



Planning Commission

ACTION CALENDAR

November 14, 2006

To: Honorable Mayor and
Members of the City Council

From: Planning Commission

Submitted by: Jordan Harrison, Secretary, Planning Commission

Subject: Amendments To The Creeks Ordinance

RECOMMENDATION

The Planning Commission supports the revised Creeks Ordinance (Berkeley Municipal Code Chapter 17.08) as proposed by staff, with Alternative 2, requiring a Use Permit in Section 17.08.050.D, with amended wording regarding definitions and rebuilding, and with concerns regarding the cost of the culvert requirements on homeowners.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

The Planning Commission held a public hearing on the Creeks Ordinance amendments on October 11, 2006 and also discussed the amendments at two other meetings. On October 25, 2006, the Commission passed the following motion on a 5-0-4 (abstain) vote.

M/S/C to convey to the City Council that the Planning Commission supports the Creeks Ordinance as revised including the comments and recommended modifications adopted tonight (Poschman /Ferrazares). Ayes: Ferrazares, Gurley, Poschman, Stoloff, Tregub. Noes: None. Abstain: Burke, Perry, St. John, Wengraf. Absent: None.

The two major issues discussed were whether a Use Permit or a Variance should be required for development within the open creek setback and costs for property owners related to construction near culverts. Each is described below.

Use Permit vs Variance: As is described in detail in the staff report from the City Manager, there are two options for expansion into the Creeks Ordinance setback—a Use Permit or a Variance. Proposed modifications to Berkeley Municipal Code (BMC) Section 17.08.050.D regulates development of a vacant lot within 30 feet of an open creek centerline or expansion of an existing structure within the first 25 feet of the centerline. For a Use Permit to be approved by the Zoning Adjustments Board (ZAB), the section requires the following findings to be made:

1. The standard “non-detriment” finding,
2. An environmental analysis of storm water runoff, water quality, riparian habitat, and bank stability to show that the project would not adversely affect the creek, and
3. A determination that alternatives have been considered, including encroachments into yards, and have been determined not to be either physically or economically feasible.

The Planning Commission recommended the Use Permit option (Alternative 2) by a 5–4 vote. The Commission also recommended deleting the third finding, which requires alternatives to be considered and determined not feasible. In their discussion, they stated that a Use Permit is more appropriate because it is nearly impossible for a Variance to be approved. Similarly, they indicated that a determination of infeasibility of alternatives might be impossible to satisfy. The motion follows.

M/S/C to recommend the City Council adopt the Use Permit option (Alternative Two) and delete finding 17.08.050.D (3) (St. John/Perry). Ayes: Gurley, Perry, St. John, Stoloff, Wengraf. Noes: Burke, Ferrazares, Poschman, Tregub. Abstain: None. Absent: None.

Culvert Costs/Homeowner Responsibilities: As indicated in the following motion, the Planning Commission was very concerned about the cost that a homeowner would be required to bear if they wanted to build near a culvert.

M/S/C to convey to the City Council that the Planning Commission is deeply concerned with the possible high costs to homeowners in terms of culvert requirements and recommend the City Council research carefully and have solid information on actual costs before approving this part of the Creeks Ordinance (17.08.045) and request the potential costs be referenced in the Council report (Poschman/Wengraf). Ayes: Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None. Abstain: Burke. Absent: None.

Proposed Section 17.08.045 provides the standards for allowing development near culverted creeks. In particular, if development is proposed within 25 feet of the centerline of a culverted creek and the location of the creek culvert is not known, the ordinance requires the property owner to provide an investigation showing the depth and size of the culvert. The City does not have information about the location of most creek culverts on private property. To determine the location and depth, a consultant would either need to get access from the end of the culvert or would need to dig holes on the property to locate the culvert. The City Engineer estimated that such a report could cost \$2,000 - \$5,000.

If it was determined that development was proposed within 15 feet of the creek culvert centerline, a structural analysis report would be required from a structural engineer that demonstrates culvert stability, access to the culvert would not be impeded by the development, and the development would not impede water quality. The City Engineer estimated that this type of report could cost \$2,500 - \$8,000, however, it should be noted that both reports would not

necessarily be required for all projects. If the property owner knows that the creek culvert is within 15 feet of the mapped location of the culvert, the structural analysis report would include the location and depth.

The Commission also suggested the following wording changes in the Creeks Ordinance. Each change is noted in the attached revised ordinance.

M/S/C to recommend the Council incorporate the numeric standards for defining a creek used in the Administrative Regulations into the creek definition (Perry /St. John). Ayes: Gurley, Perry, Poschman, St. John, Wengraf. Noes: Burke. Abstain: Ferrazares, Stoloff Tregub. Absent: None.

Staff does not support this change. The Administrative Regulations state that the City Engineer should use the following criteria in determining whether a swale is a creek:

- Swales with sections sloping 10% or more and running continuously for more than 328 feet are treated as meeting the Ordinance definition of ‘continuous swale’.
- Swales with sections sloping less than 10% and running continuously for more than 1312 feet are treated as meeting the Ordinance definition of ‘continuous swale’.

The Creeks Task Force (CTF) considered adding this information from the Administrative Regulations, however, decided against it because the regulations provide too great a level of detail for an ordinance and are stated to be criteria to be used, not a definitive definition. The purpose of the Administrative Regulations is to provide information and guidance, but if it is determined that they need to be changed or adjusted, it would be cumbersome to do so within the ordinance. The Administrative Regulations are attached to the City Manager’s report.

M/S/C to recommend to the Council ‘rebuilding’ be changed to ‘rebuilding of the structure and the resulting structure’ in 17.08.058(2-5) (Poschman /St. John). Ayes: Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None. Abstain: Burke. Absent: None.

Proposed BMC Section 17.08.058, *Replacement of structure or any portion thereof where destroyed for reasons other than involuntary causes*, is a new section of the Creeks Ordinance that requires a Use Permit to be approved when a structure is destroyed by more than 50% by a cause that is not disaster-related. This section is consistent with a similar Zoning Ordinance section. The proposed section requires certain findings to be made, as part of the Use Permit to assure that neither the construction process nor the completed structure would adversely affect the creek. The language proposed by staff simply says ‘Rebuilding the structure would not’. The Planning Commission suggested that the wording be ‘Rebuilding of the structure and the resulting structure would not’ to be clear that both are included. Staff does not believe the extra words are necessary.

BACKGROUND

The Planning Commission suggested that a Use Permit, rather than a Variance, be required for development near open creeks as part of its policy recommendations to the Council last spring. (See previously distributed May 30, 2006 City Manager's Report to the City Council.)

RATIONALE FOR RECOMMENDATION

Provided above

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

See companion report

CONTACT PERSON

David Stoloff, Acting Chair, Planning Commission, 582-2278
Wendy Cosin, Deputy Planning Director, 981-7402

Attachments

- 1: Draft BMC Chapter 17.08 Ordinance Amendments: Planning Commission recommendations
- 2: Planning Commission minutes: September 27, 2006, October 11, 2006, and draft minutes of October 25, 2006.

1

2 Note: The differences between the Planning Commission recommendation and the
3 Creeks Task Force/Staff recommendation are highlighted.

4

5 **PLANNING COMMISSION APPROVED**

6 **AMENDMENTS TO CHAPTER 17.08**

7 **PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES**

8 **Section 17.08.010 Purpose.**

9 The purpose of this chapter is to ~~regulate~~ ~~establish a policy~~ on: (1) building over or
10 near the issuance of permits for culverting open culverted creeks; (2) building near open
11 creeks; (3) the rehabilitation and restoration of natural waterways; and (4 ~~3~~) the
12 management of watersheds.

13 **Section 17.08.020 Findings.**

14 The City Council does find and declare that:

15 A. Public health and safety requires creek and watershed management and planning
16 in order to control flood and erosion damages. ~~Maintenance of natural channels,~~
17 ~~including removal of debris and erosion control.~~

18 B. A dependence on structural solutions for reduction of property damage such as
19 creek channelization, culverting and channel riprapping, often has been found to result in
20 the loss of property from unanticipated problems associated with their design.
21 Channelization can result in changes in stream meander, bank erosion, channel filling and
22 channel degradation, causing damages by the undercutting of bridges, homes and other
23 structures or by the over-the-bank flows caused by channel filling. Culverts can result in
24 upstream and downstream bank erosion problems and, because debris removal from them
25 is difficult, they can back up flows and cause floods. Undersized culverts and culverts
26 installed at the wrong slope can also cause flooding and ~~serious~~ bank erosion.

27 C. The use of riprap or other debris to stabilize banks can result in the erosion of
28 streambanks up and downstream of the riprap. Riprap and other debris may decrease
29 channel capacity contributing to potential flooding. ~~damages.~~

30 D. Streams managed as close to a natural system as possible without interference
31 from structures, maintain a geomorphic equilibrium or watercourse best suited for
32 carrying stream flows, and carrying and depositing suspended bed loads.

33 E. Natural streams and their associated riparian habitat have great ecological value,
34 and should be protected and restored because they provide ~~the most~~ environmental
35 amenities to the community and riparian owners.

36

1 F. Streams and their riparian environment should be held as an important public asset
2 in an increasingly endangered environment that provides an unusual urban ecological
3 habitat with recreational and aesthetic value. The desired condition of creeks within the
4 City of Berkeley includes natural stream banks and a corridor of riparian vegetation.

5 G. Culverting or channelization of existing open creeks should only not occur unless
6 if there is strong evidence that there is no other means to prevent the erosion of supports,
7 foundations or other structures an extreme hazard to public health or safety and no other
8 alternatives can prevent the hazard.

9 H. It is in the interest of the community City of Berkeley to encourage the removal of
10 culverts and channels, prevent unnecessary channel riprapping, and to restore natural
11 watercourses whenever safely possible.

12 I. It is in the interest of the City of Berkeley to develop incentive programs and stream
13 management resources designed to assist property owners in protecting creek corridors.

14 J. Construction over a culverted creek is discouraged but if performed must protect
15 building safety, access to the culvert and the environmental quality of the water flowing
16 through the culvert.

17 K. These regulations should protect and restore natural creeks functions in an urban
18 environment while respecting the interests of property owners.

19 L. In recognition of private property, daylighting of culverted creeks is entirely
20 voluntarily.

21 M. The California Environmental Quality Act applies to actions taken under this chapter.

22 Section 17.08.030 Definitions.

23 The following definitions shall be applicable in the construction and application of this
24 chapter.

25 A. "Creek" means a watercourse ~~which~~ (1) that carries water from either a
26 permanent or natural source, either intermittently or continuously, ~~and which runs~~ in a
27 defined channel, ~~or~~ continuous swale or depression, or in a culvert that was placed in the
28 general historic location thereof; and (2) the water either which later merges with a larger
29 watercourse or body of water, or is diverted into an engineered structure that does not
30 follow the general historic course of a creek. The definition includes a channel, swale,
31 depression, or watercourse, whether or not culverted. A "creek" does not include The
32 definition excludes any part of an engineered system structure which was developed by a
33 public agency for collection of storm or flood waters (e.g. a storm drainpipe), provided
34 however that such part that does not follow the original general historic course of the a
35 creek. The City of Berkeley may maintain maps and other reliable records, reflecting
36 such creeks for the guidance of the public. The word "creek" will be synonymous with
37 "natural watercourse" as used in the chapter.

- 38 1. A "permanent or natural source" includes a spring, artesian well, lake, estuary,
39 or a rainfall drainage area that covers at least one-third acre (14,520 square
40 feet).
- 41 2. The word "creek" is used synonymously with the phrase "natural
42 watercourse" in this chapter.
- 43 3. The portion of a creek that is visible above the ground is referred to
44 throughout this chapter as an "open creek."

- 1 4. The portion of a creek below ground and contained in an engineered structure
2 or culvert is referred to throughout this chapter as a “culverted creek.”
3 5. A “swale” is a shallow trough-like depression that carries waters mainly
4 during rainfalls and snowmelts.
5 6. Swales with sections sloping 10% or more and running continuously for more
6 than 328 feet are treated as meeting the Ordinance definition of “continuous
7 swale”. Swales with sections sloping less than 10% and running continuously
8 for more than 1312 feet are treated as meeting the Ordinance definition of
9 “continuous swale”.
10 7. The City of Berkeley may maintain maps and other reliable records, reflecting
11 such creeks for the guidance of the public.
12 B. "Culverting" means the placement or construction of a pipe or box shaped conduit
13 in a creek bed ~~for the purpose of conducting~~ allowing water to be conducted.
14 C. "Rehabilitation" means the improvement of a natural watercourse by the use of
15 erosion control technology, revegetation, vegetation management and/or selective
16 channel clearing with the objective to conserve and manage a natural waterway and
17 riparian system.
18 D. ~~"Restoration Daylighting"~~ "Restoration Daylighting" means the unearthing of a culverted ~~stream creek~~ or
19 natural watercourse and the design of a new open channel to re-create the original stream
20 channel and environment.
21 ~~—E.— "Reconstruction" means the partial re-creation of the original natural watercourse~~
22 ~~by allowing a portion of a culverted stream to flow to the surface and flow through a~~
23 ~~landscaped riparian environment.~~
24 ~~FE.~~ "Riprap" means cobbles, rock, concrete pieces or other non-vegetative debris
25 used to protect streambanks against erosion. “Riprapping” means the placement of riprap
26 on streambanks.
27 ~~GE.~~ "Cribwalls" means a rectangular framework of logs which is filled with soil
28 and/or rocks and planted with cuttings.
29 ~~HG.~~ "Brush matting" means the use of dead or live cuttings from riparian vegetation
30 stacked and secured against streambanks to check erosion and revegetate banks.
31 ~~IH.~~ "Fascines" (sometimes called, "wattles") means bundles of cuttings from riparian
32 plants used to revegetate banks.
33 ~~JL.~~ "Plant cuttings" means sticks cut from riparian shrub and tree branches in their
34 dormant state such as willows and alder, which are buried about halfway in the ground
35 and take root.
36 ~~KJ.~~ "Brush layering" means the use of live branches or cuttings which are inserted
37 into the streambanks perpendicular to the slope so that the rooting occurs back into the
38 slope.
39 ~~LK.~~ "Retention basins" means open spaces which hold overbank stream flows and
40 can be used as parks and other open space uses in drier seasons.
41 ~~ML.~~ "Gabions" means wire baskets filled with rocks and soil and planted with seeds,
42 cuttings and rooted plants. They can be used to rebuild streambanks.
43 ~~NM.~~ “Administrative Use Permit” means a permit issued in accordance with the
44 procedures, including appeals, described in Chapter 23B.28 after making the findings
45 required by this Chapter.

1 ON. “Use Permit” means a permit issued in accordance with the procedures,
2 including appeals, described in Chapter 23B.32 after making the findings required by this
3 Chapter.

4 PO. “Variance” means a permit issued in accordance with the procedures, including
5 appeals, described in, and after making the findings required by, Chapter 23B.44.

6 QP. “Creek Permit” means a permit issued by the City Engineer in accordance with
7 the procedures described in this Chapter.

8 RQ. “Creek Culvert Permit” means a permit issued by the City Engineer in
9 accordance with the procedures described in this Chapter.

10
11 The City Manager may issue administrative guidelines and procedures to implement this
12 chapter, which may further explain these definitions.

13 **Section 17.08.040 Obstructing or interfering with watercourses prohibited.**

14 It is unlawful for any person, organization, institution, corporation or the City of
15 Berkeley to fill, or cause to be filled, to obliterate or cause to be obliterated, to obstruct or
16 cause to be obstructed, to construct a building bridging a creek or cause such building to
17 be constructed, or in any manner to interfere with or cause to be interfered with, any
18 natural watercourse in Berkeley which carries off at any time of the year any storm water,
19 or any surface waters, which have been precipitated by rains. This chapter does not apply
20 to the repair, replacement or construction of structures, or to conditions existing in creeks,
21 on or before, January 4, 1990~~the effective date of this chapter.~~

22
23 **Section 17.08.045 Construction near Creek Culverts**

24
25 A. Except as provided in subsection B, any construction within 25 feet of the
26 centerline of a culverted creek, as the location of such creek is depicted on the
27 City of Berkeley map, that either expands the mass or footprint of an existing
28 building, or builds a new structure whether or not subject to the securing of a
29 building permit, shall comply with the requirements of this section. This
30 section authorizes administrative review and regulation of development of
31 structures near creek culverts for the purpose of determining appropriate
32 setbacks that promote safety and allow access for maintenance and repair.
33 Appropriate setbacks generally include those in which the structure foundations
34 are set back from the edge of the culvert a distance equal to the depth of the
35 culvert.

36
37 B. The following structures shall be exempt from the requirements of this section:

- 38
39 1. Any fence, arbor, trellis, pergola, gazebo, play structure or other
40 similar unenclosed accessory structure.
41 2. Retaining walls less than three feet in height.
42 3. Flag and light poles.
43 4. Solar energy equipment.
44 5. Mechanical lifts.

1 6. Prefabricated or other moveable one-story detached accessory
2 buildings that are not permanently attached to a foundation.
3

4 C. Prior to undertaking construction subject to this section, in addition to the
5 information otherwise required to be submitted in connection with any other
6 applicable permit, the property owner shall submit the written results of an
7 investigation, including a map with topographic features and two foot contours
8 and the depth and size of the culvert, that demonstrates to the satisfaction of the
9 City Engineer the location of the culverted creek. Where such investigation
10 establishes to the satisfaction of the City that the centerline of the culverted
11 creek is located more than fifteen feet from the proposed construction, such
12 construction shall not be subject to any further regulation under this section and
13 the City shall so advise the property owner in writing unless the City Engineer
14 finds that the depth and size of the culvert requires further review under
15 paragraph D.
16

17
18 D. If the investigation submitted pursuant to subsection C demonstrates that the
19 proposed construction will occur within fifteen feet of the centerline of the
20 location of the culverted creek, or the City Engineer finds under subsection C
21 that further review is required under this subsection D, then the applicant shall
22 be required to obtain a creek culvert permit. The City Engineer shall only issue
23 a creek culvert permit if the applicant submits a report from a structural
24 engineer, contemporaneously, with the application for a building permit, which
25 establishes to the satisfaction of the City Engineer, each of the following:
26

- 27 1. The structural integrity of the culvert under existing conditions is
28 acceptable to the City Engineer and will not be compromised by the
29 proposed construction;
- 30 2. The proposed construction will not impede access for the responsible
31 party to repair and maintain the culvert;
- 32 3. The flow of the creek will not be impeded nor its water quality
33 impaired.

34
35 The report from the structural engineer shall include (1) a map depicting the
36 distance between the structure and the culvert with topographic features and
37 two foot contours and the depth and size of the culvert; (2) a description of
38 any physical defects in the culvert based upon a visual inspection by closed
39 circuit television or other technology approved by the City Engineer; (3) an
40 analysis of the stability of the culvert based upon a structural analysis; (4)
41 the proposed design of the foundation and the bearing strength of the soil;
42 and (5) any other information deemed necessary by the City Engineer.
43

44 E. If the proposed construction is located within fifteen feet of the transition to an
45 open creek, then the construction must comply with each of the provisions of this

1 chapter that apply to construction adjacent to or within an open creek including
2 the provisions of section 17.08.050.

3 **Section 17.08.050 Setbacks for new construction required.**

4 A. Construction of, or addition to, any structure having a roof supported by columns or
5 walls, including dwellings, garages, other accessory buildings and commercial buildings,
6 within thirty feet of the centerline of an open creek shall comply with ~~to~~ this section.
7

8 B. A vertical expansion within its existing footprint of a structure that is located within
9 thirty feet of the centerline of an open creek may be constructed with the approval of a
10 creek permit by the City Engineer in accordance with this section. An applicant for a
11 creek permit shall submit a report completed by a licensed engineer or licensed geologist
12 with expertise in hydrology or slope stability concurrently with the application for a
13 building permit demonstrating to the satisfaction of the City Engineer each of the
14 following:

15
16 1. The project will not create, exacerbate, or prevent the abatement of erosion and bank
17 de-stablization problems;

18
19 2. The project will not increase stormwater runoff into the creek;

20
21 3. The project's construction activities will not degrade water quality from increased
22 sedimentation and particulates from disturbed soils; pollution from motor oil; or from the
23 generally high level of toxics and trash around construction sites;

24
25 4. The project will not eliminate or degrade significant in-stream or riparian corridor
26 habitat; and

27
28 5. The project will not prevent establishing stable banks and/or headwall at a culvert
29 intake or outflow or otherwise impede or complicate access to a culvert for maintenance
30 or repair.

31
32 The City Engineer may adopt administrative regulations that guide analysis of each of
33 these issues and may establish a list of qualified consultants. If the expansion is
34 otherwise subject to an Administrative Use Permit or Use Permit under the Zoning
35 Ordinance, then the requirements of this sub-section shall be satisfied as part of the
36 consideration of the Administrative Use Permit or Use Permit.

37
38 C. Any expansion of an existing structure into or within the area twenty-five to thirty
39 feet from the centerline of an open creek may be constructed outside its existing footprint
40 with the approval of an administrative use permit. Each of the following findings must
41 be made by the Zoning Officer or, on appeal, the Board:

42
43 1. Alternatives to expansion within the setback area, such as reducing setbacks to move
44 the structure further away from the centerline of the creek, are either physically or

1 economically infeasible. Physical feasibility includes site constraints and the
2 relationship of the structure to adjacent structures. Economic feasibility includes
3 consideration of the relative cost of constructing the structure in its original location and
4 moving the structure to a new location.

5
6 2. The additional encroachment into the area within 25-30 feet from the centerline of the
7 creek is not substantial in relation to the width and depth of the property and the existing
8 structure on the property.

9
10 3. The expansion will not create, exacerbate, or prevent the abatement of, erosion and
11 bank de-stabilization problems.

12
13 4. The expansion will not increase storm water runoff into the creek.

14
15 5. The expansion's construction activities will not degrade water quality from increased
16 sedimentation and particulates from disturbed soils; pollution from motor oil; or from the
17 generally high level of toxics and trash around construction sites.

18
19 6. The expansion will not eliminate or degrade significant in-stream or riparian corridor
20 habitat.

21
22
23 Any expansion of an existing structure within thirty feet of the centerline of a creek
24 impacts the riparian corridor in that it reduces the size of the corridor, and may impact
25 habitat, flooding, runoff, and water quality. The Zoning Officer/Board shall require on-
26 site mitigation commensurate with the impact of an expansion on the riparian corridor
27 subject to this section.

28
29 D. Except as otherwise provided in subsections B and C, it is unlawful for any person,
30 organization, institution, corporation or the City of Berkeley to construct or add to any
31 structure having a roof supported by columns or walls, including dwellings, garages,
32 other accessory buildings and commercial buildings, within 30 feet of the center line of
33 any open creek.

34 Approval for such construction may be granted only by appeal to the Zoning
35 Adjustments Board for a Use Permit. Approval of a Use Permit shall require the
36 following findings:

37
38 1. The construction will not adversely affect the creek by (a) exacerbating, creating, or
39 preventing the abatement of erosion and bank de-stabilization problems; (b) increasing
40 stormwater runoff into the creek; (c) degrading water quality from increased
41 sedimentation and particulates from disturbed soils; pollution from motor oil; or from the
42 generally high level of toxics and trash around construction sites; (d) eliminating or
43 degrading significant in-stream or riparian corridor habitat; or (e) preventing establishing
44 stable banks and/or headwall at a culvert intake or outflow or otherwise impeding or
45 complicating access to a culvert for maintenance or repair.

46

1 2. The construction will not be detrimental to the health, safety, peace, morals, comfort
2 or general welfare of persons residing or working in the area or neighborhood of such
3 proposed use, or be detrimental or injurious to property and improvements of the adjacent
4 properties, the surrounding area or neighborhood or to the general welfare of the City.
5
6

7 ~~A.—Except as otherwise provided in subsection B, it is unlawful for any person,~~
8 ~~organization, institution, corporation or the City of Berkeley to construct any structure~~
9 ~~having a roof supported by columns or walls, including dwellings, garages, other~~
10 ~~accessory buildings and commercial buildings, within 30 feet of the center line of any~~
11 ~~creek.~~

12 ~~—Approval for such construction may be granted only by appeal to the Zoning~~
13 ~~Adjustments Board for a variance. The decision of the Zoning Adjustments Board may be~~
14 ~~appealed to the City Council pursuant to Chapter 23B.44 of the Berkeley Zoning~~
15 ~~Ordinance.~~

16 B.—A residential addition to an existing single family home may be constructed
17 through the issuance of a Conditional Use Permit pursuant to Chapter 23B.32 of the
18 Berkeley Zoning Ordinance if the Zoning Adjustments Board or the City Council on
19 appeal makes all of the following findings:

20 —1.—All portions of the creek on the subject parcel are enclosed within a culvert, which
21 is located below the surface of the land and there is no open creek within 30 feet of the
22 proposed addition on any adjacent parcel.

23 —2.—The existing single family home is bisected by a culverted creek such that at least
24 30 percent of its footprint is located on both sides of the culverted creek.

25 —3.—No portion of the proposed addition is located on land or improvements directly
26 above the culverted creek.

27 —4.—There is no feasible alternative for development of the proposed addition on an
28 area outside of the setback required by subsection A because of physical conditions on
29 the site and/or the limitations imposed by otherwise applicable development standards.

30 —5.—The existing single family home has two or fewer bedrooms and is smaller than
31 the median size of single family homes within a 500 foot radius, measured from the
32 property boundary line of the existing single family home.

33 —6.—The proposed addition shall not increase the size of the home to be larger than the
34 median size of single family homes within the 500 foot radius in subsection B.5.

35 —7.—A report by an independent structural engineer selected by the City and funded by
36 the applicant has concluded that the culvert is sound and structurally adequate to support
37 the existing and proposed improvements or will be made so as part of the proposed
38 project.

39 —8.—The proposed addition will not adversely affect the creek.

40 9.—The proposed addition will not be detrimental to the health, safety, peace, morals,
41 comfort or general welfare of persons residing or working in the area or neighborhood of
42 such proposed use, or be detrimental or injurious to property and improvements of the
43 adjacent properties, the surrounding area or neighborhood or to the general welfare of the
44 City. (Ord. 6740 NS § 1, 2003; Ord. 5961 NS § 2, 1989)
45

1 **Section 17.08.052 Regulation of construction, expansion, rebuilding, or replacement**
2 **of decks adjacent to open creeks**
3

4 A. Deck between ten and thirty feet of the centerline. ~~It~~ It is unlawful for any person,
5 organization, institution, corporation, or the City of Berkeley to construct, add to,
6 rebuild, or replace a deck located in an area between ten feet and thirty feet of the
7 centerline of a creek without the approval of a Creek Permit from the City Engineer
8 accordance with this section. An applicant for a creek permit shall submit a report
9 completed by a licensed engineer or licensed geologist with expertise in hydrology or
10 slope stability demonstrating to the satisfaction of the City Engineer each of the
11 standards in paragraph D.
12

13 The City Manager or designee may adopt administrative guidelines for analysis of each
14 of the standards described in paragraph D and may establish a list of qualified
15 consultants. If the deck construction is otherwise subject to an Administrative Use
16 Permit or Use Permit, then the requirements of this sub-section shall be satisfied as part
17 of the consideration of the Administrative Use Permit or Use Permit.
18

19 B. Replacement or Rebuilding of Deck within ten feet of the centerline. Except as
20 otherwise provided in Section 17.08.055, it is unlawful for any person, organization,
21 institution, corporation, or the City of Berkeley to rebuild or replace a damaged or
22 destroyed deck within ten feet of the centerline of a creek without the approval of an
23 Administrative Use Permit after making the findings in paragraph D.
24

25 C. New Deck within ten feet of the centerline—. Except as otherwise provided in
26 paragraph A, it is unlawful for any person, organization, institution, corporation or the
27 City of Berkeley to construct a new deck or add to an existing deck located in an area
28 within ten feet of the centerline of a creek without the approval of a Variance.
29

30 D. Permit Standards - Neither a Creek Permit nor an Administrative Use Permit may be
31 issued pursuant to paragraphs A or B, respectively, without determining each of the
32 following:
33

- 34 1. The deck will not create, exacerbate, or prevent the abatement of, erosion and
35 bank de-stabilization problems.
- 36 2. The deck will not increase stormwater runoff into the creek.
- 37 3. The deck's construction activities will not degrade water quality from increased
38 sedimentation and particulates from disturbed soils; pollution from motor oil; or
39 from the generally high level of toxics and trash around construction sites.
- 40 4. The deck will not eliminate or degrade significant in-stream or riparian corridor.
41

42
43 The Zoning Officer/Board may impose conditions when necessary to make the findings
44 set forth herein for approval of the administrative use permit.
45

46 **Section 17.08.053 Paving adjacent to open creeks**

1
2 A. Impervious Paving – Prohibited. It is unlawful for any person, organization,
3 institution, corporation or the City of Berkeley to install, or replace after loss, impervious
4 paving on the area within thirty feet of the centerline of an open creek without the
5 approval of a variance.

6
7 B. Pervious Paving – 10 to 30 feet from centerline of open creek. Pervious paving is
8 permitted in an area between ten and thirty feet of the centerline of an open creek.

9
10 C. Pervious Paving – 0 to 10 feet from the centerline of open -creek. Pervious paving is
11 permitted in an area between zero and ten feet from the centerline of a creek for footpaths
12 only.

13
14 **Section 17.08.054 New or replacement of bridges**

15
16 In addition to any other requirements imposed by the City or other agencies, a bridge
17 over an open creek may only be is built or replaced, if the bridge provides a clear span
18 necessary to pass the water level raised by a one in 100 year storm event unless a
19 variance is approved. The bridge shall only be as wide as is necessary to accommodate
20 the proposed use of such bridge.

21 **Section 17.08.055 Replacement of a structure or any portion thereof where**
22 **destroyed due to disaster or similar occurrence.**

23 Notwithstanding any other provision of this chapter ~~Section 17.08.050~~, a structure, or
24 any portion thereof, may be replaced or reconstructed as long as all the following
25 conditions exist:

26 A. The structure, or any portion thereof, has been destroyed by any involuntary
27 ~~causes such as~~ including fire, earthquake or flood.

28 B. The proposed structure to replace or reconstruct the destroyed structure or portion
29 thereof, is ~~reasonably similar in~~ substantially the same with respect to its use, dimensions,
30 floor area, square footage, lot coverage and footprint to ~~as~~ the destroyed structure or
31 portion thereof and complies with all currently applicable building codes.

32 C. If a culvert exists on the parcel and the proposed replacement will be within ~~30~~ 15
33 feet of the centerline of such culvert, the applicant has submitted a report by a licensed
34 structural engineer demonstrating to the satisfaction of the City that the proposed
35 replacement structure will not negatively affect the culvert and that the replacement
36 structure is designed with a foundation, such as pile supported, which does not exert any
37 bearing load on the culvert. In making this determination, the report included
38 information related to the proposed foundation design, the bearing strength of the soil,
39 and the depth and size of the culvert. Alternatively, the applicant has submitted a report
40 by a licensed structural engineer which has demonstrated to the City's satisfaction either
41 that there is no feasible alternative to avoid imposing additional loading on the culvert,
42 and the analysis provided has determined that the culvert has sufficient strength to resist
43 such loading or the applicant proposes to reinforce the culvert as part of the project at the
44 applicant's expense in a manner satisfactory to the City.

1 **17.08.058 Replacement of structure or any portion thereof where destroyed for**
2 **reasons other than involuntary causes.**

3 If a lawful non-conforming roofed structure located within 30 feet of a centerline of an
4 open creek is to be replaced to the extent that more than 50% of its appraised value is to
5 be removed, and such replacement is not as a result of an involuntary cause such as fire,
6 earthquake, or flood, the Board may approve a Use Permit for the structure to be repaired,
7 or rebuilt within its previous footprint. In addition to the findings required to approve a
8 Use Permit, each of the following findings must be made:

9
10 1. Alternatives to rebuilding of structures within the 30-foot setback area have been
11 considered, including possible encroachments into yard setbacks to move the structure
12 farther away from the creek centerline, and have been determined by the Board either not
13 to be physically or economically feasible. In determining physical feasibility, the Board
14 may consider site constraints; and the relationship of the structure to adjacent structures.
15 In determining economic feasibility, the Board may consider the relative cost of
16 constructing the structure in its original location and moving the structure to a new
17 location.

18
19 2. Rebuilding of the structure and the structure would not create, exacerbate, or prevent
20 the abatement of, erosion and bank de-stabilization problems;

21
22 3. Rebuilding of the structure and the structure would not increase stormwater runoff
23 into the creek;

24
25 4. Rebuilding of the structure and the structure will not degrade water quality from
26 increased sedimentation and particulates from disturbed soils; pollution from motor oil;
27 or from the generally high level of toxics and trash around construction sites;

28
29 5. Rebuilding the structure would not eliminate or degrade significant in-stream or
30 riparian corridor.

31 **Section 17.08.060 Construction of walls, drains, bulkheads, etc.--Permit conditions**
32 **required.**

33 The intent of this section is to prohibit culverting and riprapping, unless there is strong
34 evidence that there is no other reasonable means to prevent the erosion of adjacent
35 supports, foundations or other structures.

36 It is unlawful for any person, organization, institution, corporation or the City of
37 Berkeley to construct or cause to be constructed, any wall, culvert, drain, bulkhead, or
38 other structure in any natural watercourse or creek in the City of Berkeley, or to place
39 riprap or any debris in the channel or on the banks, without first obtaining a permit
40 therefor from the City Engineer. If a permit for construction is granted, the City Engineer
41 shall require the applicant to submit plans and specifications for such a wall, bulkhead,
42 culvert, drain, structure or bank protection work which shall specify the exact location

1 and extent of the project. Any work that has been granted a permit, shall be carried out
2 under the supervision of the City Engineer, or his/her designated representative.

3 Such a permit will not be granted if any one or more of the following alternatives, or
4 any other is available to solve the problem.

5 A. Excavating to restore a natural meander, stream geometry and channel roughness.

6 B. Clearing debris cleanup.

7 C. Flood proofing: e.g. minor redesign of buildings, relocation of porches or other
8 minor structures, sheds, garages; raising of such structures; raising the grade of adjacent
9 land.

10 D. Removal of structures where feasible.

11 E. Bank stabilization using vegetation or combination revegetation construction (soil
12 bioengineering) that does not degrade the existing natural environment. This may include
13 the use of vegetated and dirt filled gabions, vegetated wood cribwalls, live and dead
14 brush matting, fascines, brush layering and cuttings, and other similar strategies based on
15 employing plants as the long-term stabilizing materials.

16 F. Vegetation management that can include selective clearing that retains a riparian
17 canopy and root structure to preserve riparian habitat, control unwanted undergrowth, and
18 stabilize banks.

19 G. Set-back levee construction: flood wall construction on the flood plain.

20 H. Changes in site design.

21 The request for any permit to culvert or perform any construction in a natural
22 watercourse must conform to the requirements of the California Environmental Quality
23 Act (C.E.Q.A.) and its current amendments and guidelines.

24 If the City Engineer recommends the granting of a permit for culverting or any other
25 construction in any natural watercourse, the matter shall be referred to the Public Works
26 Commission for review. If the City Engineer denies a permit, the applicant may appeal to
27 the Public Works Commission for review and recommendation. In all cases the decision
28 of the Public Works Commission will be final, unless the matter is appealed within 15
29 days to the City Council by the applicant, City staff or an interested party. (Ord. 5961-NS
30 § 2, 1989)

31 **Section 17.08.070 Obstructions or structures declared nuisance when--Notice to**
32 **remove--City to perform work when--Costs.**

33 Any structure, wall, bulkhead, culvert, drain, riprap or dam hereafter constructed,
34 erected or maintained in violation of any of the provisions of Sections 17.08.040 and
35 17.08.050 hereof, any structure, wall, bulkhead, culvert, drain, riprap or dam heretofore
36 erected or constructed in such manner or of such materials that the same does now or will
37 hereafter obstruct the flow of any natural watercourse in the City, shall be and the same is
38 declared to constitute a public nuisance, and the City Attorney of said City shall, upon
39 order of the City Council, immediately commence action or proceedings for the
40 abatement and removal and enjoinder thereof in the manner provided by law, and shall
41 take such other steps and shall apply to such courts as may have jurisdiction to grant such
42 relief as will abate and remove such building, obstruction, or structure, and restrain and
43 enjoin any person, firm, or corporation from setting up, erecting, building, maintaining,
44 or using any such building, obstruction or structure or using any property contrary to the

1 provisions of this chapter. The remedies provided for herein shall be cumulative and not
2 exclusive.

3 Any violation of this chapter shall be deemed an infraction punishable as set forth in
4 Chapter 1.20 of the Berkeley Municipal Code. (Ord. 5961-NS § 2, 1989)

5 **Section 17.08.080 Failure to enforce chapter.**

6 Failure to enforce any part of this chapter, will not give rise to any civil or criminal
7 liabilities. (Ord. 5961-NS § 2, 1989)

8 **Section 17.08.090 Fees.**

9 The City Council may establish by resolution the fees for administration of this
10 chapter.

11

12 **Section 17.08.100 Violation--Penalty**

13

14 Any violation of this Chapter may be charged, in the discretion of the enforcing officer or
15 City Attorney, as a misdemeanor or an infraction.

16

17

Attachment 2

APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING September 27, 2006

1 Time: The meeting was called to order by Chair Burke at 7:05p.m.

2

3 Location: North Berkeley Senior Center.

4

5 ROLL CALL

6

7 Commissioners Present: Burke, Ferrazares, Gurley, Pollack, Poschman, Samuels, Sheen,
8 Stoloff, Wengraf (left at 10:12 pm).

9

10 Commissioners Absent: None.

11

12 Staff Present: Cosin, Dando, Gatzke, Harrison, Consulting City Attorney Betsy Strauss.

13

14 ORDER OF THE AGENDA

15 There was no change to the order.

16

17 PUBLIC COMMENT PERIOD

18

19 Speaker 1: Barbara Allen, a member of the Creeks Task Force, stated that the City
20 Council recommended culverted creeks be removed from the Creeks Ordinance
21 and mentioned the request to the Task Force for a 45-day review period of the
22 ordinance language.

23

24 Speaker 2: Martha Jones with Neighbors on Urban Creeks requested the City identify
25 all properties affected by the Creeks Ordinance, all property owners be notified of
26 any changes to the Ordinance, the process for removal from the affected
27 properties list be clarified and the City accept responsibility for locating culverted
28 creeks.

29

30 Speaker 3: Diane Crowley, a member of the Creeks Task Force, discussed concerns
31 with being able to rebuild by right and requested the word "involuntary"
32 destruction be removed in the proposed amendments.

33

34 Speaker 4: Vonnie Gurgin with Neighbors on Urban Creeks recommended a Use
35 Permit instead of the option for a Variance in the proposed amendments.

36

37 Speaker 5: Shirley Dean with Neighbors on Urban Creeks spoke about the unfair
38 treatment of culverted creeks and how they are treated on private property versus
39 when they are located under a street.

40

41 Speaker 6: Mischa Lorraine, the Neighbors on Urban Creeks appointment to the
42 Creeks Task Force, stated that the interests of property owners have been ignored
43 in the proposed amendments and that the drafted language is insensitive to
44 property owners.

45

46 Speaker 7: Alex Lemberg of the student advocacy organization ACCESS
recommended the hours of operation in the Telegraph Avenue Commercial
District (C-T) be extended to midnight.

47

48 Speaker 8: Martin Kohen of ACCESS recommended extending the hours of operation
49 in the C-T District.

50

51 Speaker 9: Jason Overman on the Rent Stabilization Board and speaking as an
52 individual supported the recommended zoning amendments designed to support
53 Telegraph Avenue businesses.

54

**APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
September 27, 2006**

47 Speaker 10: Kenan Wang supported the quota system and did not support removing
48 the Variance requirement for businesses to exceed the quota limit.
49

50 **PLANNING STAFF REPORT**

51 Principal Planner Gatzke informed the Commission that the City Council adopted the
52 first and second readings of the Zoning Ordinance revisions related to the staff
53 recommendations on density bonus and the Major Residential Additions Subcommittee
54 and staff recommendations on residential additions. Gatzke noted that the Council might
55 consider exempting pipeline projects from the Ordinance that modifies the regulation of
56 residential additions at its October 10, 2006 meeting. Commissioner Wengraf requested
57 the legal opinion issued in response to a letter submitted to the Council on this issue.
58

59 **CHAIRPERSON'S REPORT**

60 No report.
61

62 **COMMITTEE REPORTS**

63
64 **Creeks Task Force**

65 Chair Burke mentioned that the Task Force has met three times in the past three weeks to
66 review the draft ordinance language.
67

68 **Density Bonus Subcommittee**

69 No report.
70

71 **Downtown Area Plan Citizen Advisory Committee**

72 Commissioner Samuels said the DAPAC met last week where Planning Director Dan
73 Marks and Principal Planner Matt Taecker synthesized the different themes for
74 consideration. Samuels noted a Subcommittee was established to discuss guidelines for
75 Center Street and the first meeting would be on October 5th at 7:00 pm at the North
76 Berkeley Senior Center.
77

78 **Major Residential Additions Subcommittee**

79 The Commission discussed whether or not to dissolve the Subcommittee and decided not
80 to in order to potentially respond to the issue raised by the Council for exempting
81 pipeline projects from the new regulations.
82

83 **Southside Plan Subcommittee**

84 Commissioner Pollack said the Subcommittee finished the current phase of work, which
85 will be brought before the Planning Commission at the end of October. Pollack noted the
86 major issues related to the preferred alternative for the EIR including lane changes to ease
87 traffic flow and changing Bancroft and Durant streets from two-way to one-way.
88

89 Chair Burke appointed new Commissioner Roia Ferrazares to the Subcommittee.
90

**APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
September 27, 2006**

91 **APPROVAL OF MINUTES**

92 M/S/C to approve the minutes from the September 6, 2006 Planning Commission
93 meeting as amended and the minutes from the September 13, 2006 Planning Commission
94 meeting as amended. (Poschman/Pollack). Ayes: Burke, Gurley, Ferrazares, Pollack,
95 Poschman Samuels, Sheen, Stoloff, Wengraf. Noes: None. Abstain: None. Absent: None.

96

97 **UPCOMING AGENDA ITEMS**

98 It was noted that the preferred alternatives for the Southside EIR will come before the
99 Planning Commission on October 25, 2006 and the decision on Southside will likely be
100 at the November 29, 2006 meeting.

101

102 **ACTION ITEMS**

103 **Discussion: Recommendations on the Creeks Ordinance Revisions (BMC 17.08);**
104 **Discussion and Set Public Hearing for ZA 6-06: Amendments to the Zoning**
105 **Ordinance related to the Creeks Ordinance (BMC Title 23) and rebuilding after**
106 **involuntary destruction of structure; and Draft Initial Study.**

107 Vice Chair Stoloff chaired the following portion of the meeting related to the proposed
108 amendments to the Creeks Ordinance and Zoning Ordinance.

109

110 Deputy Planning Director Wendy Cosin presented the proposed ordinance changes, the
111 process and schedule, noting that staff anticipated the City Council to hold a public
112 hearing on all of the ordinance changes on November 14, 2006.

113

114 M/S/C to set for public hearing on October 11, 2006 the Zoning Ordinance revisions
115 related to the revisions related to the Creeks Ordinance and rebuilding after involuntary
116 destruction of a structure. (Poschman/Burke). Ayes: Burke, Gurley, Ferrazares, Pollack,
117 Poschman Samuels, Sheen, Stoloff, Wengraf. Noes: None. Abstain: None. Absent: None.

118

119 Commissioners expressed concern with holding a public hearing only on the Zoning
120 Ordinance revisions and not the Creeks Ordinance revisions. Commissioners raised
121 additional concerns with noticing of the creekside property owners for the hearing and
122 the City Council hearing.

123

124 M/S/WITHDRAWN to hold a public hearing on all Zoning and Creek Ordinance
125 revisions instead of on October 11th on October 25, 2006. (Pollack/Wengraf).

126

127 Substitute M/S/WITHDRAWN to hold the public hearing on October 11 and if there is
128 new information to continue it to October 25, 2006. (Burke/Poschman).

129

130 The Commissioners further discussed when to hold the public hearing, in what manner
131 and how to inform the public. Deputy Planning Director Cosin said she could send out a
132 notice to the Creeks Ordinance affected properties list with information about the October
133 11th hearing and the Council public hearing and would include the drafted language.
134 Vice Chair Stoloff, acting as Chair, recognized the consensus of the Commission to hold

**APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
September 27, 2006**

135 the October 11th hearing on the Zoning Ordinance amendments and at the same time
136 receive public comment on the Creeks Ordinance revisions and draft Initial Study.

137

138 Chair Burke recommended Commissioners bring their comments on the Creeks
139 Ordinance revisions in writing to the next meeting.

140

141 M/S/C to modify the proposed Zoning Ordinance revision to read as follows for proposed
142 Berkeley Municipal Code (BMC) Section 23C.04.100.B, "The Planning Director shall
143 establish a process that allows an owner of a qualifying structure to apply for an advance
144 determination that the proposed repair or replacement of a structure is substantially
145 similar as required by paragraph A (2) including the information required to document
146 existing conditions." (Poschman/Pollack) Ayes: Burke, Gurley, Pollack, Poschman
147 Samuels, Sheen, Stoloff, Wengraf. Noes: None. Abstain: Ferrazares. Absent: None.

148

149 Individual members of the Planning Commission made the following comments on the
150 proposed revisions to the Creeks Ordinance (section numbers refer to the proposed
151 revisions and new sections):

- 152
- Section 17.08.020.M - question as to whether or not the BMC should reference
153 CEQA, as this is not done in other sections of the BMC.
 - Section 17.08.030 - there is no definition of a non-culverted creek.
 - Section 17.08.045 - questions relating to what appears to be discretionary
155 authority by the Public Works Engineer as to when additional information is
156 required to build near culverted creeks. Staff noted the issuance of the "creek
157 culvert permit" is a ministerial permit (an administrative decision), which is non-
158 discretionary.
 - Section 17.08.030.A.7 - recommendation that the City "shall" maintain a map of
160 the creeks instead of "may".
 - Section 17.08.045.C - the fifteen foot measure should clearly state it is measured
162 horizontally at the surface, if that is the intent.

164

165 The Commissioners raised additional questions including what the financial burdens are
166 to the property owners for creek permits including how much it costs to locate a creek
167 and how much structural reports cost. Additionally a question was raised on the staff
168 implications to the Public Works Department and the resulting time and budget needed as
169 a result of the proposed regulations.

170

171 **Discussion and CONTINUE Public Hearing to October 11, 2006: Telegraph Avenue**
172 **Economic Development Assistance Package, Zoning Component.**

173 M/S/C to set for public hearing on October 11, 2006 the Zoning Ordinance revisions
174 related to the revisions to implement the Telegraph Avenue Economic Development
175 Assistance Package. (Wengraf/Sheen). Ayes: Burke, Gurley, Ferrazares, Pollack,
176 Poschman Samuels, Sheen, Stoloff, Wengraf. Noes: None. Abstain: None. Absent: None.

177

**APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
September 27, 2006**

178
179 Principal Planner Gatzke reviewed the proposed Zoning amendments to the Telegraph
180 Avenue Commercial District. Commissioner Sheen commented on the process of
181 developing the changes.
182
183 Commissioners asked for data on the economic downturn and if there was a relationship
184 to the quotas, as well as any available information on the sizes of spaces, vacancy rates,
185 the current uses, and what the capacity of the neighborhood is to sustain new uses in the
186 C-T District.
187
188 Gatzke commented that some of the information requested requires a much broader
189 economic analysis, which has not been done.
190
191 **ADJOURNMENT**
192 The meeting was adjourned at 10:16 pm.
193
194
195 Note on Commission Meeting Reporting:
196 In June 2005, the City Council adopted a plan that requires commission secretaries to
197 submit an annual report that summarizes for each meeting a) the number of
198 commissioners in attendance, b) the number of members of the public in attendance, c)
199 the number of public speakers and d) the length of the meetings.
200
201 For the September 27, 2006 Planning Commission meeting, the following will be
202 reported:
203 Commissioners in attendance: 9
204 Members of the public in attendance: 16
205 Public Speakers: 10
206 Length of the meeting: 3 hour 11 minutes

APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING

October 11, 2006

1 Time: The meeting was called to order by Chair Burke at 7:05 p.m.

2

3 Location: North Berkeley Senior Center.

4

5 **ROLL CALL**

6

7 Commissioners Present: Burke, Ferrazares, Gurley (arrived 7:15), Perry, Pollack,
8 Poschman, Stoloff, Tregub, Wengraf.

9

10 Commissioners Absent: None.

11

12 Staff Present: Cosin, Dando, Gatzke, Harrison, Consulting City Attorney Betsy Strauss.

13

14 **ORDER OF THE AGENDA**

15 There was no change to the order.

16

17 **PUBLIC COMMENT PERIOD**

18 Speaker 1: Sennet Williams stated that with the added density in the City we are going to
19 need more parks and open space, especially in South and West Berkeley. He
20 suggested the school district property at Browning and Addison as a potential park
21 site, which also has a creek.

22

23 **PLANNING STAFF REPORT**

24 Secretary Harrison informed the Commission that on October 10th the City Council
25 adopted an Ordinance amending the recently adopted MRA Zoning Ordinance
26 amendments that addresses projects already in the approval pipeline by allowing those
27 projects for which a building permit application was received or the AUP application
28 deemed complete on or prior to September 26 to be subject to the "old regulations"
29 pertaining to residential additions. Deputy Planning Director Cosin informed the
30 Commissioners that Bayer released an annual report which was distributed to the
31 Commission and offered to answer questions.

32

33 **CHAIRPERSON'S REPORT**

34 No report.

35

36 **COMMITTEE REPORTS**

37

38 **Creeks Task Force**

39 No report.

40

41 **Density Bonus Subcommittee**

42 No report.

43

44 **Downtown Area Plan Citizen Advisory Committee**

45 Chair Burke reported that an architect has been selected for the downtown.BAM/PFA,
46 Toyo Ito from Japan.

APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 11, 2006

47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85

Major Residential Additions Subcommittee

M/S/C to disove the MRA Subcommittee. (Poschman/Wengraff). Ayes: Burke, Ferrazares, Pollack, Poschman, Stoloff, Tregub, Wengraf. Noes: None. Abstain: None. Absent: Perry, Gurley.

Southside Plan Subcommittee

Principal Planner Gatzke reported that staff will prepare a report on the Southside EIR preferred alternative for the next meeting.

APPROVAL OF MINUTES

Approval was postponed to the next meeting.

UPCOMING AGENDA ITEMS

No discussion.

ACTION ITEMS

Item 9 Public Hearing: ZA 6-06: Amendments to the Zoning Ordinance (BMC Title 23) related to the Creeks Ordinance and rebuilding after involuntary destruction of structure. Public Comment: Recommendations on the Creeks Ordinance Revisions (BMC 17.08) and Draft Initial Study.

Vice Chair Stoloff chaired the following portion of the meeting related to the proposed amendments to the Creeks Ordinance and Zoning Ordinance.

Deputy Planning Director Wendy Cosin presented the proposed ordinance changes.

The Commissioners asked questions regarding the rebuilding by right amendments.

M/S/C to open the public hearing on the Zoning Ordinance revisions related to the Creeks Ordinance and take public comment on the Creeks Ordinance revisions. (Gurley/Wengraf). Ayes: Burke, Ferrazares, Gurley, Perry, Pollack, Poschman, Stoloff, Tregub, Wengraf. Noes: None. Abstain: None. Absent: None.

Speaker 1: Tom Kelley, a member of the CTF, spoke in favor of the Creeks Ordinance amendments as drafted, noting they were endorsed by a strong majority of the CTF. Also, he noted that he feels environmental review should be conducted on the Use Permit option under consideration, as it would weaken existing regulations.

APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 11, 2006

- 86 Speaker 2: Eric Wasserman stated that culverts should not be regulated by the Creeks
87 Ordinance, noting no other city does so, and that they were added to the ordinance by
88 interpretation and without public scrutiny.
- 89 Speaker 3: Bob Allen discussed the variance option for creek properties to reduce other
90 standards in order to meet the creek setback, calling it a "super variance" and stating
91 it would allow waiver of height, parking and setback requirements which would
92 adversely impact neighbors, impacting more people than the creeks ordinance does.
- 93 Speaker 4: Kitty McLean stated her preference for the variance option.
- 94 Speaker 5: Daisy Marshal stated she thinks that she thinks creek culverts should be a part
95 of the storm drain system
- 96 Speaker 6: Rosemary Green stated that it is the community's responsibility to maintain
97 culverts, not individual property owners.
- 98 Speaker 7: Joan Bajsarowicz stated she had received notice of a creek on her property
99 although there is not evidence of such.
- 100 Speaker 8: Carlene St. John, a member of the public works commission and CTF,
101 reported that the PWC wanted the ordinance to address the whole watershed system,
102 not just creeks.
- 103 Speaker 9: Tom Maklalsen stated that the City should consider culverts as part of the
104 storm drain system and not as creeks.
- 105 Speaker 10: Diane Crowley, a member of the CTF, discussed the Zoning Ordinance
106 amendment to 23C.04.100 addressing the right to rebuild by right after a disaster,
107 stating that it should not be limited to exclusively residential buildings and to
108 residential buildings of less than 3 units.
- 109 Speaker 11: Ann Riley, recommended adoption of the revised Creeks Ordinance, and
110 stated she is impressed by the quality of the CTF process and product. She also
111 recommends a Variance rather than a Use Permit be required to expand into the
112 setback.
- 113 Speaker 12: Elyce Judith, said she lives on an open section of Codornices Creek that
114 flooded last winter and that without her greater than 30 foot setback she would have
115 had sever damage to her house. She supports maintaining the Variance requirement.
- 116 Speaker 13: Jennifer Mary Pearson recommends the Creeks Ordinance as revised and the
117 Variance requirement.
- 118 Speaker 14: Carole Schemmerling, a CTF member, recommends the Variance option
119 because the people making the Use Permit findings would not be trained to deal with
120 creek related issues. Also, she stated that finding pipes underground is not as
121 expensive as staff reported.
- 122 Speaker 15: Jill Korte stated her 5-unit condo is on the Strawberry Creek culvert and she
123 did not received notice, and she feels they should also be allowed to rebuild by right.
- 124 Speaker 16: Terry Mandel stated she thought the council promised to take culverts out of
125 the ordinance at their May 30, 2006 hearing. She feels the whole community should
126 pay for culvert maintenance and repair.
- 127 Speaker 17: Martha Jones stated she was speaking on behalf of NUC that she is very
128 concerned there is still not an accurate creeks map.
- 129 Speaker 18: Barbara Allen, CTF member, thanked the Commission for the public notice
130 and urged them to remove culverts from the Ordinance and take time to develop their
131 recommendations.

APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 11, 2006

- 132 Speaker 19: Dan Dean described historic examples of when the city required developers
133 to put in culverts and stated it isn't fair to assume they are all the property owners
134 responsibility.
- 135 Speaker 20: Vonnie Gurgin stated her concern that there is no appeal of the City
136 Engineer's decision about culverts, that property owners should not have to pay to
137 locate their culverts, and that there should be a comprehensive watershed plan.
- 138 Speaker 21: Shirley Dean recommend the following changes to the proposed Creeks
139 Ordinance – to remove culverts, to better balance property owner's rights and
140 protection of the natural environment, to require an accurate map, to require a Use
141 Permit rather than a Variance for new construction in the setback, to eliminate the
142 "involuntary" language, to require the City to locate culverts on private property and
143 pay for their maintenance, and to prepare a comprehensive watershed management
144 plan.
- 145 Speaker 22: Joshua Bradt, CTF member, stated that in his experience working with
146 creeks it is not good to build closer to creeks so he recommends the Variance option
147 to protect property owners and the creeks.
- 148 Speaker 23: Sennet Williams, said he lives on the Strawberry Creek culvert and is
149 concerned about the relaxation of the regulations and suggested the Council designate
150 certain culverts for future restoration.
- 151 Speaker 24: Lisa Gambino, stated she lives near a swale that has flooded in the past, and
152 that flooding has destroyed her house which she doesn't think she should have to pay
153 for.
- 154 Speaker 25: Clifford Fred stated his concern that the reduced variance proposal abolishes
155 the height limit, that this could have environmental effects requiring an initial study.
- 156 Speaker 26: Sandra Waggener, stated she supports the NUC proposals and that she
157 doesn't feel property owners should have to pay to find the creek culverts or repair
158 them.
- 159 Speaker 27: Pauline Bondonno Cross favors the Use Permit option to expand next to a
160 creek and to allow variations in yard setbacks near creeks.
- 161 Speaker 28: Mansor Niofar stated that on May 30 the city promised the right to rebuild
162 and now it seems the city has changed their mind.
- 163 Speaker 29: Ella Ellis stated the right to rebuild language is not clear and culverts should
164 not be in the Creeks Ordinance.
- 165 Speaker 30: R. Krause encouraged the city to take culverts out of the ordinance and stated
166 the costs to locate and repair culverts should not be born by property owners.
- 167 Speaker 31: Henrik Bull stated the ordinance does not achieve its stated goals.
- 168 Speaker 32: Joan Sprinson described a segment of the Strawberry Creek culvert near her
169 property maintained by the City of Albany and stated that property owners should not
170 be required to maintain creek culverts on their property.
- 171
- 172 The Commissioners discussed the public comments and the ordinance revisions.
173 Commissioners expressed concern about the size of residential buildings proposed to be
174 granted the right to rebuild by right, the definition of a creek culvert, the responsibility of
175 property owners to locate and repair culverts, "involuntary" destruction of a structure, the
176 "super variance", creek culverts in the ordinance, the transition area of creek culvert to

APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 11, 2006

177 open creek, the lack of appeal for the City Engineer's decision on creek culvert permits,
178 and the burden of the creek culvert survey.
179

180 M/S/WITHDRAWN to close the public hearing on the Zoning Ordinance revisions
181 related to the Creeks Ordinance. (Burke/ Poschman).

182
183 Chair Stoloff excused himself to meet with staff to organize the questions and concerns
184 raised by the Commissioners on the Creeks Ordinance.

185
186 **Item 10 Public Hearing: Telegraph Avenue Economic Development Assistance**
187 **Package, Zoning Component.**
188

189 M/S/C to open the public hearing on the Telegraph Avenue Zoning Ordinance
190 amendments. (Poschman /Tregub). Ayes: Burke, Ferrazares, Gurley, Pollack, Poschman,
191 Tregub. Noes: None. Abstain: None. Absent: Stoloff, Perry, Wengraf.

192
193 Speaker 1: Roland Peterson of the Telegraph Business Improvement District said he
194 general supports the amendments but thinks 23E.56.080.A.3, requiring a
195 transportation services fee, should be taken out.

196 Speaker 2: Jesse Arreguin encourages an extension of the by right hours of operation but
197 does not support allowing a UP to exceed quota limits.

198 Speaker 3: Kenan Wang of the student advocacy organization ACCESS encourages an
199 extension of the by right hours of operation to midnight.

200 Speaker 4: Amanda Purcell, also of ACCESS, encourages an extension of the by right
201 hours of operation. Delay until implementation of the Southside Plan would delay it
202 by at least year.

203 Speaker 5: Kriss Worthington stated delay in implementing these emergency measures
204 will hurt Telegraph businesses. He added there is significant demand for extended
205 hours and this is already a desire for those who participated in the Southside Plan
206 process.

207 Speaker 6: Alex Lemberg, also of ACCESS, stated that extending the hours will improve
208 safety due to more people and more lighting on the street.
209

210 M/S/C to close the public hearing on the Telegraph Avenue Zoning Ordinance
211 amendments. (Poschman /Tregub). Ayes: Burke, Ferrazares, Gurley, Perry, Pollack,
212 Poschman, Tregub, Wengraf. Noes: None. Abstain: None. Absent: Stoloff.

213
214 The group conducted a straw vote on support of extended the by right hours to 2 am 7
215 days a week: 6 of 8 were in favor. The group discussed 2 am vs. 12 midnight on
216 weekdays. The group discussed the value of quotas.
217

218 M/S to move the staff recommendations with hours of 12 midnight by right and 2 am on
219 Friday and Saturday with a UP. (Pollock /Stolof). A friendly amendment from Wengraf
220 to remove the TSF language was accepted.
221

APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 11, 2006

222 Substitute M/S/F to move the staff recommendations with the hours of 2 am by right 7
223 days a week, eliminate quotas, and cut the TSF section. (Perry/Wengraf). Ayes:
224 Ferrazares, Perry, Wengraf.

225

226 Substitute M/S/C to move the staff recommendations with by right hours of 12 midnight
227 Sunday-Thursday and 2 am on Friday and Saturday and cut the TSF language. (Tregub/
228 Wengraf). Ayes: Ferrazares, Perry, Pollack Stoloff, Tregub, Wengraf. Noes: Burke,
229 Gurley, Poschman. Abstain: None. Absent: None.

230

231 **CONTINUED Item 9 Public Hearing: ZA 6-06: Amendments to the Zoning**
232 **Ordinance (BMC Title 23) related to the Creeks Ordinance and rebuilding after**
233 **involuntary destruction of structure. Public Comment: Recommendations on the**
234 **Creeks Ordinance Revisions (BMC 17.08) and Draft Initial Study.**

235

236 Chair Stoloff outlined the main issues to be addressed regarding the Creeks Ordinance
237 revisions and creeks-related Zoning Ordinance amendments.

238

239 M/S/C to incorporate the following language proposed by Commissioner Poschman into
240 BMC Section 23C.04.100: "The planning director shall also develop a description for
241 owners of qualifying residential structures of such building information required by the
242 city to document existing characteristics of the building in case of future damage or
243 destruction" (Poschman/Gurley). Ayes: Burke, Ferrazares, Gurley, Perry, Pollack,
244 Poschman, Stoloff, Tregub, Wengraf. Noes: None. Abstain: None. Absent: None.

245

246 M/S/C to close the public hearing on the Zoning Ordinance revisions related to the
247 Creeks Ordinance. (Burke/Tregub). Ayes: Burke, Ferrazares, Gurley, Poschman, Stoloff,
248 Tregub. Noes: Perry, Pollack, Wengraf. Abstain: None. Absent: None.

249

250 **ADJOURNMENT**

251 **The meeting was adjourned at 11:35 pm**

252

253

254 Note on Commission Meeting Reporting:

255 In June 2005, the City Council adopted a plan that requires commission secretaries to
256 submit an annual report that summarizes for each meeting a) the number of
257 commissioners in attendance, b) the number of members of the public in attendance, c)
258 the number of public speakers and d) the length of the meetings.

259

260 For the October 11, 2006 Planning Commission meeting, the following will be reported:

261 Commissioners in attendance: 9

262 Members of the public in attendance: 60

263 Public Speakers: 39

264 Length of the meeting: 4 hours 30 minutes

DRAFT MINUTES OF REGULAR PLANNING COMMISSION MEETING

October 25, 2006

1 Time: The meeting was called to order by Chair Burke at 7:05 p.m.

2

3 Location: North Berkeley Senior Center.

4

5 **ROLL CALL**

6

7 Commissioners Present: Burke, Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff,
8 Tregub, Wengraf.

9

10 Commissioners Absent: None.

11

12 Staff Present: Cosin, Strauss, Jensen, Gatzke, Harrison.

13

14 **ORDER OF THE AGENDA**

15

Item 11 will precede Item 10.

16

17 **PUBLIC COMMENT PERIOD**

18

Speaker 1: Leo Ellis, stated that while he is not personally affected by the creeks
19 ordinance he feels the whole community should pay for culverts.

20

Speaker 2: Ella Ellis said she is concerned about the need for the right to rebuild in case
21 of fire in spite of the creeks ordinance setback.

22

Speaker 3: Barbara Allen, of Neighbors on Urban Creeks, read from a letter stating NUC
23 is opposed to the "super variance" which reduces the variance requirement on creek
24 properties to enable compliance with the Creeks Ordinance because adjacent property
25 owners will likely loose property value. It is more sensible to allow a use permit to
26 encroach into the 30 foot creek setback.

27

Speaker 4: Vonnie Gurgin, also of NUC, continued to read from the NUC letter, and
28 added that there could be impacts to neighbors from moving houses due to the Creeks
29 Ordinance 30 foot setback and the people who will be impacted haven't be notified.

30

Speaker 5: Martha Jones, also of NUC, continued to read from the NUC letter, and urged
31 the Commission to reject 23B.44.010.

32

Speaker 6: Jerry Landis, also of NUC, stated that property owners should be allowed to
33 tear down an old existing house and rebuild to the same footprint and height by right.

34

Speaker 7: Bob Schneider recommended creek culverts be taken out of the Creeks
35 Ordinance and feels that repair of culverts should not be the responsibility of property
36 owners.

37

Speaker 8: Diane Crowley states that the limitations on "voluntary" loss is unfair and
38 doesn't make sense. Also, the right to rebuild should be extended to all properties.

39

Speaker 9: Juliet Lamont urged the PC to recommend the Council adopt the CTF Creeks
40 Ordinance recommendations with the Variance option. She stated the proposed
41 ordinance is less strict than the existing ordinance and was the result of an open and
42 collaborative process.

43

Speaker 10: Phil Price, a member of the CTF, urged the PC to support the CTF
44 recommendations and explained that creeks definitions are often flawed and difficult
45 to develop and the City's definition is consistent with many other cities and state

DRAFT MINUTES OF REGULAR PLANNING COMMISSION MEETING

October 25, 2006

46 agencies. Also, he does not agree with allowing the Variance to be relaxed for certain
47 standards in order to meet the creeks setback but instead there should be a new limit.
48 Speaker 11: Carole Schemmerling, a member of the CTF, urged the PC to support the
49 creeks ordinance amendments with the Variance option.
50 Speaker 12: Shirley Dean stated the right to rebuild should be allowed whether a structure
51 is destroyed by fire or termites, she supports the Use Permit rather than Variance
52 option, the city should pay to locate culverts and create an accurate map, the city
53 should take the financial responsibility for collapsed culverts, and should develop a
54 comprehensive watershed plan.

55

56 **PLANNING STAFF REPORT**

57 None. Staff answered Commissioner's questions about the City Council's action on the
58 MRA pipeline projects.

59

60 **CHAIRPERSON'S REPORT**

61 None.

62

63 **COMMITTEE REPORTS**

64

65 **Creeks Task Force**

66 None.

67

68 **Density Bonus Subcommittee**

69 None.

70

71 **Downtown Area Plan Citizen Advisory Committee**

72 None.

73

74 **Downtown BART Plaza and Transit Area Design Plan Citizens Advisory Committee**

75 The need to continue this Committee was discussed.

76

77 M/S/C to dissolved the BART Plaza Subcommittee (Wengraff/Poschman). Ayes: Burke,
78 Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None.
79 Abstain: None. Absent: None.

80

81 **Southside Plan Subcommittee**

82 None.

83

84 **APPROVAL OF MINUTES**

85

86 M/S/C to approve the draft minutes of September 27 (Poschman/Ferrazares). Ayes:
87 Burke, Ferrazares, Gurley, Poschman, St. John, Stoloff, Wengraf. Noes: None. Abstain:
88 Perry, Tregub. Absent: None.

89

DRAFT MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 25, 2006

90 M/S/C to approve the draft minutes of October 11 (Poschman/Ferrazares). Ayes: Burke,
91 Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None.
92 Abstain: None. Absent: None.

93
94 **UPCOMING AGENDA ITEMS**
95 No Discussion.

96
97 **ACTION ITEMS**

98 **Item 9 DAPAC Quarterly Report**

99 Will Travis, Chair of the DAPAC, presented background on the previous DAPAC
100 meetings, including the themes developed by the DAPAC members and information on
101 UC plans for downtown, and discussed the upcoming meeting topics.

102
103 **Item 11 Recommendations on the Creeks Ordinance Revisions (BMC 17.08).**

104 Vice Chair Stoloff chaired the portion of the meeting pertaining to the Creeks Ordinance
105 and distributed an outline for the discussion with the issues identified at the previous
106 meeting. Deputy Planning Director Cosin gave an overview of her responses to their
107 questions and introduced Supervising Civil Engineer Lorin Jensen.

108
109 The Commissioners discussed the Use Permit verses Variance option for expansion into
110 the creeks ordinance setback and the proposed Use Permit findings. A motion was made
111 to recommend the council adopt the Variance option (Burke). A substitute motion was
112 made recommend the Use Permit option and modify the findings (Perry). A substitute
113 motion was made to recommend the Use Permit option and delete findings #3 (St. John).

114
115 M/S/C to recommend the City Council adopt the Use Permit option (Alternative Two)
116 and delete finding 17.08.050.D(3) (St. John/Perry). Ayes: Gurley, Perry, St. John, Stoloff,
117 Wengraf. Noes: Burke, Ferrazares, Poschman, Tregub. Abstain: None. Absent: None.

118
119 The Commission discussed the potential cost and burden to homeowners of locating and
120 repairing culverts and asked staff for clarification on homeowner responsibilities. Jensen
121 explained that if a property owner discovers their culvert is in disrepair and reports this to
122 the city, the city would require repair of the culvert if it is a nuisance, meaning a life-
123 safety issue or causing pollution.

124
125 M/S/C to convey to the City Council that the Planning Commission is deeply concerned
126 with the possible high costs to homeowners in terms of culvert requirements and
127 recommend the City Council research carefully and have solid information on actual
128 costs before approving this part of the Creeks Ordinance (17.08.045) and request the
129 potential costs be referenced in the Council report (Poschman/Wengraf). Ayes:
130 Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None.
131 Abstain: Burke. Absent: None.

132
133 The Commission discussed the issues of appeal of the City Engineer's decision. Strauss
134 explained that in order for the creek culvert permit to remain ministerial it cannot be
135 appealable. The group asked for clarification on why culverts are in the Creeks

DRAFT MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 25, 2006

136 Ordinance. Strauss explained this is consistent with the common law definition of creek
137 and the position of the City Attorney.

138
139 The Commission discussed the definition of creek.

140
141 M/S/Fails to convey to the City Council that the Planning Commission is concerned with
142 the definition of creek and recommends the council give it careful consideration. Their
143 concerns include the language "general historic course," "continuous swale or
144 depression" and the lack of a definition of a non-creek culvert (Wengraf/Perry). Ayes:
145 Perry, Poschman, Tregub, Wengraf. Noes: Burke, Ferrazares, Gurley, Stoloff. Abstain:
146 St. John. Absent: None.

147
148 M/S/C to recommend the Council incorporate the numeric standards for defining a creek
149 used in the Administrative Regulations into the creek definition (Perry/St. John). Ayes:
150 Gurley, Perry, Poschman, St. John, Wengraf. Noes: Burke. Abstain: Ferrazares, Stoloff
151 Tregub. Absent: None.

152
153 M/S/Fails to recommend changing "may" to "shall" in 17.08.030.A(6) (Poschman/
154 Wengraf). Ayes: Poschman, St. John, Tregub, Wengraf. Noes: Burke, Ferrazares, Perry,
155 Stoloff. Abstain: Gurley. Absent: None. (Note: this motion was made during Item 10).

156
157 M/S/C to recommend to the Council "rebuilding" be changed to "rebuilding of structure
158 and the resulting structure" in 17.08.058(2-5) (Poschman/St. John). Ayes: Ferrazares,
159 Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None. Abstain:
160 Burke. Absent: None. (Note: this motion was made during Item 10).

161
162 M/S/C to convey to the City Council that the Planning Commission supports the Creeks
163 Ordinance as revised including the comments and recommended modifications adopted
164 tonight (Poschman/Ferrazares). Ayes: Ferrazares, Gurley, Poschman, Stoloff, Tregub.
165 Noes: None. Abstain: Burke, Perry, St. John, Wengraf. Absent: None.

166
167 **Item 10 ZA 6-06: Amendments to the Zoning Ordinance (BMC Title 23) related to**
168 **the Creeks Ordinance and rebuilding after involuntary destruction of structure.**
169 The Commission discussed the right to rebuild provisions of proposed 23C.04.100.

170
171 M/S/C to recommend the right to rebuild be extended to residential structures with four
172 units or fewer in line 17 (Attachment 1, Item 10 of October 25, 2006) (Poschman/
173 Gurley). Ayes: Burke, Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub,
174 Wengraf. Noes: None. Abstain: None. Absent: None.

175
176 M/S/C to strike "involuntary" and add "but not limited to" after "including" and add
177 "except the intentional act or omission of the property owner" after "flood" to
178 23C.04.100.A(1) and make the same changes to the language in BMC 17.08.055, line 27
179 page 10 (Attachment 2, Item 9 of October 11, 2006) (Perry/St. John). Ayes: Ferrazares,

DRAFT MINUTES OF REGULAR PLANNING COMMISSION MEETING
October 25, 2006

180 Gurley, Perry, St. John, Stoloff, Tregub, Wengraf. Noes: Burke. Abstain: Poschman.
181 Absent: None.

182
183 The commission discussed the use permit option for creek properties to comply with the
184 Creeks Ordinance proposed in revisions to 23B.44.010.

185
186 M/S/C to recommend adoption of the staff proposed provisions in 23B.44.010 with the
187 exception of "the height of buildings" (Perry /Ferrazares). Ayes: Burke, Ferrazares,
188 Gurley, Perry, Poschman, Stoloff, Tregub, Wengraf. Noes: St. John. Abstain: None.
189 Absent: None.

190
191 M/S/C to recommend the Council adopt the staff proposed Zoning Ordinance
192 amendments as modified by tonight's actions (Stoloff / Ferrazares). Ayes: Burke,
193 Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None.
194 Abstain: None. Absent: None.

195

196 **ADJOURNMENT**

197 The meeting was adjourned at 10:55 pm.

198

199 **Note on Commission Meeting Reporting:**

200 In June 2005, the City Council adopted a plan that requires commission secretaries to
201 submit an annual report that summarizes for each meeting a) the number of
202 commissioners in attendance, b) the number of members of the public in attendance, c)
203 the number of public speakers and d) the length of the meetings.

204

205 For the October 25, 2006 Planning Commission meeting, the following will be reported:

206 Commissioners in attendance: 9

207 Members of the public in attendance: 18

208 Public Speakers: 12

209 Length of the meeting: 3 hours 50 minutes