

## **Creeks Task Force Recommendations (April 17, 2006)**

The Task Force has developed a set of 13 Statements of Agreement, which were created to develop consensus as much as possible prior to discussion of the regulatory recommendations. The voting record for each statement and recommendation from the April 3<sup>rd</sup> CTF meeting follows each item in parentheses in the order of votes in favor, opposed, abstentions, and members absent. Additional recommendations and clarifications were approved on April 17, 2006.

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

#### **General Watershed Issues**

1. Creeks are a community asset that should be protected and enhanced. (13:0:2:0)
2. Creeks are part of an interconnected and integrated water management system and a holistic analysis is needed. (13:0:2:0)
3. There will be financial costs associated with creek restoration, repair and maintenance of creek culverts, repair and maintenance of storm drains, and overall watershed management and other watershed related issues. The City should look for additional funding for some or all of these costs. (13:0:2:0)

#### **Creek Culverts**

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

#### **Existing Structures**

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

#### **New Structures**

12. For developed lots, 30 feet from the creek centerline is considered an area of interest and additional scrutiny applies within it for development, including potential impacts on creeks. (13:0:2:0)

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

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

13. On vacant lots, structures should not be allowed to be developed within 30 feet from the centerline of an open creek, unless a Variance is obtained. (10:3:2:0)

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

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

### **Definitions**

1. “Open creek” means an above ground watercourse which carries water from either a permanent or natural source, either intermittently or continuously; and which runs in a defined channel or continuous swale or depression, which later merges with a larger watercourse. The definition includes a channel, whether natural or engineered, swale, depression, or watercourse. A depression that carries water only during or immediately following rainfall is not a creek. The definition excludes any part of an engineered system which was developed by a public agency for collection of storm or flood waters. The City of Berkeley may maintain maps and other reliable records, reflecting such creeks for the guidance of the public. The word “open creek” will be synonymous with “natural watercourse” as used in the chapter. (11:1:1:2)
2. A “creek culvert” is an underground pipe or other engineered system capable of carrying water that connects two sections of open creek, or connects an open creek to another body of water. (9:3:1:2)

### **Creek Culverts**

3. Underground creek culverts should be treated similarly to storm drains for the purposes of setbacks for safety, access and maintenance. A new definition of ‘creek culvert’ should be incorporated into the Creeks Ordinance, Berkeley Municipal Code 17.08. The Creeks Ordinance should also incorporate a section providing authorization of the Department of Public Works to administratively review and regulate development of structures (new structures and expansions to existing structures) near underground creek culverts, including roof structures, foundations, footings, and similar structures. (For information purposes only, this generally means that structure foundations must be set back from the edge of the culvert a distance equal to the depth of the culvert measured to the bottom of the culvert.) (10:3:1:1)
4. Special authority should be granted to City Staff in reviewing applications for development at the inlets and outfalls of underground creek culverts. Any setback requirement and/or potential requirements for mitigations or improvements for the underground creek culverts should be based on engineering and safety criteria and the health of the creek, and shall consider the special requirements of this transition area. (9:0:5:1)

## Existing Structures

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

5. Expansions up or down: Modifications to legally non-conforming structures within the 30-foot threshold area are permitted by right (if otherwise permitted under the Zoning Ordinance) if the expansion is within the existing footprint and is a vertical expansion (excavation or addition of new story). An environmental analysis of the impact on creek is required to show no negative impact on the creek. (This is a case-by-case review for such projects.) (11:3:1:0)
6. Expansions within the 30-foot setback: Modifications to conforming or legally non-conforming structures that cause an expansion up to 5 feet into the 30-foot threshold area (i.e., no closer than 25 feet from the creek centerline) are allowed with an Administrative Use Permit (AUP), which includes an environmental analysis. Such expansions are only allowed if other options for expansion are not feasible, if the encroachment is relatively minor, if the proposed development would not create an adverse impact on the creek, the relative importance of the buffer based on the creek characteristics is considered, and mitigations commensurate with the impacts are included. Horizontal expansions from 0'-25' from the creek centerline are not permitted, unless a Variance is obtained. (11:3:1:0)
7. Repair/rebuilding: Existing legally non-conforming structures may be repaired, renovated, and maintained subject to all other Zoning regulations, including the requirement for a Use Permit if more than 50% of the structure (dwelling unit) is replaced. (11:3:1:0)
  - a. Rebuilding of structures within the 30-foot threshold area should be encouraged through incentives to be moved farther away from the creek centerline.
  - b. Mitigations should be considered for rebuilding within the 30-foot threshold area.

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

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

### Rebuild after Loss<sup>4</sup> of Legally Non-conforming Unroofed Structures and Paving along Open Creeks

9. Decks: (12:0:3:0)

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

<sup>4</sup> Loss of unroofed structures means that 50% or more of the structure is damaged or lost and needs to be replaced.

- a. After loss, decks may only be rebuilt within zero to 10 feet of a creek centerline with the approval of an Administrative Use Permit, including an environmental analysis of the impact on the creek.
  - b. After loss, decks may be rebuilt within 10 feet to 30 feet of a creek centerline with an environmental analysis of the impact on the creek. (Ministerial Review)
10. Paved Surfaces: (12:0:3:0)
- a. No impervious paving is permitted within 30 feet of a creek centerline, unless a Variance is obtained. Replacement with impervious material is not allowed.
  - b. Only paving for footpaths and bridges is allowed within 10 feet of a creek centerline. Pervious paving is permitted within 10 – 30 feet of a creek centerline. Construction of paving should follow Best Management Practices guidelines.
11. Bridges: Bridges shall be constructed with a clear span necessary to pass a one in 100 year storm event. Bridges shall be of the minimum width necessary for the proposed use. All rebuilt bridges must meet this standard. (12:0:3:0)

## **New Structures**

### New Roofed Structures along Open Creeks

12. On either vacant or developed lots, no new structures may be constructed within 30 feet of the centerline of an open creek, unless a Variance is obtained. (11:3:1:0)

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

13. Decks: (12:0:3:0)
- a. Decks may not be built within zero to 10 feet of the creek centerline, unless a Variance is obtained.
  - b. Decks may be built within 10 feet to 30 feet of a creek centerline with an environmental analysis of the impact on the creek. (Ministerial Review)
14. Paved areas: (12:0:3:0)
- a. No impervious paving is permitted within 30 feet of a creek centerline, unless a Variance is obtained.
  - b. Only paving for footpaths and bridges is allowed within 10 feet of a creek centerline. Pervious paving is permitted within 10 – 30 feet of a creek centerline. Construction of paving should follow Best Management Practices guidelines.
15. Bridges shall be constructed with a clear span necessary to pass a one in 100 year storm event. Bridges shall be of the minimum width necessary for the proposed use. (12:0:3:0)

16. Fences, play structures and other similar construction should not be regulated under the Creeks Ordinance; however, Best Management Practices should be utilized for construction.<sup>5</sup> (12:0:3:0)

#### Additional Comment

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

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

#### **General Watershed Issues**

##### Watershed Management

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

##### *Care of Creeks*

1. The Creek Coordinator position within the City of Berkeley should be changed to a Watershed Coordinator and funded. This position's tasks may include providing general assistance to creekside property owners, applying for grants or other funding sources for creek restoration and watershed management issues, and supporting staff with watershed issues and review of creek projects. (12:0:3:0)
2. The City of Berkeley needs a watershed-wide assessment in order to develop a watershed management and action plan to adequately address watershed issues. (12:0:3:0)
3. A Best Management Practices guide and incentives package should be developed to assist property owners and the City with creek-friendly development and activities, to help restore the health of Berkeley's watersheds. (12:0:3:0)
4. The City should develop a program to understand where underground creek culverts have negative impacts upstream and downstream. (12:2:0:1)

##### *Daylighting*

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

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<sup>5</sup> This includes dog shelters, compost bins and other similar structures.

**Notice to Property Owners of Ordinance Changes**

6. The City of Berkeley should notify all affected property owners, as identified by the City, of the approved changes to the Creeks Ordinance, as well as advanced notice of proposed changes. (14:0:0:1)