



Creeks Task Force

Staff Report

To: Planning Commission
From: Erin Dando, AICP
Secretary to the Creeks Task Force
Date: April 5, 2006
Subject: **Preliminary Recommendations from the Creeks Task Force**

Recommendation

That the Planning Commission review the recommendations of the Creeks Task Force (CTF) for revisions to the Creeks Ordinance, BMC 17.08, *Restoration and Preservation of Natural Watercourses*. The Commission should provide the City Council its comments and recommendations on the work of the Creeks Task Force, finalizing its review at the Commission's April 26th meeting in order to meet predetermined deadlines established by the City Council.

Background

The Creeks Task Force over the past year has identified numerous issues relating to Berkeley's urban creeks, creek culverts and general watershed management. Over the past three months, the Planning Commission has reviewed information on the process, background materials, the issues the CTF has been addressing, and the progress of the CTF, including information from the consultant team regarding existing conditions and the development of several different options for potential revisions to the Creeks Ordinance. (Please see staff reports to the Planning Commission dated April 13, 2005, December 14, 2005, January 11, 2006, January 25, 2006, February 8, 2006, and March 22, 2006.)

Attached is a draft background paper by Task Force member Jon Streeter, to be approved by the Creeks Task Force in April, which provides information on the history of the Creeks Ordinance, the different view points the Task Force has come to understand during the public review process, and the rationale for the CTF's recommendations (Attachment A). Upon adoption of this paper, a final version will be forwarded to the Planning Commission.

The Creeks Task Force anticipates finalizing its recommendations for revisions to the BMC 17.08 on Monday April 3, 2006. This report outlines the CTF preliminary recommendations as of March 20, 2006 and reflects the recommendations presented at the March 22, 2006 Public Hearing. A minority report signed by five members of the CTF is included in the Commission's communications packet.

The Planning Commission makes its recommendations to the City Council by April 26th in order to forward them to the City Council in May 2006.

The recommendations developed by the Task Force will not include an ordinance amendment; rather, the recommendations will be presented to the City Council for direction on the development of ordinance language. Future ordinance language amendments may require review by the Task Force and/or Planning Commission at a later date. Depending on Council's direction, Land Use Planning staff resources may be required for this effort into the next fiscal year.

In order to meet the Council's deadlines and to clarify necessary action, staff is preparing a report for the April 25th City Council meeting requesting an amendment to Resolution No. 62,711 A-N.S., Establishing a Temporary Creeks Task Force in order to revise the schedule in light of the Creeks Task Force's (CTF) progress in developing recommendations for revisions to the Creeks Ordinance (Attachment B).

Discussion

The Task Force has developed a set of 13 Statements of Agreement, which were created to develop consensus as much as possible prior to discussion of the regulatory recommendations. At least nine of the 15 Task Force members agreed to the statements and regulatory recommendations below.

Statements of Agreement

1. Creeks are a community asset that should be protected and enhanced.
2. Creeks are part of an interconnected and integrated water management system and a holistic analysis is needed.
3. Culverted creeks should be regulated differently than open creeks.
4. Creek culverts should be treated similarly to storm drains for the purposes of safety, access and maintenance.
5. No new creek culverts should be built.
6. Daylighting creek culverts on private property should be voluntary.
7. The Ordinance should include an incentives program to encourage daylighting creek culverts and restoration of existing open creek channels.
8. The City's priority for daylighting is on public property. Daylighting creek culverts should be encouraged and appropriate segments for potential daylighting on public property should be identified by the City.
9. Existing legally non-conforming structures¹ may be repaired, renovated, and maintained within their existing footprint.
10. Rebuilding after any loss² is permissible to the same configuration and footprint as the original structure.
11. For developed lots, 30 feet from the creek centerline is considered an area of interest and additional scrutiny applies within it for development, including potential impacts on creeks.

¹ For the purposes of this discussion, "non-conforming structure" means a structure that does not conform to the regulations in the revised Creeks Ordinance.

² Loss includes damage or demolition due to disaster, neglect, dry rot, and for any other reason. The Zoning Ordinance defines demolition as the removal of 50% of the walls and 50% of the roof of a structure.

12. On vacant lots, structures should not be allowed to be developed within 30 feet from the centerline of an open creek, unless a Variance is obtained.
13. There will be financial costs associated with creek restoration, repair and maintenance of creek culverts, repair and maintenance of storm drains, and overall watershed management and other watershed related issues. The City should look for additional funding for some or all of these costs.

Recommendations on Regulatory Revisions

The Task Force developed preliminary regulatory recommendations prior to the joint public hearing with the Planning Commission in March, to provide the opportunity for feedback prior to finalizing the recommendations in April. Recommendations apply to open creeks, except for the statement on creek culverts. All recommendations for regulations of development along creeks are in addition to any requirements under the Zoning Ordinance or Building Code.

Table 1 (attached) summarizes the CTF preliminary regulatory recommendations and compares them to the requirements under the existing Creeks Ordinance.

Regulating Existing Roofed Structures³

1. Expansions up or down: Modifications to legally non-conforming structures within the 30-foot threshold area, if the expansion is within the existing footprint, but the expansion includes a vertical expansion (excavation or addition of new story) are permitted by right with an environmental analysis of impact on creek (case-by-case).
2. Expansions within the 30-foot setback: Modifications to conforming or legally non-conforming structures that cause an expansion up to 5 feet into the 30-foot threshold area must obtain an Administrative Use Permit (AUP) if other options for expansion are not feasible and if: the encroachment is relatively minor, development would not create an adverse impact on the creek, the relative importance of the buffer based on the creek characteristics is considered, and mitigations are provided if required. Horizontal expansions from 0'-25' from the creek centerline are not permitted, unless a Variance is obtained.
3. Repair/rebuilding: Existing legally non-conforming structures may be repaired, renovated, and maintained subject to all other Zoning regulations, including the requirement for a Use Permit if more than 50% of the structure (dwelling unit) is replaced.
 - i. Rebuilding of structures within the 30-foot threshold area should be encouraged through incentives to be moved farther away from the creek centerline.
 - ii. Mitigations should be considered for rebuilding within the 30-foot threshold area.

New Roofed Structures

4. On either vacant or developed lots, no new structures may be constructed within 30 feet of the centerline of an open creek, unless a Variance is obtained.

³ Note: The Zoning Ordinance requires an Administrative Use Permit for major residential expansions of 500 square feet or more regardless of proximity to creeks. This requirement would not change; however, the more stringent regulations of the Creeks Ordinance would supersede.

Creek Culverts

5. Creek culverts should be treated as storm drains for the purposes of safety, access and maintenance.

The Task Force has heavily debated the merits of how creek culverts should be regulated and under what area in the Berkeley Municipal Code it should fall under. The Task Force is split in its decision on whether or not to move the regulation of creek culverts under regulations for storm drains or whether to leave it under the Creeks Ordinance.

New Construction of Unroofed Structures

1. Decks:
 - a. Decks may not be built within zero to 10 feet of the creek centerline, unless a Variance is obtained.
 - b. Decks may be built within 10 feet to 30 feet of a creek centerline with an environmental analysis of the impact on the creek. (Ministerial Review)
2. Paved areas:
 - a. No impervious paving is permitted within 30 feet of a creek centerline, unless a Variance is obtained.
 - b. Pervious paving is permitted within 30 feet of a creek centerline and construction of paving should follow Best Management Practices guidelines.
3. Bridges shall be constructed with a clear span of minimal width necessary to pass a one in 100 year storm event without damage to the structure, creek channel or creek bed and bank.
4. Fences, play structures and other similar construction should not be regulated under the Creeks Ordinance; however, Best Management Practices should be utilized for construction.⁴

Repair and Maintenance of Legally Non-conforming Unroofed Structures

5. Any legally non-conforming structure (decks, paving, bridges) may be repaired and maintained without further review under the Creeks Ordinance.

Rebuild after Loss or Damage of Legally Non-conforming Unroofed Structures

6. Decks:
 - a. After loss or damage, decks may only be rebuilt within zero to 10 feet of a creek centerline with the approval of an Administrative Use Permit, including an environmental analysis of the impact on the creek.
 - b. After loss or damage, decks may be rebuilt within 10 feet to 30 feet of a creek centerline with an environmental analysis of the impact on the creek. (Ministerial Review)

⁴ This includes dog shelters, compost bins and other similar structures.

7. **Paved Surfaces:** Replacement of impervious paved surfaces within 30 feet of a creek centerline shall be with pervious paving and should follow Best Management Practices guidelines. Replacement with impervious material is not allowed.
8. **Bridges:** After loss or damage, bridges must be constructed with a clear span of minimal width (from rail to rail) necessary to pass a one in 100 year storm event without damage to the structure, creek channel or creek bed and bank. Rebuild of a bridge not meeting this standard is not allowed.

Additional Comment

Although the Task Force did not vote on this issue, there seems to be general agreement that if a structure is required by Building Codes, it should be allowed, even if it is not normally allowed under the Creeks Ordinance. For example if a bridge is needed to meet egress for a residence under the Building Code, but it cannot meet the standard for the revised Creeks Ordinance, it should be allowed in order to comply with the Building Code regulations.

Watershed Management

The Creeks Task Force agreed the following statements related to watershed management, which serve as recommendations outside the realm of revisions to the Creeks Ordinance.

Care of Creeks

1. The Creek Coordinator position within the City of Berkeley should be changed to a Watershed Coordinator and funded. This position's tasks may include providing general assistance to creekside property owners, applying for grants or other funding sources for creek restoration and watershed management issues, and supporting staff with watershed issues and review of creek projects.
2. The City of Berkeley needs a watershed-wide assessment in order to develop a watershed management and action plan to adequately address watershed issues.
3. A Best Management Practices guide and incentives package should be developed to assist property owners and the City with creek-friendly development and activities, to help restore the health of Berkeley's watersheds.

Daylighting

4. A public process for the determining daylighting opportunities should include the identification of stretches of creeks where daylighting could occur.
5. The City should develop a program to understand where creek culverts have negative impacts upstream and downstream and on ecological functions. The daylighting plan should identify if and where daylighting or other creek culvert improvements would improve the situation.