

March 20, 2006

## **Recommendations for Revision of the Berkeley Creeks Ordinance: The Minority Report from the Creeks Task Force**

To the Chairperson and the Members of the Berkeley Planning Commission:

You have received a report of recommended revisions to the Berkeley Creek Ordinance from the Creeks Task Force, many of which have the unanimous or nearly unanimous support of the members of the task force. However, there are some areas in which we, as a minority on the task force, do not agree with the majority. We are bringing those matters to your attention through this minority report.

### **Repair and Building of Existing Structures**

Nothing in the proposed ordinance should create any impediment to repair or rebuilding of existing structures after damage or loss. It is essential that the owner of private property have the right to rebuild a structure which has been damaged or destroyed, on the same footprint, and to the same height and bulk as the original, *without further zoning review*.

Similarly, we recommend that *all repairs to existing buildings should be allowed with no additional zoning review*, while still required to meet all standards set by the Building Department.

We recommend that structures on creekside properties should not be regulated differently from other properties in Berkeley. Accordingly, we ask that reconstruction of *any* existing building after damage or destruction, to its same height, bulk, and footprint, should not require a Use Permit. *Therefore, we recommend that the Planning Commission consider changing the zoning ordinance to drop the Use Permit requirement for all reconstruction of existing buildings.*

We have agreed with the majority of the task force that the owner of a structure that is close to a creek should be encouraged to rebuild further away from the creek, but we also want to state that the owner should never be *required* to do so. Because rebuilding in a different location in order to move further from the creek may cause other impacts on neighbors' views, light, privacy, etc., such a change should require a zoning review in the form of an AUP, but with the fees waived.

### **Expansion of Existing Buildings**

In the case of expansions of existing buildings into the 30-foot area near creeks, *we support a case-by-case analysis of the appropriate setback from the creeks*, until such time as the City

staff can develop flexible standards which consider the varying depth and water flow of creeks in Berkeley, the sizes and layouts of lots adjoining the creeks, or the proximity, character and bulk of the proposed expansions. A case-by-case setback analysis could incorporate a mathematical formula based on the size and depth of the specific creek at issue, and would also utilize a review, by a professional engineer, of specific criteria for the safety of the creek and of the building.

### **Regulation of Culverted Creeks**

Culverts of all types should be removed from the Creek Ordinance. Administration of building on or near culverts should be left solely to the Public Works Department, as was intended by the original ordinance.

### **Daylighting of Culverted Creeks**

Daylighting of culverts on private property should be *entirely voluntary*, with the help of the city. This means that the city should provide a supportive role only, and should not define which properties have “potential for daylighting” *except on public or semi-public/institutional land*.

### **Locating and Repairing Culverts on Private Property**

We recognize that the drainage of water throughout the city is an integrated system which provides a public benefit for all citizens, and should not become the financial responsibility of individual property owners. Therefore, *when either the location or the repair of a culvert under private property, whether for a creek or for a storm drain, becomes an issue, the expense of locating the culvert and of carrying out the repair should be borne by the city.*

We thank you for your consideration of these recommendations for revisions to the Creeks Ordinance.

Respectfully submitted,

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