

June 29, 2005

Department of Public Works
Office of the Director

Planning and Development
Office of the Director

SUBJECT: Procedure for Processing Permit Applications Where a Creek May Be Present on the Property

PURPOSE

The purpose of this Procedure is to establish a process to implement the Creeks Ordinance, Berkeley Municipal Code Chapter 17.08, by clarifying the dimensions of creeks protected by the Ordinance, and by requiring certain documentation from property owners where City records indicate that development on the property might be subject to the restrictions of this Chapter. The standards and procedures set forth in this Procedure may also be used to make determinations where a property owner has submitted no permit application, but where City records indicate development on that property might be subject to the restrictions of the Chapter. Additionally, from time to time, staff may initiate a review of protected creek locations and status using the criteria set forth in Section 6 below that can modify how a property is affected by the Ordinance.

POLICY

The City of Berkeley has adopted the Creeks Ordinance, Chapter 17.08. The Creeks Ordinance was intended to establish a policy on: (1) the issuance of permits for culverting open creeks; (2) the rehabilitation and restoration of natural waterways; and (3) the management of watersheds. With regard to new construction, the Creeks Ordinance requires a property owner to maintain a 30-foot setback from the centerline of a creek unless the Zoning Adjustments Board can make certain findings.

To assist the staff and property owners in identifying and enforcing the Creeks Ordinance with regard to new construction, the Planning and Public Works Departments have adopted the following Procedure. Accordingly, when staff receives a permit application for construction on any parcel that has been identified by the City as potentially subject to the setback requirements, the Procedure described below must be followed:

PROCEDURE

As used in this Procedure, the term “parcel” refers to one or more parcels that constitute the applicant’s property on which development is proposed, and the term “applicant” refers to the property owner or his or her authorized representative. In some situations, the procedures set forth below require a creek identification fee (as determined and updated by City Council from time to time) to be paid more than once in the course of a single investigation..

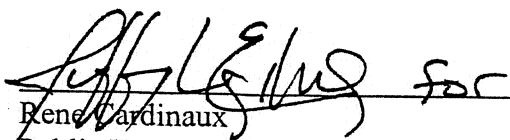
1. Planning staff will review whether any aspects of the proposed construction would potentially encroach into the creek setback as documented online at the time of the application review, and considering relevant additional materials submitted by the applicant.
 - a. Where the preliminary evaluation documents that no potential encroachment by any aspect of the proposed construction can be expected, that particular permit application may be found to meet the requirements of the Creeks Ordinance while the parcel will remain identified as potentially subject to setback requirements for any subsequent construction. Aspects of proposed construction considered for potential encroachment would include temporary access required during the time of construction.
 - b. When preliminary evaluation indicates potential encroachment by any aspect of the proposed construction, the extent of the creek setback is identified in Sections 2 through 6 below.
2. For projects that appear to be more than forty feet from the creek centerline as currently identified by City records and where the creek affecting the parcel is open and not culverted, require the applicant to pay a creek identification fee for City Engineer staff to conduct a site visit and document an estimated location of the creek setback. Staff will plot the estimated creek setback on map layers that include approximate parcel boundaries and an orthorectified aerial photograph. This form of documentation is intended to be adequate for projects that appear to be more than forty feet from creek centerline as currently identified by City records. Submission of a topographic survey as required in Section 3 may also satisfy this requirement. Site conditions may require certain projects to also follow Section 3 even if the project appears to be more than forty feet from a protected creek centerline as currently identified by City records.
3. For projects forty feet or less from the creek centerline as currently identified by City records and where the creek affecting the parcel is open and not culverted, applicants must submit a topographic map of their property and any adjoining property that is produced by either a California licensed land surveyor or a qualified California registered civil engineer. This topographic map must adequately identify drainage patterns to locate centerlines of channels, swales, or depressions within thirty feet of the applicant's parcel. This map must also show relevant parcel boundaries, relevant portions of existing structure footprints, and any features from which proposed development are referenced. City Engineer staff will indicate the required creek setback on this detailed topographic map. If not assessed for Section 2, the applicant must pay a creek identification fee for City Engineer staff to evaluate this map and indicate the required creek setback on it.
4. For projects where the creek affecting the parcel is culverted, require the applicant to pay a creek identification fee for City Engineer staff to conduct a site visit and document an estimated location of the culverted creek and the required creek setback. However, if site conditions are such that the creek identification fee does not reasonably cover the expense for City Engineer staff to document the location of the culverted creek, the property owner shall be responsible for supplying adequate information to the City in order to identify the location of the culverted creek.
5. Where the applicant disputes the location of the creek setback as identified by City Engineer staff pursuant to Section 3, require that applicant to pay a creek identification

fee to have City Engineer staff conduct a site visit to determine the creek setbacks required under the Ordinance.

6. In determining how the parcel is subject to the Ordinance, the City Engineer shall use the following criteria regarding BMC 17.08.030.A creek definitions:
 - a. Watersheds are recognized as providing "intermittent natural sources" for watercourses to source a protected creek under the Ordinance where surface drainage covers at least one-third acre (14,520 square feet) as bounded by topographic ridges or a publicly maintained storm drain system that diverts flow into another drainage area. The path of an unprotected watercourse pursuant to the Ordinance shall continue to be specified in City records. This portion of unprotected watercourse shall contribute to the length of "continuous channel, swale, or depression" of any continuation of protected upstream or downstream watercourses as defined in the Ordinance. If development alters the path of the unprotected watercourse, the modified path shall be specified in City records so as not to reduce the length of the protected watercourses.
 - b. Swales with sections sloping 10 percent or more and running continuously for more than 328 feet are treated as meeting the Ordinance definition of "continuous swale." By example, a slope more than 10 percent drops more than one foot over a 10-foot horizontal run.
 - c. Swales with slope less than 10 percent and running continuously for more than 1312 feet are treated as meeting the Ordinance definition of a "continuous swale." By example, a slope less than 10 percent drops less than ten feet over a 100-foot horizontal run

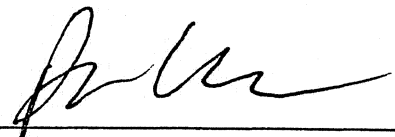
After each investigation or review is complete, the City Engineer shall record findings of the review including the setback extent and any adjustments in City records.

Approved by:



Rene Cardinaux
Public Works Director

Approved by:



Dan Marks
Planning and Development Director