repair and rebuilding of existing structures prior to the February 15th hearing. If more information is available prior to this hearing, information will be posted online at:

<http://www.cityofberkeley.info/planning/landuse/Creeks/>

Background

History of the Creeks Ordinance

Berkeley Municipal Code (BMC) 17.08, Preservation and Restoration of Natural Watercourses, also known as the Creeks Ordinance was first adopted by the City Council in 1989. Over the years, City Staff has requested interpretation of the intent of the Ordinance from the City Attorney and Council in order to administer it appropriately.

Recent Developments

In 2003, community members began petitioning the City Council 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 referenced a map, it was not adequate 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.

The City Council, prior to taking any new action to modify the Creeks Ordinance, scheduled a Public Hearing on September 28, 2004. With the GIS technology, the City was able to provide mailed notice for the first time to over 2,000 property owners that were estimated to be directly affected by the Ordinance. The City continues to refine the map as new information is obtained and due to the state of available information, some property owners that were previously notified are no longer regulated under the ordinance.

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 that is located within the required 30-foot setback of the center line of a creek may be rebuilt to generally the same extent, configuration, footprint, etc. in the event that the building is destroyed by a disaster. However, regardless of this change, the building is still subject to all Zoning regulations, which may include a requirement for a Use Permit if 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.

After deliberation, on November 9, 2005, the Council established a temporary Creeks Task Force (CTF) to review and make recommendations on the Creeks Ordinance. The Council prescribed the composition of the Task Force, its scope of work and requested that it complete its work by May 2006.

Creeks Task Force (CTF)

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 Council Resolution includes 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 also 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 required that all recommendations from the CTF first go to the Planning Commission prior to the Council's review.

The Task Force heard from a number of experts and other interested parties 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 representing property owners affected by the Ordinance, 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 Citizens for a Strawberry Creek Plaza.

A consultant, Balance Hydrologics, was retained by the City for a variety of tasks, including collection of field data through sampling at creekside properties. Over 370 property owners granted access for the consultants to perform a field assessment, which led to 78 samples of properties with open creeks. The consultant team's presentation to the CTF can be viewed at: <http://www.ci.berkeley.ca.us/planning/landuse/creeks/2006/EPackets/20060109/20060109BHFieIdResults.ppt>

The field work focused on providing data on the current conditions of Berkeley creeks and watersheds and development adjacent to creeks. Field data reports include information on open creeks relating to the existing setbacks of major structures, minor structures, and impermeable surfaces; cross-sections of each sampling site; and biological data. The consultant also analyzed properties with culverted creeks by reviewing aerial photographs and maps. 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 letter.

Communication to the Creeks Task Force

Written communication on this matter may be submitted electronically to Erin Dando, Secretary to the Creeks Task Force at edando@ci.berkeley.ca.us. Hard copies should be addressed to:

Creeks Task Force
Attention: Erin Dando, AICP
City of Berkeley Planning Department
2120 Milvia St.
Berkeley, CA 94702

In order to be included in the hearing packet distributed to the Task Force and/or Planning Commission, materials should be received no later than 12:00 noon on Wednesday, February 8th for the first hearing and 12:00 noon on Wednesday, March 15th for the joint hearing on March 22nd.

Additional Resources

The City of Berkeley, Creeks Task Force, and Planning Commission value your opinion on this important matter and hope you will attend both hearings. Additional information on the process and work of the Creeks Task Force can be found on the websites below.

Creeks Task Force Webpage: <http://www.cityofberkeley.info/planning/landuse/Creeks>

Map individual parcels and the creeks map: <http://map.ci.berkeley.ca.us/creeks/>

Questions: Erin Dando, edando@ci.berkeley.ca.us or 510.981.7429 or Wendy Cosin, wcosin@ci.berkeley.ca.us or 510.981.7402