



# Item 10 – Supplemental

April 5, 2006

Item 7b  
Creeks Task Force  
April 17, 2006

## Creeks Task Force

### Staff Report

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

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#### Recommendation

That the Planning Commission review the updated recommendations of the Creeks Task Force (CTF) for revisions to the Creeks Ordinance, BMC 17.08, *Restoration and Preservation of Natural Watercourses* and other non-regulatory recommendations. 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 26<sup>th</sup> meeting in order to meet predetermined deadlines established by the City Council.

#### Discussion

Staff provided the preliminary recommendations to the Commission as part of the April 5<sup>th</sup> agenda packet. The attached recommendations were finalized by the Creeks Task Force on April 3<sup>rd</sup>.

Additionally, the Creeks Task Force believes the background report by Jon Streeter (forwarded to the Commission as Attachment A to the original Item 10 Staff Report, April 5) provides a useful background concerning the legislative history and deliberations of the Creeks Task Force. The CTF members do not all agree with all the content, but nevertheless they endorse it as the basic summary.

A correction has also been made to the staff report to the Creeks Task Force regarding a future staff report to the City Council requesting an extension to the deadline for amendments to the Creeks Ordinance (Attachment B to the original Item 10 Staff Report, April 5). Instead of requesting a deadline of August 1, 2006 for amendments to be adopted, staff will request a deadline of the first City Council meeting in September, recognizing the August Council recess.

## **Creeks Task Force Preliminary Recommendations (April 3, 2006)**

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. The voting record for each statement and recommendation from the April 3<sup>rd</sup> CTF meeting follows each item in parentheses in the order of votes in favor, opposed, abstentions, and members absent.

### ***Statements of Agreement***

#### **General Watershed Issues**

1. Creeks are a community asset that should be protected and enhanced. (13:0:2:0)
2. Creeks are part of an interconnected and integrated water management system and a holistic analysis is needed. (13:0:2:0)
3. 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. (13:0:2:0)

#### **Creek Culverts**

4. Culverted creeks should be regulated differently than open creeks. (13:0:2:0)
5. Creek culverts should be treated similarly to storm drains for the purposes of safety, access and maintenance. (13:0:2:0)
6. No new creek culverts should be built. (13:0:2:0)
7. Daylighting creek culverts on private property should be voluntary. (13:0:2:0)
8. The Ordinance should include an incentives program to encourage daylighting creek culverts and restoration of existing open creek channels. (13:0:2:0)
9. 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. (13:0:2:0)

#### **Existing Structures**

10. Existing legally non-conforming structures<sup>1</sup> may be repaired, renovated, and maintained within their existing footprint. (13:0:2:0)
11. Rebuilding after any loss<sup>2</sup> is permissible to the same configuration and footprint as the original structure. (13:0:2:0)

#### **New Structures**

12. 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. (13:0:2:0)
13. 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. (10:3:2:0)

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

<sup>2</sup> 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.

### ***Recommendations on Regulatory Revisions***

Recommendations apply to open creeks, except for the statements on creek culverts. All recommendations for regulations of development along creeks are in addition to any requirements under the Zoning Ordinance or Building Code. Creek culverts, as discussed in these recommendations, refer to underground creek culverts and not at grade channelized creeks, which are considered open creeks. Table 1 provides a comparison of the recommendations to the existing Creeks Ordinance.

#### **Creek Culverts**

1. Creek culverts, as currently regulated under BMC 17.08, should be treated similarly to storm drains for the purposes of setbacks for safety, access and maintenance. (For information purposes only, this generally means that structure foundations must be set back from the edge of the culvert a distance equal to the depth of the culvert measured to the bottom of the culvert.) (12:0:3:0)
2. A new definition of ‘underground creek culverts’ should be incorporated into the Creeks Ordinance, Berkeley Municipal Code 17.08. The Creeks Ordinance should also incorporate a section specifically for the setback requirement for proposed development (new structures and expansions to existing structures) near creek culverts. Setbacks for underground creek culverts should be handled administratively by engineering staff through the Department of Public Works. (9:4:1:1)

#### **Existing Structures**

##### Regulating Existing Roofed Structures<sup>3</sup> along Open Creeks

3. Expansions up or down: Modifications to legally non-conforming structures within the 30-foot threshold area are permitted by right (if otherwise permitted under the Zoning Ordinance) if the expansion is within the existing footprint and is a vertical expansion (excavation or addition of new story). An environmental analysis of the impact on creek is required to show no negative impact on the creek. (This is a case-by-case review for such projects.) (11:3:1:0)
4. 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 (i.e., no closer than 25 feet from the creek centerline) are allowed with an Administrative Use Permit (AUP), which includes an environmental analysis. Such expansions are only allowed if other options for expansion are not feasible, if the encroachment is relatively minor, if the proposed development would not create an adverse impact on the creek, the relative importance of the buffer based on the creek characteristics is considered, and

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<sup>3</sup> 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.

mitigations commensurate with the impacts are included. Horizontal expansions from 0'-25' from the creek centerline are not permitted, unless a Variance is obtained. (11:3:1:0)

5. 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. (11:3:1:0)
  - 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.

#### Repair and Maintenance of Legally Non-conforming Unroofed Structures and Paving along Open Creeks

6. Any legally non-conforming unroofed structure and paving may be repaired and maintained without further review under the Creeks Ordinance. (12:0:3:0)

#### Rebuild after Loss or Damage of Legally Non-conforming Unroofed Structures and Paving along Open Creeks

7. Decks: (12:0:3:0)
  - 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)
8. Paved Surfaces: (12:0:3:0)
  - a. No impervious paving is permitted within 30 feet of a creek centerline, unless a Variance is obtained. Replacement with impervious material is not allowed.
  - b. Only paving for footpaths and bridges is allowed within 10 feet of a creek centerline. Pervious paving is permitted within 10 – 30 feet of a creek centerline. Construction of paving should follow Best Management Practices guidelines.
9. Bridges: Bridges shall be constructed with a clear span necessary to pass a one in 100 year storm event. Bridges shall be of the minimum width necessary for the proposed use. All rebuilt bridges must meet this standard. (12:0:3:0)

### **New Structures**

#### New Roofed Structures along Open Creeks

10. 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. (11:3:1:0)

### New Construction of Unroofed Structures and Paving along Open Creeks

11. Decks: (12:0:3:0)
  - 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)
12. Paved areas: (12:0:3:0)
  - a. No impervious paving is permitted within 30 feet of a creek centerline, unless a Variance is obtained.
  - b. Only paving for footpaths and bridges is allowed within 10 feet of a creek centerline. Pervious paving is permitted within 10 – 30 feet of a creek centerline. Construction of paving should follow Best Management Practices guidelines.
13. Bridges shall be constructed with a clear span necessary to pass a one in 100 year storm event. Bridges shall be of the minimum width necessary for the proposed use. (12:0:3:0)
14. Fences, play structures and other similar construction should not be regulated under the Creeks Ordinance; however, Best Management Practices should be utilized for construction.<sup>4</sup> (12:0:3:0)

#### 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 the Building Code, 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.

### ***Non-Regulatory Recommendations***

#### **General Watershed Issues**

##### 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. (12:0:3:0)

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<sup>4</sup> This includes dog shelters, compost bins and other similar structures.

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. (12:0:3:0)
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. (12:0:3:0)
4. The City should develop a program to understand where underground creek culverts have negative impacts upstream and downstream. (12:2:0:1)

*Daylighting*

5. The City shall develop a process to encourage daylighting on private property including a set of minimum criteria consistent with Best Management Practices and incentives for daylighting to be made available to private property owners should they be interested. (14:0:0:1)

**Table 1. Creeks Task Force Recommendations for Revisions to the Creeks Ordinance<sup>1</sup>**

	Setback from Creek Centerline	Repair & Maintenance	Rebuild / Replace <sup>2</sup>	New Structure	Building Expansions	
					Vertical	Horizontal
<b>Open Creeks</b>						
<b>Roofed Buildings</b>						
Existing Ordinance	30'	no restrictions	no restrictions <sup>3</sup>	Not allowed (Variance)	Not allowed (Variance)	Not allowed (Variance)
<b>Recommendations</b>	30'	no restrictions	no restrictions <sup>3</sup>	Not allowed (Variance)	requires environmental analysis (ministerial review)	0'-25' not allowed (Variance); between 25' - 30' allowed with AUP (requires environmental analysis);
<b>Decks</b>						
Existing Ordinance	no restrictions	no restrictions	no restrictions	no restrictions	NA	NA
<b>Recommendations</b>	0' - 10'	no restrictions	AUP (requires environmental analysis) requires environmental analysis (ministerial review)	Not allowed (Variance)	NA	NA
	10' - 30'	no restrictions	requires environmental analysis (ministerial review)	requires environmental analysis (ministerial review)	NA	NA
<b>Paved Areas</b>						
Existing Ordinance	no restrictions <sup>4</sup>	no restrictions	no restrictions	no restrictions	NA	NA
<b>Impervious</b>	30'	no restrictions	Not allowed (Variance)	Not allowed (Variance)	NA	NA
<b>Pervious</b>	0' - 10'	no restrictions	only footpaths and bridges allowed		NA	NA
	10' - 30'	no restrictions	no restrictions	no restrictions	NA	NA
<b>Bridges</b>						
Existing Ordinance	no restrictions <sup>4</sup>	no restrictions	no restrictions	no restrictions <sup>4</sup>	NA	NA
<b>Recommendations</b>	no restrictions <sup>4</sup>	no restrictions	Must meet new standard	Must meet new standard	NA	NA
<b>Fences, play structures, and other similar structures</b>						
Existing Ordinance	no restrictions	no restrictions	no restrictions	no restrictions	NA	NA
<b>Recommendations</b>	no restrictions	no restrictions	no restrictions	no restrictions	NA	NA
<b>Underground Creek Culverts</b>						
The CTF recommends underground creek culverts remain regulated under the Creeks Ordinance, BMC 17.08; however, they should be treated similarly to storm drains for the purposes of setbacks for safety, access and maintenance. Furthermore, setbacks for underground creek culverts should be handled administratively by engineering staff in Public Works. The recommendations for setbacks above apply only to open creeks.						

<sup>1</sup> These regulatory recommendations apply to open creeks under a revised Creeks Ordinance. **ALL OTHER ZONING AND BUILDING CODE REQUIREMENTS APPLY.**

<sup>2</sup> Rebuild under the existing ordinance specifically applies to rebuilding after loss by a disaster, such as a fire or earthquake. The CTF recommends the rebuild pertain to any loss, not just due to natural disasters.

<sup>3</sup> The Zoning Ordinance generally requires a Use Permit in the case of a demolition and rebuild of a new dwelling unit. The CTF has recommended that no additional regulations be required to rebuild to the same size, configuration and footprint.

<sup>4</sup> The Creeks Ordinance prevents riprapping and other hardened material from being placed within the creek.

**Repair & Maintenance:** general maintenance and minor repairs (less than 50% removal of structure) for legally non-conforming structures

**Rebuild/Replace:** Triggered when 50% of the walls and 50% of the roof of a building are removed (demolition); for unroofed structure - threshold is to be determined by CTF on 4/3. Potentially the threshold may be 50% removal of unroofed structure, which would require new regulations to be met. Requirements are for legally non-conforming structures.

**Vertical Expansion:** expanding a building up or down, i.e. adding a story or excavating for a lower floor or basement.

**Horizontal Expansion:** adding to a building horizontally, which results in expanding the existing building closer to the creek.

**AUP:** Administrative Use Permit