



Office of the City Manager

**Item 8**  
Creeks Task Force  
April 17, 2006

ACTION CALENDAR  
April 25, 2006

To: Honorable Mayor and  
Members of the City Council

From: Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Creeks Task Force – Revised Schedule

RECOMMENDATION

Adopt a Resolution amending Resolution No. 62,711A–N.S. revising the schedule for the Creeks Task Force and for suspension of the creek culvert provisions in the Creeks Ordinance (BMC Chapter 17.08).

FISCAL IMPACTS OF RECOMMENDATION

Creeks Task Force work utilizes approximately 1 FTE. A budget of \$100,000 for consultant support was approved by the City Council on October 18, 2005. Approximately half of the budget has been spent on a field creek assessment program. Extension of the time frames for the Creeks Ordinance revision process will extend the cost of staff time devoted to this project.

CURRENT SITUATION AND ITS EFFECTS

The November 9, 2004 resolution establishing the Creeks Task Force (CTF) called for recommendations on revisions to the Creeks Ordinance (BMC 17.08 – Preservation and Restoration of the Natural Watercourses) to be transmitted to the City Council by May 2006 (Attachment 3). It further states that should those recommendations not be forthcoming, “the current culvert protections in the Creek Ordinance will be indefinitely suspended on May 1, 2006 until such time as a new ordinance is adopted”. As described in this staff report, the CTF has developed policy recommendations that, as of this writing, will be finalized and forwarded to the Planning Commission in April, and then to the City Council in May. The recommendations developed by the CTF are not in the form of ordinance amendments; rather, they provide policy language, which staff can use to develop ordinance amendments. Due to this progress, staff has not yet prepared the necessary ordinance for removing culverts from the existing Creeks Ordinance and requests Council extend the deadline until its first meeting in September (September 19, 2006). This additional time is necessary to allow time for the Council to review and comment on the policy direction recommended by the CTF and allow staff time to prepare an ordinance consistent with Council direction. Depending on the Council’s review and direction, a draft ordinance could be prepared and available for adoption by June or July.

A resolution is attached to revise the deadline of May 1, 2006 for removal of creek culverts from the existing regulations and to approve the schedule described herein. The resolution states that

an ordinance shall be prepared to suspend creek culvert protections for consideration by the Council at its first meeting in September should a draft revised Creeks Ordinance not be available for consideration on or before that date.

The CTF has invested over a year in this process and members have expressed an interest in reviewing the drafted language prior to its final review and approval by the Council. The CTF has also developed recommendations on watershed and creek issues that do not directly relate to the Creeks Ordinance revisions. It is anticipated that the Task Force will want to complete the remaining consultant tasks as funds remain for additional activities. When staff returns to the City Council in May with recommendations and a final report from the CTF, we will also recommend a work program for the CTF and a “sunset” date for its disbanding, consistent with the original resolution establishing a “temporary” Task Force.

### BACKGROUND

Per the City Council directive on November 9, 2004, a temporary Creeks Task Force was established to review the Creeks Ordinance. Over the past year, the CTF identified numerous issues relating to Berkeley’s urban creeks, creek culverts and general watershed management. Task Force members have heard from and learned from experts in creek management, other regulatory bodies, the public and each other regarding the various issues relating to creek regulations and the interrelationship with creeks, the urban environment and private property. More recently the CTF has received analysis of Berkeley’s creeks from a consultant team hired by the City to evaluate existing creek conditions.

The Creeks Task held the first of two public hearings on February 15<sup>th</sup>, where four preliminary options for revisions to the Creeks Ordinance were mailed to property owners identified by the City as affected by BMC 17.08 and other interested parties, including Council members. The options were posted on the CTF web page for review and comment. Over 200 members of the public attended the meeting with 60 speakers and numerous written comments.

Following the first public hearing, the CTF developed a set of 13 Statements of Agreement, which were created to develop as much consensus as possible prior to discussion of the regulatory recommendations. The second hearing was held jointly with the Planning Commission on March 22, 2006, with over 200 people in attendance and 49 speakers. The Statements of Agreement and preliminary recommendations for regulatory revisions to the Creeks Ordinance were presented at the hearing in order to provide the public an additional opportunity to comment before the CTF finalizes its recommendations. This hearing also afforded the Planning Commission an opportunity to hear from the public directly, prior to its review of the CTF recommendations.

Regulatory recommendations for development near open creeks and regulations for underground culverted creeks along with the Statements of Agreement were approved by the Creeks Task Force on April 3<sup>rd</sup>, attached. Additional clarifications to the recommendations are anticipated on April 17<sup>th</sup>.

The Creeks Task Force has forwarded its recommendations to the Planning Commissions, with clarifications forthcoming. The Council required all recommendations from the CTF first go to the Planning Commission prior to the Council's review. It is anticipated that the Planning Commission will make its recommendations to the City Council at its May 10<sup>th</sup> meeting in order to forward them to the City Council in May 2006.

#### RATIONALE FOR RECOMMENDATION

The CTF has made good progress on recommendations for revisions to the Creeks Ordinance and will have those to the Council within the deadline established in the November 2004 resolution establishing the CTF. However, the CTF will not have met the technical deadline of having a revised ordinance before the Council by May. Staff believes it is essential for the Council to review CTF policy recommendations and provide direction to staff prior to staff drafting an ordinance. In order to go through these steps and have a draft ordinance ready in May, the CTF would have needed to complete its work several months ago, and that would have established very harsh deadlines on the CTF's work.

Because the CTF has made diligent progress towards achieving the Council's intent, and in order to allow time for Council review and drafting of a revised creeks ordinance based on Council policy direction, staff believes extending the deadline to the Council's first meeting in September is appropriate. Depending on how quickly the Council acts once it has the Task Force recommendations, a draft-revised ordinance could be before the Council by June or July.

#### ALTERNATIVE ACTIONS CONSIDERED

An ordinance could be prepared to remove regulations pertaining to creek culverts from the Creeks Ordinance and presented for action at the next Council meeting. While the ordinance will not be effective by May 1, Council adoption of the ordinance will generally meet the intent of the Council's November 2004 resolution.

#### CONTACT PERSON

Wendy Cosin, Deputy Planning Director, 981-7402

#### Attachments:

- 1: Resolution
- 2: Recommendations from CTF (April 3, 2006)
- 3: Resolution No. 62,711 A-N.S., Establishing a Temporary Creeks Task Force

RESOLUTION NO. ##,###-N.S.

AMENDING RESOLUTION NO. 62,711A–N.S. REVISING THE SCHEDULE FOR THE  
CREEKS TASK FORCE

WHEREAS, on November 9, 2004 the City Council established a temporary Creeks Task Force establishing a scope of work, deadlines and a process for submitting recommendations for revisions to BMC 17.08 Preservation and Restoration of Natural Watercourses (the Creeks Ordinance); and

WHEREAS, the original resolution stated that the current creek culverts protections would be indefinitely suspended on May 1, 2006 in the event that recommendations from the Creeks Task Force were not forthcoming; and

WHEREAS, the Creeks Task Force has made good progress in developing recommendations for revisions to the Creeks Ordinance and will forward those recommendations to the Planning Commission for review in April 2006; and

WHEREAS, policy recommendations will be submitted to the City Council in May 2006.

NOW THEREFORE, BE IT RESOLVED that upon receiving recommendations for revisions to the Creeks Ordinance (BMC Chapter 17.08) from the temporary Creeks Task Force and the Planning Commission in May 2006, the City Council will provide further direction to staff to develop amendments to that ordinance; and

BE IT FURTHER RESOLVED that Resolution No. 62,711A–N.S., Establishing a Temporary Creeks Task Force, is amended to ask the City Manager to return on September 19, 2006 with an ordinance suspending the creek culvert protections of the existing Creeks ordinance (BMC 17.08), should a more comprehensive creeks revision ordinance not be before the Council on or before that date.