

## CD/PLG-Hurin, Ruben

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**From:** ATTY-Kane, Kathleen  
**Sent:** Friday, October 16, 2015 5:26 PM  
**To:** Mark Haberecht; CD/PLG-Meeker, William  
**Cc:** CD/PLG-Hurin, Ruben; CD/PLG-Gardiner, Kevin; GRP-Council; GRP-Planning Commissioners  
**Subject:** RE: 1509 El Camino Real

Good afternoon, Mr. Haberecht –

The City has been asking permission to post plans as they are submitted, in order to facilitate review of proposed projects. Most project applicants have granted such permission. The request for permission is not a change in legal interpretation, nor would such a change necessarily generate any minutes in a public meeting. It is an approach the City has undertaken in order to facilitate maximum possible convenience for members of the public who wish to review development projects.

Kathleen Kane

### Kathleen A. Kane



City Attorney  
City of Burlingame  
501 Primrose Road | Burlingame, CA 94010  
Tel. (650) 558-7204 | Fax (650) 342-8386 | [kkane@burlingame.org](mailto:kkane@burlingame.org)

### PRIVILEGED AND CONFIDENTIAL COMMUNICATION

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**From:** Mark Haberecht [mailto:mhabs@comcast.net]  
**Sent:** Friday, October 16, 2015 4:57 PM  
**To:** CD/PLG-Meeker, William  
**Cc:** CD/PLG-Hurin, Ruben; CD/PLG-Gardiner, Kevin; GRP-Council; GRP-Planning Commissioners  
**Subject:** RE: 1509 El Camino Real

Dear Mr. Meeker, as I was examining the 1509 El Camino Project (and other projects) on the Burlingame website, I noticed that all plans are now available publicly on the website.

Has there been a change in legal interpretation more in line with my interpretation (below)?

Was there a public hearing on this change and if so, could you direct me to them as well as the minutes on the change?

Please incorporate these comments and attached email below into the official record of the proceedings of the 1509 El Camino Project and its successors.

Thank you,  
Mark Haberecht  
1505 Balboa

Begin forwarded message:

**From:** "ATTY-Kane, Kathleen" <[kkane@burlingame.org](mailto:kkane@burlingame.org)>  
**Subject:** RE: 1509 El Camino Real  
**Date:** March 23, 2015 at 3:06:14 PM PDT  
**To:** <[mhabs@comcast.net](mailto:mhabs@comcast.net)>  
**Cc:** "CD/PLG-Meeker, William" <[wmeeker@burlingame.org](mailto:wmeeker@burlingame.org)>, "MGR- Goldman, Lisa" <[lgoldman@burlingame.org](mailto:lgoldman@burlingame.org)>, "CD/PLG-Gardiner, Kevin" <[kgardiner@burlingame.org](mailto:kgardiner@burlingame.org)>, "CD/PLG-Hurin, Ruben" <[RHurin@burlingame.org](mailto:RHurin@burlingame.org)>, "GRP-Council" <[council@burlingame.org](mailto:council@burlingame.org)>, "GRP-Planning Commissioners" <[PlanningCommissioners@burlingame.org](mailto:PlanningCommissioners@burlingame.org)>

Thank you for your input. My advice to the City is based on the statute, the legislative purposes behind the statutory scheme, authoritative sources interpreting the statute, and risk analysis. I appreciate your perspective and should my advice change in the future I will of course inform my client.

Take care,  
Kathleen Kane

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**From:** [mhabs@comcast.net](mailto:mhabs@comcast.net) [<mailto:mhabs@comcast.net>]  
**Sent:** Monday, March 23, 2015 2:51 PM  
**To:** ATTY-Kane, Kathleen  
**Cc:** CD/PLG-Meeker, William; MGR- Goldman, Lisa; CD/PLG-Gardiner, Kevin; CD/PLG-Hurin, Ruben; GRP-Council; GRP-Planning Commissioners  
**Subject:** Re: 1509 El Camino Real

Ms. Kane, thank you for your response.  
However, I believe your interpretation of the Health & Safety Code to be in error.

Section 19851(a) pertains *only* to the “official copy of the plans maintained by the building department of the city or county provided for under Section 19850.” Section 19850 requires the building department to maintain “an official copy . . . of the plans of every building, during the life of the building, for which the department issued a building permit.”

In my view, there is no reasonable reading under which section § 19850 would concern *proposed* plans of a building for which the city has not yet issued a building permit.

## Health & Safety Code § 19850

The building department of every city or county shall maintain an official copy, which may be on microfilm or other type of photographic copy, of the plans of every building, during the life of the building, for which the department issued a building permit.

“Building department” means the department, bureau, or officer charged with the enforcement of laws or ordinances regulating the erection, construction, or alteration of buildings.

Except for plans of a common interest development as defined in Section 1351 of the Civil Code, plans need not be filed for:

- (a) Single or multiple dwellings not more than two stories and basement in height.
- (b) Garages and other structures appurtenant to buildings described under subdivision (a).
- (c) Farm or ranch buildings.
- (d) Any one-story building where the span between bearing walls does not exceed 25 feet. The exemption in this subdivision does not, however, apply to a steel frame or concrete building.

## Health & Safety Code § 19851

(a) The official copy of **the plans maintained by the building department of the city or county provided for under Section 19850** shall be open for inspection only on the premises of the building department as a public record. The copy may not be duplicated in whole or in part except (1) with the written permission, which permission shall not be unreasonably withheld as specified in subdivision (f), of the certified, licensed or registered professional or his or her successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written permission of the board of directors or governing body of the association established to manage the common interest development, or (2) by order of a proper court or upon the request of any state agency.

(b) Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, shall request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building or (2), if the building is part of a common interest development, from the board of directors or other governing body of the association established to manage the common interest development.

(c) The building department shall also furnish the form of an affidavit to be completed and signed by the person requesting to duplicate the official copy of the plans, which contains provisions stating all of the following:

- (1) That the copy of the plans shall only be used for the maintenance, operation, and use of the building.
- (2) That drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record.
- (3) That subdivision (a) of Section 5536.25 of the Business and Professions Code states that a licensed architect who signs plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to, or use of, those plans, specifications, reports, or documents where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the architectural service rendered by the architect who signed the plans, specifications, reports, or documents was not also a proximate cause of the damage.
- (d) The request by the building department to a licensed, registered, or certified professional may be made by the building department sending a registered or certified letter to the licensed, registered, or certified professional requesting his or her permission to duplicate the official copy of the plans and sending with the registered or certified letter, a copy of the affidavit furnished by the building department which has been completed and signed by the person requesting to duplicate the official copy of the plans. The registered or certified letters shall be sent by the building department to the most recent address of the licensed, registered, or certified professional available from the California State Board of Architectural Examiners.
- (e) The governing body of the city or county may establish a fee to be paid by any person who requests the building department of the city or county to duplicate the official copy of any plans pursuant to this section, in an amount which it determines is reasonably necessary to cover the costs of the building department pursuant to this section.
- (f) The certified, licensed, or registered professional's refusal to permit the duplication of the plans is unreasonable if, upon request from the building department, the professional does either of the following:
  - (1) Fails to respond to the local building department within 30 days of receipt by the professional of the request. However, if the building department determines that professional is unavailable to respond within 30 days of receipt of the request due to serious illness, travel, or other extenuating circumstances, the time period shall be extended by the building department to allow the professional adequate time to respond, as determined to be appropriate to the individual circumstance, but not to exceed 60 days.
  - (2) Refuses to give his or her permission for the duplication of the plans after receiving the signed affidavit and registered or certified letter specified in subdivisions (c) and (d).

The above comments and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

Thank you,  
Mark Haberecht

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**From:** "Kathleen ATTY-Kane" <[kkane@burlingame.org](mailto:kkane@burlingame.org)>  
**To:** [mhabs@comcast.net](mailto:mhabs@comcast.net)  
**Cc:** "CD/PLG-Meeker, William" <[wmeeker@burlingame.org](mailto:wmeeker@burlingame.org)>, "MGR- Goldman, Lisa" <[lgoldman@burlingame.org](mailto:lgoldman@burlingame.org)>, "CD/PLG-Gardiner, Kevin" <[kgardiner@burlingame.org](mailto:kgardiner@burlingame.org)>, "CD/PLG-Hurin, Ruben" <[RHurin@burlingame.org](mailto:RHurin@burlingame.org)>, [council@burlingame.org](mailto:council@burlingame.org), [planningcommissioners@burlingame.org](mailto:planningcommissioners@burlingame.org)  
**Sent:** Monday, March 23, 2015 8:04:47 AM  
**Subject:** Re: 1509 El Camino Real

Health and Safety Code 19851 governs the duplication of plans:

19851. (a) The official copy of the plans maintained by the building department of the city or county provided for under Section 19850 shall be open for inspection only on the premises of the building department as a public record. The copy may not be duplicated in whole or in part except (1) with the written permission, which permission shall not be unreasonably withheld as specified in subdivision (f), of the certified, licensed or registered professional or his or her successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written permission of the board of directors or governing body of the association established to manage the common interest development, or (2) by order of a proper court or upon the request of any state agency. (b) Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, shall request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building or (2), if the building is part of a common interest development, from the board of directors or other governing body of the association established to manage the common interest development. (c) The building department shall also furnish the form of an affidavit to be completed and signed by the person requesting to duplicate the official copy of the plans, which contains provisions stating all of the following: (1) That the copy of the plans shall only be used for the maintenance, operation, and use of the building. (2) That drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record. (3) That subdivision (a) of Section 5536.25 of the Business and Professions Code states that a licensed architect who signs plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to, or use of, those plans, specifications, reports, or documents where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the architectural service rendered by the architect who signed the plans, specifications, reports, or documents was not also a proximate cause of the damage. (d) The request by the building department to a licensed, registered, or certified professional may be made by the building department sending a registered or certified letter to the licensed, registered, or certified professional requesting his or her permission to duplicate the official copy of the plans and sending with the registered or certified letter, a copy of the affidavit furnished by the building department which has been completed and signed by the person requesting to duplicate the official copy of the plans. The registered or certified letters shall be sent by the building department to the most recent address of the licensed, registered, or certified professional available from the California State Board of Architectural Examiners. (e) The governing body of the city or county may establish a fee to be paid by any person who requests the building department of the city or county to duplicate the official copy of any plans pursuant to this section, in an amount which it determines is reasonably necessary to cover the costs of the building department pursuant to this section. (f) The certified, licensed, or registered professional's refusal to permit the duplication of the plans is unreasonable if, upon request from the building department, the professional does either of the following: (1) Fails to respond to the local building department within 30 days of receipt by the professional of the request. However, if the building department determines that professional is unavailable to respond within 30 days of receipt of the request due to serious illness, travel, or other extenuating circumstances, the time period shall be extended by the building department to allow the professional adequate time to respond, as determined to be appropriate to the individual circumstance, but not to exceed 60 days. (2) Refuses to give his or her permission for the duplication of the plans after receiving the signed affidavit and registered or certified letter specified in subdivisions (c) and (d).

Sent from my iPhone

On Mar 23, 2015, at 7:50 AM, "[mhabs@comcast.net](mailto:mhabs@comcast.net)" <[mhabs@comcast.net](mailto:mhabs@comcast.net)> wrote:

Ms. Kane, thank you for your response.

What Health & Safety Code provision are you relying for your opinion?

Thanks,  
Mark Haberecht

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**From:** "Kathleen ATTY-Kane" <[kkane@burlingame.org](mailto:kkane@burlingame.org)>  
**To:** "Mark" <[mhabs@comcast.net](mailto:mhabs@comcast.net)>  
**Cc:** "CD/PLG-Meeker, William" <[wmeeker@burlingame.org](mailto:wmeeker@burlingame.org)>, "MGR- Goldman, Lisa" <[lgoldman@burlingame.org](mailto:lgoldman@burlingame.org)>, "CD/PLG-Gardiner, Kevin" <[kgardiner@burlingame.org](mailto:kgardiner@burlingame.org)>, "CD/PLG-Hurin, Ruben" <[RHurin@burlingame.org](mailto:RHurin@burlingame.org)>, [council@burlingame.org](mailto:council@burlingame.org), [planningcommissioners@burlingame.org](mailto:planningcommissioners@burlingame.org)  
**Sent:** Sunday, March 22, 2015 9:23:58 AM  
**Subject:** Re: 1509 El Camino Real

Good morning --

I wanted to inform this exchange with the background of the discussion on why wet stamped plans are not available on the Internet. It is illegal under the Health and Safety Code for the City to make such plans available for copying. They can be viewed by members of the public but not reproduced without following a statutorily prescribed mechanism for securing permission. Posting the plans where they could be downloaded would circumvent this statutory scheme. The City seeks to comply with all applicable state law mandates and therefore makes such plans available for in-person review but does not post them on the web page.

Take care,

Kathleen Kane  
City Attorney

Sent from my iPhone

On Mar 22, 2015, at 9:12 AM, Mark <[mhabs@comcast.net](mailto:mhabs@comcast.net)> wrote:

Thank you Mr. Meeker.

I trust that the the plans for 1509 ECR stamped with an architect/designer's stamp or did they indicate who drafted them. The version I saw as well as the one some neighbors saw at City Hall didn't appear to indicate who actually drafted the plans with the typical stamp or sidebar indication.

I think the policy of no links to plans on the web needs to be revisited as public transparency and information flow far outweighs any potentially small cost of duplication risk. Intellectual property of significantly higher value is available freely for examination on the internet and with

appropriate copyright disclaimers, are viewed regularly by the consuming public without issue. When there is an issue, there are laws to offer protections to the owners of intellectual property.

Also, due to this policy, it would be in the public interest that even *more* lead time be given from announcement of an agenda item. The public sees this on Friday as an agenda item then has either Friday or Monday to go to City Hall to review the plans and make comments. That seems unrealistic, especially for the working public, most of whom have jobs and have to give appropriate lead times to their supervisors/co workers to take time off. With regard to neighbors involved in discussions with the developer, Mr. Hurin has done a tremendous job in keeping everyone apprised of the goings on (I believe he is a great asset to the City and he deserves many thanks for representing the City in a professional and respectful manner). My concern is more for the public being allowed sufficient time to get up to speed in matters of high complexity and provide useful feedback.

For important issues such as these, where we are dealing with matters of State law, public protection, due process, land use theory, environmental regulation, traffic/public safety issues, economics, etc. the more transparency, lead time, information flow, the better. Not only for the public but by virtue of prudent risk management from the City's perspective.

I will request City Council to initiate a re-examination of this policy, and I'm sure many community members will agree, that it does little by way of serving public purpose.

The above comments and all references contained therein are hereby incorporated into the official proceedings of this project and its successors.

Respectfully submitted,

Mark Haberecht  
1505 Balboa Ave

On Mar 21, 2015, at 6:57 PM, CD/PLG-Meeker, William  
<[wmeeker@burlingame.org](mailto:wmeeker@burlingame.org)> wrote:

Mr. Haberecht:

The Community Development Department - Planning Division ceased posting project plans on the City's web-site and agenda links quite some time ago in response to a City Attorney that informed staff that posting of such materials prepared by an architect, designer or other professional are

protected from duplication and distribution as copyrighted materials. A review of the City's agenda postings during the past year or more confirms the application of this policy. You and any other member of the public are provided the opportunity to review the plans in the project file during normal City Hall business hours: 8 a.m. to 5 p.m., Monday through Friday.

Though you may certainly submit a request to the Planning Commission requesting a continuation of the matter on Monday evening, I wish to remind you that Monday's hearing is the first of at least three opportunities for the public to provide oral and written testimony regarding the project design. Monday's hearing is intended to permit the Planning Commission to conduct an initial review the latest project design and to provide input to refine the project prior to preparation of an updated environmental analysis pursuant to the California Environmental Quality Act (CEQA). In the future, a second opportunity for public review and comment will occur when a public hearing is held to elicit comments that will form the scope for the environmental analysis of the project pursuant to CEQA. Finally, a third public hearing will be conducted at the time that the environmental document has completed its circulation period and the project is ready for final action by the Planning Commission.

William Meeker, Director  
Community Development Department  
501 Primrose Road – 2nd Floor  
Burlingame, California 94010

PH: 650.558.7255/FAX: 650.696.3790  
E-Mail: [wmeeker@burlingame.org](mailto:wmeeker@burlingame.org)  
Website: [www.burlingame.org](http://www.burlingame.org)  
City Newsletter: Sign up for eNews

-----Original Message-----

From: Mark [<mailto:mhabs@comcast.net>]  
Sent: Saturday, March 21, 2015 3:32 PM  
To: GRP-Planning Commissioners; CD/PLG-Meeker, William; CD/PLG-Hurin, Ruben  
Cc: GRP-Council  
Subject: 1509 El Camino Real

To the Planning Commission and City of Burlingame Staff:

On the website for the March 21 Planning Commission agenda, there is no link to the plans for the most recent proposal nor are the plans contained in any linked document. The only version I have last seen was from the developer in December and some neighbors saw a version of plans at the City offices (with a January stamp I believe), but it now appears there are differences compared to that/those version(s) and what is described in the staff report.

I'm not sure I nor the public at large can really effectively comment on the most recent proposal when we don't fully know what is being proposed/considered in terms of overall square footage, number of bedrooms, landscaping, architectural details, trees, work on creek, and the like as these are items that are really only contained in the plans themselves.

The staff report and community letters were posted on the website on Friday morning, which I believe is already insufficient lead time to really digest the information and make insightful and relevant comments. 1509 ECR is what I would consider a matter of significant public controversy and therefore all information being used in meeting discussions and by discretionary decision makers should be included online. Because CEQA provides the right for the public to review and comment on the project in its final form, if it is standard practice to post plans online in addition to staff packets, letters, etc, this should be continued for this project especially.

I understand that these things do happen inadvertently, therefore I request that public correspondences/letters on the project for the March 23rd meeting be allowed to be received for another seven (7) calendar days after official plans are posted onto the website for the public to review.

The above comments and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

Thank you,

Mark Haberecht  
1505 Balboa Ave

RECEIVED

JUL 20 2015

CITY CLERK'S OFFICE July 15, 2015  
CITY OF BURLINGAME

Dear *Vice Mayor Keighan*

I am writing to you concerning an article in the July 15th Daily Journal. I note that there is *planning* some concern about the lack of affordable housing in Burlingame. I spoke before the ~~City Council~~ *commission* on this matter several times during the hearings on the planned Condo Tower at 1509 El Camino Real.

Now there is discussion of a 'Just Cause' ordinance which I think will be impossible to pass. The citizens of the city have voted that they do not want the Council to make any ordinances which would impact rental rates.

If we are concerned with the lack of affordable housing in our city, it would not be moral to allow the destruction of such housing to build a condo tower. The affordable housing would be replaced with condos that cost a million dollars to buy. On top of that, will be charges for the maintenance of the building and the wall to keep the creek from flowing onto the property. This will not be 'afordable housing'.

I hope that you will keep this in mind when the permit to build the condo tower at 1509 El Camino comes back for reconsideration.

- City Council \_\_\_\_\_ please respond
- City Manager \_\_\_\_\_
- City Attorney  No Response Required
- Dir. Finance \_\_\_\_\_
- City Planner \_\_\_\_\_
- Dir. Public Works \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Police Chief \_\_\_\_\_
- Fire Chief  On Next Agenda
- Parks & Rec \_\_\_\_\_
- Librarian \_\_\_\_\_

PLEASE SEND A COPY OF YOUR  
RESPONSE TO THE CITY CLERK

Sincerely,

*Patricia Gray*

Patricia Gray

1616 Adeline Dr.

Burlingame

7/15/2015  
10:30 AM

April 27, 2015

In speaking tonight to the members of the Planning Commission and Planning Department, I want to reiterate my concern re the outdated sewer system currently in place in this area of the Easton Addition. Much of it was built nearly 100 years ago; my house at 1516 Balboa was built in 1921. It has proved inadequate in the past, and with much new building in the area, I am concerned about the potential for biological hazards from a failure of the sewers currently in place.

As noted in my previous remarks, the 90° angle of the two lines currently in place may cause unanticipated difficulties with an increase of 150% effluent entering the system from 1509 ECR.

Now that we are bringing our focus to the environmental impact of this project, I would like to ask the people involved in any evaluation process to carefully review the ability of the city's services to provide a sewer system able to meet the demands required of it.

Thank you,

Samantha MacPhail

650-342-0350

RECEIVED

APR 27 2015

CITY OF BURLINGAME  
CDD-PLANNING DIV.

**04.27.15 PC Meeting  
Item #6a  
1509 El Camino Real  
Page 1 of 3**

**COMMUNICATION RECEIVED  
AFTER PREPARATION  
OF STAFF REPORT**

**RECEIVED**

APR 27 2015

CITY OF BURLINGAME  
CDD – PLANNING DIV.

March 23, 2015

Dear Planning Commissioners,

Living outside the 500 foot noticing circumference for the 1509 El Camino Real development project I am at a disadvantage in responding in a manner timely to provide written comment to be included in the Staff Report for the March 23, 2015 public hearing because I had to wait for that Staff Report to be made available when the agenda was published and released on March 20. With only two business days before the meeting I am hard pressed to submit cogent and complete comment that will be considered by the Planning Commission tonight at its first initial hearing because this letter will most likely be given to you tonight, leaving little time to read and digest my commentary, if it's read at all. However, I do understand that it will be included in the next Staff report, but at a time uncertain. Although I will be present to give verbal public comment tonight, I know that I will be unable to cover all salient points in this letter given that verbal comment is now restricted to a maximum of three minutes.

I am also at a disadvantage because I am unable to get either a paper or electronic copy of the architectural plans to bolster my argument. I understand that I am now limited to viewing those plans only in the Planning Department office. Therefore, I must use plans date stamped February 16, 2012 which may no longer be accurate.

Because those architectural plans are the "contract" between the City and the Applicant that are not only recorded with the County but also the basis for the Conditions of Approval, to wit, "that the project shall be built as shown on the plans submitted to the Planning Division date stamped..." they are public record which should be released to the public. The onus of liability for reproduction should not be placed upon a public agency or municipality if an architect or property owner or any other applicant chooses to submit plans for public hearing and consideration. It should be up to the architect or property owner or any other applicant to pursue any perceived damages resulting from reproduction for public distribution from any offenders using those plans for monetary or other gain except the public agency or municipality.

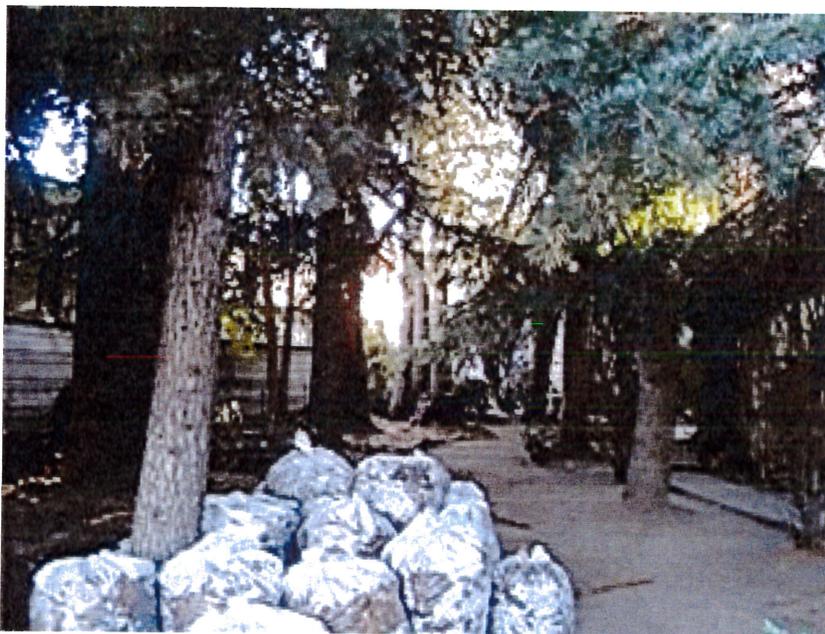
I also want to point out that no "lawn sign" was posted on the property giving notice of either the proposed project or its hearing date. I do not remember if the notice is restricted to only R-1 properties although it is my recollection that posting is not required for Commercial projects. Perhaps if posting is not required for R-2, R-3, and R-4 properties, you might consider their inclusion in the Ordinance to add transparency in proposed project consideration. After all, the entire neighborhood has an interest in all residential development.

At this time I hold in abeyance any argument that can be made in regard to the tentative joining of parcels APN: 026-011-010 & 025-228-130 until such time as I view the current architectural plans submission for the proposed project to assure myself that the claim of reduction of the building footprint from earlier submissions made by the Applicant to a neighbors meeting on January 13, 2015 can be substantiated. However, I will at this time dispute the imagined scenario of the applicant's claim of why the issue of parcel joining may have been simply a case of falling through the cracks. After extensive research of County and City records, the "facts" are not as simple as the Applicant presents them. Not wanting to muddy the waters at this time, I will say that the only real economic advantage that should come out of the lot merger should be that if the Applicant chooses to sell his constructed and completed development

project sometime in future he not be penalized with trying to off-load the “pig in the poke” property (025-228-130) he was forced to purchase in order to acquire the larger parcel (026-011-010). So long as I am assured that the added square footage that comes with the lot merger is not used to construct a larger footprint, I have no cause to bring dispute.

My primary focus is the preservation of the grove of trees in the southeast portion of the property that includes the Bunya -Bunya tree. Given the constraint of not having access to the site plan or the landscaping plan while composing my written comment at this time, I can only offer the following:

This is what the grove looked like in 2007...



...before an arborist’s report was obtained February 22, 2011 which stated that the close plantings (within 10 feet) of the deodar cedars have resulted in the suppressed foliar growth and trunk contortion. The dense broad canopy of the bunya-bunya has contributed to the suppressed growth of the trees.”

“Based on the site plan provided...the protection of the protected trees 120 through 127 within or adjacent to the proposed structure prevents their preservation.”

Sometime after the issuance of that report, six trees not designated protected were removed before the neighbor meeting with the Applicant on April 18, 2013 and the grove looked and continues to like this:



With the current outside Arborist's report, October 30, 2014, the recommendation is that all trees assessed in 2011 with the exception of two elms be removed despite Bob Disco, City Arborist's January 27, 2015 notation that "no protected size tree scheduled for removal".

It is my request that all existing trees in the grove, and especially the Bunya-Bunya, are given the protection needed for preservation with the possible exceptions of Trees # 120 the designated Spanish Fir, and #125, a Blue Tag protected Deodar Fir if it is determined that they impact the assumed smaller building footprint which only viewing of the current proposal will determine. I will add that even though no longer on the tree list for the City, the Acacias should also remain to provide existing screening because any new plantings will take years to provide what is already in place.

As a further request, the Commission should act to require the Applicant as a Condition of Approval to post a surety bond in the amount of \$100,000.00 to guarantee that all the remaining grove trees are surviving 5 years after the project has been constructed and completed. Precedent was set for this action on the 1500 block of Drake Avenue.

Thank you for your consideration.

Regards,

Pat Giorni

 Balboa, Burlingame

**04.27.15 PC Meeting  
Item #6a  
1509 El Camino Real  
Page 1 of 3**

*COMMUNICATION RECEIVED  
AFTER PREPARATION  
OF STAFF REPORT*

**RECEIVED**

APR 27 2015

CITY OF BURLINGAME  
CDD – PLANNING DIV.

**From:** Mark [mailto:-----]

**Sent:** Sunday, April 26, 2015 9:23 PM

**To:** GRP-Planning Commissioners; CD/PLG-Hurin, Ruben; CD/PLG-Meeker, William; CD/PLG-Gardiner, Kevin

**Cc:** GRP-Council

**Subject:** April 26 Meeting Comments RE: 1509 El Camino Real

April 26, 2015

Burlingame Planning Commission

RE: 1509 El Camino Real

Dear Sirs and Mesdames,

Please find my additional comments/observations from the March 23rd 2015 Planning Commission meeting and the Staff Report for the April 26, 2015 meeting:

1) It is unclear as to what environmental study is being required by the sponsoring agency (City of Burlingame). This is the Sponsoring Agency's responsibility. The CEQA checklist at the very end has a section entitled Mandatory Findings of Significance. If any of the categories are met, this means an EIR must be drafted to reveal the potentially environmentally significant issues, potential mitigants, and project alternatives. Given the community has done a significant amount of research, a Focused EIR may be more appropriate.

**Mandatory Findings of Significance** (my response to each category italicized)

**Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?**

*Yes, this has been addressed by the California Department of Fish and Wildlife Letter as potentially significant environmental issues (degrade environment quality, reduce habitat, threaten to eliminate plant community).*

**Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are**

**considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?**

*Yes, given the duplexes across Mills Creek are zoned R2, they may seek R3 zoning if 1509 El Camino gets built on the basis of achieving increased land utilization (notwithstanding the fact that creeks cannot be built upon). Also the Adeline Market Plaza and former Gas Station property have been identified in prior housing elements as a potential development areas. The owners of the Plaza in the future will likely use the height/massing/density/parking of 1509 ECR to argue for a larger more density-intensive redevelopment which will also likely have environmental effects (aesthetics, traffic, parking, environmental, etc). Finally the student population of Lincoln School has increased since 2007 (and 2011 for that matter), Ray Park activities have increased, there is now on-site after-school daycare (Champions, previously this was held at First Presbyterian) and in practice there would be a doubling of vehicles at 1509 under the current proposal. An EIR must take into consideration the impact on traffic/safety on the school and Ray Park which is already well-established as having problems (TSPC committee tried to hear the issue in 2014, but could not reach a quorum due to 3 members living within the 1400-1500 blocks of Balboa). Finally an EIR should require a new soils study based upon USGS Survey information (2010-2011) that was not taken into consideration in 2007 soils study (relied upon by the developer for subsequent applications), showing a high liquefaction susceptibility in a San Andreas Shaking Scenario (refer to prior comments on this, including USGS hazard shaking maps).*

**Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?**

*Yes, traffic and safety around Lincoln School of schoolchildren, also light and privacy (windows looking into yard of 1512 Balboa), creek wall failure (Wallach Creek Flooding Video 1524 Balboa Wy), need for proper creek wall reinforcement to support a greater load.*

2) During the March 23 2015, Planning Commission meeting, one of the Commissions said something to the effect that he felt that City Council was giving direction to the Planning Commission that there should be no reduction in housing units despite 1509 El Camino having a reduction of one unit (but many more bedrooms compared to the current property). While I understand that the Burlingame Housing Element states that a goal of Burlingame is to not have an overall housing unit decline, the application of CEQA is site-specific. Automatically saying that *every* project should not have a reduction in the number of housing units is not congruent with CEQA nor with the spirit of the Housing Element workshops I attended and Housing Element Adoption (City Council) meetings, where on the record, City staff and City Council members have clearly stated and emphasized that the Housing Element is not a "housing quota" document (actually inserted some language saying that the ABAG Regional Housing Allocation

Needs were suspect based on population projections of Burlingame that didn't make sense in light of zero population growth in 3+ decades) and that *each* property's potential development needs to be evaluated individually and on its own merits. In short, stating that every property must increase the number of units is subject to legal challenge, particularly when a project is subject to the provisions of CEQA.

3) Ms. Pat Giorni in the March 23, 2015 PC meeting, suggested the use of a Surety Bond to protect the Bunya Bunya and the surrounding grove of trees. We have seen nothing but a bad fact pattern of the developer's stewardship of his existing property, what has arisen over the years are potential liability issues (failing creek bank wall), the creek is full of debris (was brought up by the 2007 Planning Commission and nothing has been done since and has been verified by Public Works in recent visits), the developer cut down every non-protected tree on the side of the Bunya-Bunya *subsequent* to his 2007 application (photo verification in the 2007 and 2011 applications), and the building itself looks to be in a state of neglect and disrepair. A Surety Bond will help ensure tree protection for a period of time (recommend 5 years) and as mentioned at the 3/25/2015 meeting, has been used in precedent effectively.

4) The plans that I examined at March 23rd meeting had no authorship, i.e. it was unknown from reading the plans who authored them (the developer said it was his wife). I believe another member of the public also mentioned this. If they are not copyrighted, then why are they not available for public distribution? Is it not a requirement (stated within Burlingame's own building application) that the plans must clearly state who the author is? If not and are not copyrighted, then why are they still not available online? Moreover, the section of the California Safety Code that City Attorney Kane cites only applies to existing permits, it says nothing about proposed plans. This is a misinterpretation and/or mis-application of the statute specifically cited by Ms. Kane and to my knowledge, I'm not aware of City Council addressing this issue. Not only is it relevant for 1509 El Camino Real, but really for *all* public discourse on *all* projects in Burlingame. I would encourage the City Council to request a re-examination of this interpretation/application. More public dissemination of information in the digital age is better, particularly as it relates to public policy and project affecting the public at large.

These comments as well as my prior comments relating to the current or future proposed development of 1509 El Camino Real, Burlingame Ca 94010 (or its successors) are herein incorporated by reference.

Thank you for your time.

Respectfully submitted,  
Mark Haberecht  
----- Balboa

**03.23.15 PC Meeting**  
**Item 9b**  
**1509 El Camino Real**  
**Total # pages: 19**

COMMUNICATION RECEIVED  
AFTER PREPARATION  
OF STAFF REPORT

March 23, 2015  
Burlingame Planning Commission

**RECEIVED**

MAR 23 2015  
CITY OF BURLINGAME  
CDD – PLANNING DIV.

Dear Sirs and Madames,

Please find:

- i) My commentary with regard to the 2015 proposal for 1509 ECR.
- ii) Photo renderings of the project made by the developer/the City showing the view from the backyard of 1512
- iii) Executive Summary of All Concerns and Proposed Solutions for the proposed 1509 ECR Project (2012).

**Deficiencies in Public Disclosure of Project Details Prior to Hearing:**

I herein incorporate by reference the letters addressed to William Meeker and Kathleen Kane which question why the plans were not put online and why the public at large in a practical sense, would only be allowed two business days to see the plans, once it was known to the general public at large on Friday March 21st, the project would be up for a Monday night (March 23rd) hearing. While I understand that plans have been decided not to be put online due to compliance of state laws (City Attorney's opinion, other sponsoring agencies regularly post plans online and I have reason to believe this opinion was issued erroneously Ref email to Kathleen Kane), any reasonable person would conclude that effectively having two days to review the project is completely insufficient to address a project that in its last iteration has generated 400+ signatures in opposition. I state that for the record that the *plans were not reasonably made available to the public at large*. While certain neighbors received blue notice of public hearing cards (I did not), these cards were mostly received on Wednesday or Thursday night and the general public was not aware of the hearing until Friday morning. The short lead time also does not help any Planning Commissioner who sees the staff report and plans one day prior to the public being able to see them. Also, no Notice of Public Hearing posting was present in front of the property (I and another neighbor did not see a sign in front of the property and pictures have been taken as of Sunday night 3/22/2015). The above actions taken together may be construed (regardless of intent) as reducing public knowledge of the proposed project and interfering with public due process mandated by State law. It was also unknown as of Friday morning, how many hearings would be allowed and this was only found out after raising questions about the plans and availability to the public by Mr. Meeker that there would be at least 3 meetings discussing this project (the public at large would have not been aware of this).

**The New (2015) proposal:**

Upon confirmation of having sufficient time to look at the plans referred to in the Staff Report, and based on what I've been shown by the developer in late 2014 and early 2015, and based on a version of the plans seen by neighbors at City Call, this latest proposal is a substantial improvement over the 2012 proposal that incorporates many of my, the neighbors' and the broader community concerns. I still believe we still have work to do to make this a better project and to fully address neighbor, community, environmental as well as government agency concerns (CA Dept of Fish and Wildlife or "CDFW"), but what **Mr. Fellowes has now proposed is a good first step**. We also want to ensure that this type of project adhere to the guidelines set by Burlingame to keep the fabric/character of the city, which are spelled out in numerous publications.

The developer has met with me and several neighbors on 4 occasions in a spirit of good faith, in spite of some differences that still remain to varying degrees, but I think we are close to having a project that is ultimately feasible, offers the developer a good return on investment, is workable for the community, environmentally compliant, and much better for all stakeholders. I hope going forward this can serve as an example of the proper way for development in Burlingame to occur, in a spirit of partnership that occurs *prior* to proposals being submitted and involving neighbors and the community at every step of the way. This also minimizes surprises for developers, who may be given certain guidance by the City, only to find out that public perceptions compared to City perceptions are vastly different. I would highly encourage that future development advocated by the City of Burlingame not be taken with a "let's see who complains" type of approach. I would also encourage significant improvements in the way the City discloses public hearings, allowing sufficient time of the public to reasonably know and understand a project and hence provide well-informed, meaningful input.

To the developer's credit, they took down the height by one story, kept most of the trees, removed the rooftop gather area, moved the A/C vents to the front. I think these are good first steps to a workable project.

### **Summary of Findings:**

I believe the following steps need to be taken in order to render this project workable from an environmental and neighborhood perspective.

- 1) **The failing creek bank must be repaired.** This is simply a matter of safety for the 1509 Residents as well as the surrounding neighbors. The Wallachs at 1524 Balboa have sent the City of Burlingame footage of a flood that nearly damaged their property and have provided several pictures, and raised problems with the head of Public Works, who agreed with the assessment of the failing bank wall. The CDF&W, as the expert agency, and the developer's own environmental consultant (in 2007) also recommended repair of the bank.
- 2) The CDF&W letter recommended that **natural landscaping and vegetation be used to reduce runoff into the creek and to help sustain the riparian habitat. A putting green and bocce court hardly qualify as natural/native landscaping and I suspect the CDF&W will most likely come back with similar comments this time around.** Given this and the concerns surrounding noise, **these should be removed** and perhaps a community garden (growing vegetables/herbs) put in its place.
- 3) **Screening trees should be provided** to in the rear and south side of the property to better provide privacy to neighbors and brake up the massing. I have included renderings performed by the Developer/the City. Also, the developer mentions that he will provide screening trees but they do not appear on the plans. The trees chosen should be tall and of relatively fast growth.
- 4) **I feel that the rear 3rd story units need either to be set back more, or make significant changes to the massing/improving articulation.** This building appears to the neighbors and the neighborhood as a 'box' and literally looks straight down into the yard/windows of one of the neighbors (renderings provided).
- 5) This proposal is effectively a de Novo proposal and given all neighbor concerns, this should go **through Design Review** to address design issues as well as receive valuable input from the Planning Commission.

- 6) I think this needs to be a high quality **“Burlingame Building” in the rear just as much as the front, with articulation, offset massing, additional detail, enhanced foliage (screening trees or trellises)**. If Spanish architecture is to be maintained, **I highly recommend the use of “reclaimed” terra cotta mission barrel tiles**. It has been used on some homes and really helps conceal the newness of buildings and helps attenuate the massing (there is a home on Poppy Drive which is a great example of this). Other forms of architecture including brick/stone in more earthy tones may be more appropriate to help reduce the box-like nature of the building from the rear and sides (the part that affects neighbors the most).
- 7) The developer should also contribute something for the **public safety of Lincoln School and Ray park**. The Developer himself in 2007 (per transcripts) said that the current 12 bedrooms had 23-25 cars parked at the property typically. Now there will be increasing the bedrooms (24 per staff report) one can reasonably expect that 40-50 vehicles will need to be parked on the property, which is impossible and will cause parking overflow into the surrounding area, and will increase traffic in a high traffic School and Park area. The cars exiting the property to make a left onto ECR to go north (virtually impossible during school hours) would instead have to go through a series of right turns (6 crosswalks) which will also mean more traffic around the school. Also, in 2013, several neighbors and I went to several TSPC meetings to address traffic/safety/parking issues in the neighborhood. Because 3 commissioners lived within 500 feet of the 1400 and 1500 blocks of Balboa, they had to recuse themselves and a quorum could not be formed for the hearing. The fact that it was going to be heard and that the commissioners themselves believed traffic to be a problem in the area, it is in fact a problem, and the developer should give back to the community and pay for 1) speed limit sign on Balboa at the Way/Ave School Crossing (Your Speed is XXX) ; 2) flashing reflector crosswalk at the School Crossing; 3) consider a stop sign on Ray and Balboa for those traveling down Ray toward El Camino; 4) Sponsor the associated costs of “permitted parking” program for the City of Burlingame.
- 8) **We need an “all clear” from the CDF&W** that the building is at a suitable distance away from the creek, that the creek bank has repaired, there is native landscaping, and satisfaction of all issues raised by the CDFW report in 2012.
- 9) **Insertion of Adequate Sound Wall** (not sure if this made it to the version of plans that I saw).
- 10) **Building Department should require a soils study** to bore down to the point of the piers (not done in prior study), to require a sufficiently foundation, due to the proximity to the creek, as this is a high damage probability liquefaction zone (per FEMA maps, San Andreas Shaking scenario, information that was provided subsequent to the soils study done in 2007).

### **Background/History of 1509 ECR: The Neighborhood Perspective**

Many of you may not be familiar with the complete history of 1509 El Camino Real and the various applications to build on the property. Being relatively new to the neighborhood since 2010 and the second owner of a newer build construction on Balboa, in 2012, I was approached by several of my neighbors about proposed project at 1509 El Camino Real by developer Pat Fellowes of San Carlos. The neighbors were quite angry that a project of such massive scale and scope could be proposed. My first reaction was sounds like a case of “NIMBY”-ism not unlike what I typically hear for the newer build houses in the neighborhood (similar to what I live in). Upon discussing the issue with them and doing

some of my own research, nothing could be further from the truth and I soon understood exactly where they were coming from upon learning the following:

- The developer met with neighbors in 2006-2007, listened to their concerns and proposed a project smaller scale project in 2007. The project, as I understood it, were separate 2 story condos, with 2 buildings and underground parking. Note that the developer believed at the time that a smaller, multi-building complex with *underground* parking was financially feasible (in comparison to what is being proposed today with is larger). The Developer had paid ~\$2.1MM in for an 11 unit building in 2004 that is currently cash-flowing approximately ~\$1,400 per unit (estimated). The developer in the 2007 application appropriately described aspects of the environment that he believed his (then) proposal addressed (quotes from the written application):
  - “The 2 level townhouse style with center open court is acceptable design that is sensitive with the surrounding properties’ scale”
  - “The center court allows light and air through along the front and rear of the units and creates a pleasing open area entry to visitors”
  - “One driveway in front of building going down to an underground garage, herby mitigating the commercial look of the design”
  - “ A large park-like setting on the above podium with individual garden for the homeowner”
  - “Large Amounts of landscape. Nice rear yards for private enjoyment”
  - “(Trellises) landscaping treatment will provide a way to soften the hardscape of the building and add an aesthetic and pleasing element with the climbing vines to the frontage”

This information further environmental conditions and building appropriateness as a basis of fact (and those same descriptions were not used in the 2012 application).

- The audio files/tapes the 2007 Planning Commission meeting on the 2007 proposal showed a Planning Commission that acknowledged the environmental difficulties of developing the property, and described an environment, neighborhood character, trees, the natural setting that must be preserved. The comments were very pointed and made it clear that this property was different from most in Burlingame and that key environmental aspects with respect to the natural and human environment had to be preserved. I incorporate the audio tapes herein by reference.
- In the 2010-2011 timeframe, the developer again met with neighbors adjoining the 1509 ECR property, said he was going to propose a different building, listened to their concerns, which were largely reiterated from the 2007 meetings and Planning Commission meeting.
- A few months later, in 2012, the neighbors were shocked when the developer proposed a massive 4 story project with a 55 foot variance (5 story), including the adjoining of two lots, one of which contains a creek is unbuildable for the sole purpose of maximizing square footage, as well as the removal of several heritage trees, including what we believe to be the only/last Bunya-Bunya tree in Burlingame (approx 120 years old). All were puzzled how something could be so defiantly proposed, flying in the face of what the 2007 Planning Commission said, what was established about the environment and creek area, and in the spirit of the developer asking about neighbor concerns, which they believed should at least incorporate their and the 2007 Planning Commissions feedback.
- Upon finding out these details, myself in disbelief, and in light of considering the valid and well articulated concerns about the site’s environment, the potential impact to the neighborhood and the traffic/safety of the neighborhoods kids and my own children, it was decided that we should collect petitions; and we obtained over 400 live, written signatures opposing the proposed 2012

proposal (a staggering number considering that many online petitions cannot gather that many signatures).

- One of the neighbors noticed that a tree permit to cut down the grove of trees, including the Bunya-Bunya was inadvertently issued under R-1 vs R-3 regulations and upon petitioning the Parks and Recreation, the tree permit was revoked, placing the project in a “limbo” state.
- Mr. Bob Disco’s tree report (2012 proposal) directly contradicted Osterling’s (paid tree consultant and former Planning Commissioner) report by saying the trees were still healthy.
- Along with the petitions, a significant number of letters were written relating to the insufficiency of the MND for the 2012 project and how the 2012 project or its approval would have been a violation of the provisions of CEQA and its adoption would have been characterized by some, including myself, as a clear abuse of discretion.
- Upon hearing the extent and depth of the opposition, as well as the rescinding of the tree permit, the developer then decided to put the project on hold and have meetings with neighbors. Needless to say, the neighbors now finally thought they had a real voice at the table.
- Subsequent review of a letter sent by the CA Dept of Fish and Wildlife (CDFW) submitted during the public comment period (submitted to the California State Clearinghouse) revealed a strongly worded letter that validated all neighbors claims with respect to environmental impacts on wildlife of trees, validity of the failing creek bank, light/shadow effects, riparian environment effects. This letter is now part of the record and qualifies as expert opinion.

What has confounded me, and I have asked this question and still have not received an adequate answer: **what about the environment, neighborhood, and circumstances has changed that would allow a developer to seek a larger, more imposing project (~28,000 total square feet) compared to what was proposed in 2007 (~19,000 total sq ft) and was effectively deemed un-approvable?** I’ve heard various answers from different sources e.g. different Planning Commission, different city priorities, different housing needs, even the excuse "the City told me they wanted building just like 1512 Floribunda (Thorenfeldt Construction), so I gave it to them, now they told me I have to talk to you".

Through this whole process, upon examining body of evidence, including opinions from experts and public agencies, and I believe the answer to my question is quite simple: **nothing about the environment has changed to make this project more favorable and traffic/parking has gotten worse and the school population has increased.** Also, the latest project size has still increased from the 2007 proposal, in effect rendering the latest proposal a concession by the neighborhood to what was approved in 2007 (and deemed unworkable). We the public cannot solely rely on sponsoring agencies decisions, nor that local public officials are aware of all the goings on CEQA is provided to us as the only tool to protect our environment, our city, and its human inhabitants. CEQA tries to answer one thing: *Might a project have a significant impact on the environment?* It’s absolutely irrelevant whether the project can provide some public benefit or answer some need, or what the size or financial condition of the applicant is, or how the project compares with other projects.

**Cheap vs Cheap for A Reason**

The developer only paid \$2.1MM in 2004 for a cash-flowing property, which even then was extremely inexpensive at that time. In investing, there are two forms of “value” or “cheapness”: 1) cheap, and 2) cheap for a reason. The real estate markets in highly desirable areas tend to be relatively efficiently priced. The owner/developer erroneously misjudged “potential” that could only be unlocked by rezoning a portion of land that is unbuildable and contains a creek, a site defined by trees and a bucolic atmosphere, a site that abuts R1 single family homes, and a site whose development has potential cumulative impacts on neighboring properties. In short, he bought a significantly environmentally constrained property, as the developer himself has stated, as the 2007 Planning Commission has effectively stated, as many neighbors have asserted for several years, as members of City Staff have stated (with respect to problems with Creek), all of which were subsequently validated in many points by the CDF&W in its response to the 2012 proposal. Because of the developer’s investment judgment on this particular property, he should bear the cost, not the neighborhood. We have had two real estate experts perform an analysis of the “even numbered” side of 1100-1400 Blocks of Balboa facing multi-family units, which adjusting for age/square footage sell for \$50,000-\$100,000 lower than comparable homes on the “odd numbered” address side as they border multifamily units. The value of the neighbors’ properties that abut 1509 ECR will probably see this wealth transfer occur, to the sole benefit of the developer.

### **CEQA and Feasibility**

CEQA requires that a project environmental impacts be *reduced to the extent such that a project will be no longer be rendered feasible*. We have several developers in the Planning Commission some of whom have experience with multi-family housing and know the profitability and costs quite well. I have spoken to two developers (who are not members of the PC) privately, from which I derived my financial analyses. When using leverage (construction loan + mortgage), the return on investment (equity) is quite favorable. In short, the building size can be further reduced and this can still be rendered a feasible project that can return in excess of not doing anything to the property. In 2007 a smaller proposal, with multiple buildings (more buildings have more corners and are more expensive) and underground parking (adds about \$1MM to the total cost of project this size) was deemed feasible.

### **Illustrative Economics of Property Development as a Basis for Realistic Solutions**

In order to establish meaningful discussions on what is feasible in terms of development from both the community and developer’s perspective, I have prepared an economic valuation analysis of potential property development incorporating information from local multi-family builders, estimated construction costs from 1226 El Camino Real ( Burlingame Permit Archives) and other multifamily properties (City of Burlingame Building Permit Database), and local real estate agents, to arrive at estimated multi-family all-in construction costs (at contractor level) of approximately \$300 per finished square foot (this includes unfinished garage space and parts of the structure, e.g. outdoor balconies). I have also accessed the MLS to ascertain recent comparable sales and asking prices for new condo construction in Burlingame (which are actually in the midst of rising substantially) on a per finished square foot basis, which is assumed to be approximately \$700 for newer construction. Our analysis also includes an alternative opportunity cost NOI (Net Operating Income) and Capitalization Rate (Cap Rate) approach used by the Institutional Investment Community for Commercial Real Estate and Multifamily Real Estate Investment Trusts (REITs).

The following analysis establishes my belief that the property may be developed profitably even with a 50% reduction in total square footage (from the 2012 proposal, or another 25%-30% from the 2015 proposal); with profitability being defined as unlevered Return on Investment (ROI), and resulting in a

final sale valuation greater than the point of theoretical “indifference” (ie, keep renting out property as is) using the NOI approach, which values the existing property at \$3.7MM vs. the \$6.56MM value achieved at 9,300 square feet of living space). With unlevered return on initial investment of ~33-50% (if leverage were used, the return on equity would be even greater), we believe that a significantly downsized project can still earn a very profitable return on investment.

**Alternative #1 Develop and Sell Condos**

Development Economics	Square Foot Reduction (%)					
	Initial (2012) Proposal	-20%	-30%	-40%	-50%	-60%
Total Finished Living Square Footage	23,247	18,598	16,273	13,948	11,624	9,299
Fair Market Value Per Sq. Ft.	\$ 700	\$ 700	\$ 700	\$ 700	\$ 700	\$ 700
<b>Total Fair Market Value</b>	<b>\$ 16,272,900</b>	<b>\$ 13,018,320</b>	<b>\$ 11,391,030</b>	<b>\$ 9,763,740</b>	<b>\$ 8,136,450</b>	<b>\$ 6,509,160</b>
All-In (Living/Garage/Public Area) Construction Cost Per Sq.	\$ 300	\$ 300	\$ 300	\$ 300	\$ 300	\$ 300
Total Construction Cost	\$ 6,974,100	\$ 5,579,280	\$ 4,881,870	\$ 4,184,460	\$ 3,487,050	\$ 2,789,640
Total Land Cost	\$ 2,100,000	\$ 2,100,000	\$ 2,100,000	\$ 2,100,000	\$ 2,100,000	\$ 2,100,000
Total Unlevered Cost	\$ 9,074,100	\$ 7,679,280	\$ 6,981,870	\$ 6,284,460	\$ 5,587,050	\$ 4,889,640
<b>Unlevered Profit</b>	<b>\$ 7,198,800</b>	<b>\$ 5,339,040</b>	<b>\$ 4,409,160</b>	<b>\$ 3,479,280</b>	<b>\$ 2,549,400</b>	<b>\$ 1,619,520</b>
<b>Unlevered Total Return on Investment</b>	<b>79%</b>	<b>70%</b>	<b>63%</b>	<b>55%</b>	<b>46%</b>	<b>33%</b>

**Alternative # 2 - Continue as Income Producing Property**

Fair Market Rent Per Month	\$ 1,400
# of units	11
Total Rent per Month	\$ 15,400
Per Year (x 12)	\$ 184,800
Maintenance Cost/Year (6% per annum)	\$ (11,088)
Property Taxes	\$ (23,730)
Annual Net Operating Income (NOI)	\$ 149,982
Capitalization Rate*	5.000%
<b>Current Fair Market Value</b>	<b>\$ 3,696,000</b>

\* Assumes 80% LTV @ 4.25% (Prime + 1%) Required Return on Equity of 8%

**Current Resident Concerns:**

Several residents of the current 1509 ECR apartment complex expressed their concern of being displaced and in one of the Planning Commission meetings, one resident, already afraid to speak up, was effectively silenced into intimidation by being told by to seek help elsewhere. While as neighbors, we understand that Burlingame has very limited options for lower income rental availability, and developers have a right to develop their properties within the confines of rules, regulations, local statues and state law, we hope that our actions in coming up with a more workable solution also allowed those renters who may be displaced more time to enjoy their setting, families, lower cost rent while extending optionality for other location options.

**De Novo Project vs De Facto Environmental Conditions**

While this most recent proposal project is considered a substantial revision of the 2012 project, it must be kept in mind that the environmental conditions of the property nor potential impacts to the human environment have not changed in any way making development more favorable since 2007. In fact, the

school population of Lincoln and Ray Park activities have only increased, thereby increasing potential impacts to traffic, safety, noise, and the like.

### **CEQA and Applicability to Discretionary Actions.**

While a complex law that is tough to navigate and presents a challenge for Planners and decision makers alike, there are a few key points to be made about application of the law by virtue of its statutory provisions as well as case law/precedent:

- CEQA requires that a *project's significant environmental impacts be revealed, and reduced to the extent feasible*. In this context, "infeasible" doesn't just mean less profitable for the developer. The courts have held that there must be a factual showing that the mitigation measures or project alternatives would create a hardship sufficiently severe to render it impossible to continue with the project.
- To require the preparation of an EIR, one only needs to make only make a "fair argument" that there may be a significant environmental impact, even though a contrary conclusion may be possible. (CEQA Guidelines §15064(g)(1), Friends of B Street v. Cfty of Hayward (1980) 106 Cal.App.3d 988.) CEQA sets a "low threshold" for preparation of an EIR. (No Oil Inc. v. City of Los Angeles (1974)13 Cal.3d 68, 84.)
- If the EIR identifies a significant impact of a proposed project, the project cannot be approved until all feasible "mitigation measures" or "project alternatives" which could "eliminate or substantially lessen" the identified significant impacts have been adopted.
- The EIR must examine the project's "cumulative impacts," meaning the impacts of the project added to those of past, present, and reasonably foreseeable future projects. (PRC §§21083(b), CEQA Guidelines §§15065(c), 15130, 15355.)

### **EIR vs Mitigated Negative Declaration - Cumulative Impacts.**

I am surprised that the lead agency, the City of Burlingame, still does not appear to require an EIR or focused EIR for 1509 El Camino Real .

The legal test is this: if there's *any* substantial evidence that the approved project *may* have a significant impact (or even if its mitigation measures may have a significant impact), an EIR is required.

The Developer's own comments in the application for the 2007 application, public comments on the 2012 application, the TSPC's attempt to hear concerns about parking and traffic at the 1400 and 1500 Blocks of Balboa (a quorum could not be reached), the CDFW letter addressing the 2012 proposal, including the problems with the creek, setbacks, and impacts on the riparian environment already establish that development on the property may have significant

**The EIR must examine the project's "cumulative impacts," meaning the impacts of the project added to those of past, present, and reasonably foreseeable future projects. (PRC §§21083(b),**

**CEQA Guidelines §§15065(c), 15130, 15355.) It is known that the Adeline Market Plaza was listed prior Housing Element reports as a property that may potentially be developed and therefore development along El Camino and Adeline needs to be addressed as a whole especially given potential cumulative impacts.** An EIR should address the potential cumulative impact of building 1509 ECR and the potential effects on development of Adeline Market and its impact on traffic, population, and the human environment.

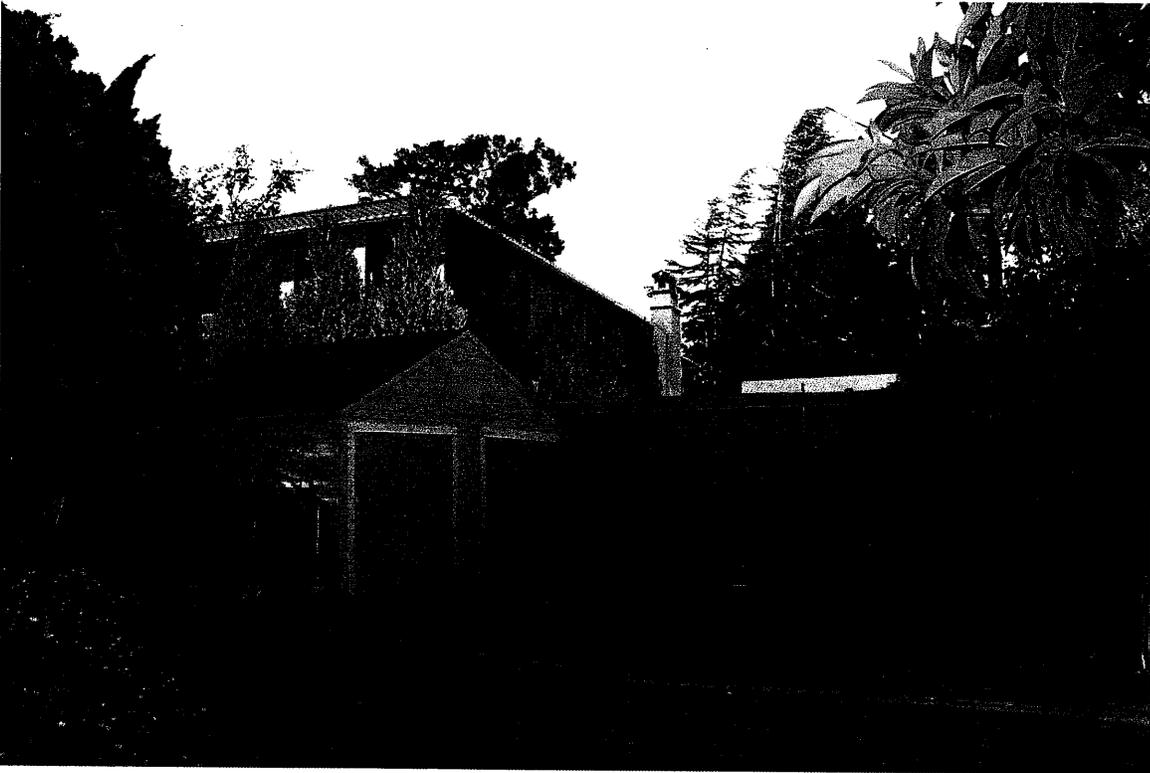
### **Typical Developer Responses**

#### **“NIMBY Neighbors”:**

- While Developers like to label neighbors as “NIMBY”, one cannot say that getting 400 written signatures, the significant weight of opinions of neighbors in the legal profession, nor the prior concerns of prior commissioners and the public in 2007, establishing the environmental conditions as “expert opinions”, nor the 2013 hearing by the Traffic and Safety Commissions on 1400 and 1500 Blocks of Balboa, nor the notices that we as parents get from Lincoln school on the traffic and safety concerns can be regarded as “NIMBY” in nature. Me and several neighbors believe in responsible development that is both feasible and works for the community and within the laws/regulations.

#### **“Look how much I’ve given up to build this compared to the last building. This is a win for the NIMBYs at my expense”**

- While the project has substantially improved, it is still larger than the 2007 proposal, deemed as un-approvable by a sitting Planning Commission. Proposing something that effectively gets shot down, then proposing a larger building that generates more opposition, and returning to a building that is larger than the original proposal in can be argued from the neighborhood perspective as the neighborhood giving up more “concessions” when looking at the totality of proposals from day one.



# Executive Summary of all public concerns raised by the 2012 1509 ECR Proposal (Subsequently withdrawn by the developer) and potential solutions

This Summary has been prepared in response to the public comment concerns raised about the development of 1509 El Camino Real, representing the key concerns raised of over 400 residents during petition signature soliciting activities, public and written commentary at several Planning Commission meetings and one City Council Meeting (“From the Floor”).

With each key concern are specific, fact-based, and realistic *potential* solutions on how to mitigate the environmental impacts of potential property development.

## Key Concerns and Potential Solutions

### I. Mitigated Negative Declaration vs. Full Environmental Impact Report

#### Concerns:

- The justification made by the City to require an MND is insufficient (Pg 1 MND report) “the project would (typo) result in certain potentially significant environmental impacts, but those impacts would be reduced to a less than significant level by implementation of mitigation measures that have been agreed upon and would be implemented by the applicant and monitored by the City of Burlingame.”
- Public feedback and prior one-on-one discussions with certain residents and the developer was not incorporated into the preparation of the MND.
- No alternatives nor mitigating factors were identified by the MND.
- Public commentary Fair Arguments of potentially environmentally significant impacts on the following were not included nor sufficient in the report: i) Aesthetics; ii) Biological Resources/Trees; iii) Riparian Environment/Creek; iv) Traffic/Parking; v) Soils; vi) Population; vii) other items (see below).
- Broad community opposition to project via letters and 400+ petition signature from several neighborhoods (and cities) establish that aesthetic and land use impacts are far greater than the immediate El Camino area, as defined by the developers.
- California Department of Fish and Wildlife Report objections on riparian environment, bank creek wall, soil erosion, native landscaping, riparian feeding, and stream alternation impacts.
- Neighbors including myself brought up traffic/parking issues to TSPC meetings in 2014. TSPC had 1400 and 1500 blocks of Balboa as agenda item. 3 of TSPC Commissioners had to recuse themselves due to their proximity to both blocks, a quorum couldn't be reached to hear the item. The very fact that TSPC acknowledged traffic/parking as issues on the blocks of Balboa and wanted to hear the item is considered expert acknowledgement of the traffic/safety/parking issues along the 1400-1500 Blocks of Balboa. Traffic/Circulation issues are covered by CEQA

#### Solution:

- A Full Environmental Impact Report should be prepared for any potential project.

### II. MND Ignored Prior (2007) Environmentally Significant Conditions raised by Community, Planning Commission and Developer himself; This is the Fatal Flaw of the MND

#### Concerns:

- In the 2007 application, the Developer's justification for design at the time actually acknowledged several environmental issues and circumstances we are raising today that were ignored in the 2012 project.
- The environmental circumstances haven't changed and still exist today vs. 2007.
- 2007 concerns and environmentally significant factors (per PC transcripts) were included in staff report; should also be acknowledged/included in the even more important Environmental Report.
- Transcripts from 2007 application establish prior Planning Commission environmental concerns on smaller project with respect to:
  - Trees: "*Burlingame values trees - trees should remain*" (Quotations from Audio Tapes)
  - Aesthetics: "*If project moves forward, rear two units need to be reduced to two stories; design should respect transitions to adjacent neighborhoods.*"
  - Aesthetics: "*Additional work needs to be done on massing.*"
  - Aesthetics: "*Spanish architecture doesn't lend itself to a 3 story building*".
  - Environmental/Neighborhood Concerns: "*Applicant needs to address neighbors concerns.*"
  - Feasibility "*Maximizing developer's profit is not a reason for the Commission to approve a project*"
- Most of the reasons in applying for re-zoning in 2012 were cut-and-paste from the prior application, with the exception except for anything relating to appropriateness of aesthetics, size/scale, and fitting with neighborhood. From the 2007 Application as written by the developer:
  - "One single building would be overbearing in mass and bulk, as there are mostly smaller buildings within the subject property."
  - "Project would be in keeping with the character of smaller structures rather than one large one"
  - "2-Level Townhouse style with center open court is compatible design that is sensitive with surrounding properties' scale)."
  - "Center Court allows light and air through/along the front and rear of the units and creates an open pleasing entry to visitors."
  - "One driveway going down to underground garage, hereby mitigating the commercial look of the design"
  - "Large amounts of landscape"
  - "Feel that trellises (at front of property) give the best residential feel for the last impact on the surroundings"
  - (Trellises) "provide a way to soften hardscape of the building and add an esthetic and pleasing element with climbing vines to the frontage"
  - "Placement of trellises to be in front of the building rather than on the same plane of structure or beyond makes for a more attractive view".

Solution:

- Environmentally significant factors identified haven't changed and were readily acknowledged by all parties and must be presented for CEQA Compliance.
- Because they are Environmentally significant factors per CEQA, a full EIR must be prepared.

### III. Land Use & Planning: Re-Zoning of R2 Lot Containing a Creek to R3 and merging the two parcels (R2 and R3) into one R3 Lot.

Concerns:

- Sole purpose is to allow larger building.
- Density defined by number of units is not significantly increasing. Current R3 parcel has 11 units on .35144 Acres for a Unit/Acre ratio of 31.035. Combining R2 and R3 parcel results in 15 units on .4461 acres, for a Unit/Acre ratio of 33.62
- Increasing the number of units to 15 from 11 does not significantly "solve" any housing problems.
- Destruction of lower income rental property fails to address General Plan/Housing Elements requiring to maintain rental opportunities in Burlingame. This creates a new housing problem that is insufficiently outweighed by the "benefit" of creating new "Million Dollar Condo" slightly higher density housing opportunities.
- R2 to R3 zoning may induce domino effect of further developments—i.e. developer wants to build larger building, so gets rezoned.

- Burlingame's own Housing Element report has an appendix referencing a working group which has identified Adeline Market as a potential mixed-use residential and commercial redevelopment. Any potential cumulative effects of development (which would make developing this property 'easier' through precedence) should be considered in an EIR.
- Rezoning and Lot Merge Should be treated as separate item from approval of any project: 1) If Council does not approve the lot merge, the developer loses ~4,000 square feet; 2) If Council approves the lot merge and zoning change, the project can move forward and if approved, leaves the public with no recourse to appeal the decision
- Request for zoning change requires under direct purview of City Council to determine the final approval action; the Planning Commission will not be able to decide.
- A transaction resulting in a title change should not automatically mean that the R2 parcel on the subject property, particularly because it wouldn't make sense to build an R3 structure on the R2 parcel, as it contains a creek and is unbuildable.
- Neighbor on opposite R2 lot applied for R3 permit for addition and got denied (Helen Johnson); now is acceptable for 4-5 story building? Can Ms. Helen Johnson now apply for a rezoning from R2 to R3 and 5-story conditional use permit? Building standards should be applied uniformly and without prejudice.
- Need to look at reasons why creek lot was rated R2 (title analysis and history of Burlingame zoning required); Platt maps are needed.

#### Solution:

- Any Zoning request should be treated separately from any project, so that City Council may vote on zoning independent of Planning Commission approval on merits of project, thereby allowing Burlingame citizens to retain full due process rights.
- (Or) Keep R2 lot containing the creek zoned R2.
- Do a full title and Platt map analysis of Burlingame Zoning on subject R2 parcel.

#### **IV. Aesthetics - Building Is Too Large/Massive; Does Not Respect Neighborhood Transitions**

##### Concerns:

- Fails to comply with guidelines and restrictions along El Camino in Burlingame; General Plan limits condo/apartment buildings to maximum of 2-3 stories; MND project is 2 stories above this.
- Conditional Use Permits above 2-3 stories given for "special circumstances;" Because of surrounding buildings (duplexes, 2-3 story apts, 2 story houses across street), and the gateway site to tunnel of trees, "special circumstances" would actually argue for 2-3 story development, tunnel of trees as gateway site).
- Pictures submitted in the MND themselves establish that the entire two block area along the stretch of ECR is max 2-3 stories (actually really only 2.5)
- MND erroneously refers to "urban context" of the proposed project, when site is defined by trees; Reasonable person observations, PC comments for 2007 proposal agreed that site is "defined by Trees"
- CEQA guidelines require that any negative impact on "aesthetics" is deemed a "significant environmental impact" per se.
- Significant Negative Aesthetic Impact to 1400-1500 blocks of Balboa and Adeline and Albemarle (pictures per Haberecht, Mitchell, Johnson)
- In 2007 Application, developer himself states that a 2 story design is right for the neighborhood. In the 2011 Application, this commentary was completely absent in wake of asking for a conditional use permit to build 2-3 stories higher.
- Planning Commissioners have acknowledged that property is part of 3 neighborhoods: ECR, Balboa/Adeline, and Albemarle
- North Burlingame where the "Tunnel of Trees" begins in earnest is a "Gateway Site" (per definition of Burlingame Architectural guidelines) is anything but an oasis of trees and 1-3 level homes;
- 4-5 story building would create new source of substantive light for neighbors at nighttime (see building height Mitchell/Johnson photos).
- 3rd-4th stories of proposed building will present a "wall of windows" causing glare to the Adeline apartment and the 1400 Block of Balboa Eve residents from sunrise through mid-day from direct reflected sunlight, further emphasizing the mass, bulk and height.

- 4-5 story building would create new source of substantive light for nocturnal wildlife (CDFW report).
- 4-5 story building would have a significant adverse impact on aesthetics, privacy, quality of life, and feelings of control over their environment (Mitchell and Johnson photos).
- Renderings of the property are from angles that are favorable to project; after story poles were put up and photos taken, can see significantly greater adverse impact on neighborhoods vs the renditions.
- Size/mas of building coupled with the violation of privacy by having units look into the backyard of residences and has rooftop garden actually reduces the comfort of the neighborhood by detracting a sense of ownership and control residents have over their environment.
- Project violates Burlingame's own *Architectural and Design Guidelines* (Residential and Commercial):
  - "A building should simply not scream at the neighboring buildings for attention"
  - "Compatibility of the architecture with the mass, bulk, scale, and existing materials of existing development and compatibility with transitions where changes in land use occur nearby".
  - "Design buildings to be appropriate to the use envisioned while maintaining general compatibility with the neighborhood"
  - "Create human scale buildings no matter what style is used"
  - "On visually prominent sites, the building has an important responsibility for defining the character of the surrounding neighborhood. Projects on such sites should clearly respond to the street and adjacent architecture".
  - "Human scale supports the health and comfort of the neighborhood by enhancing the sense of ownership and control residents have over their environment. It makes our neighborhoods seem like friendly, human places"
  - "Managing mass and bulk should not be considered a cosmetic exercise, it should be embodied (typo) in the actual design of the building"
  - "Homeowner privacy is achieved by sensitive placement of buildings and landscaping and by the ways building components are orchestrated to support separation at property lines. These elements can also minimize noise, further insulating occupants to promote a sense of privacy."
  - "Respect for the parking and garage patterns in the existing neighborhood."
  - "Gateway sites do not justify monumental buildings."
  - "Gateway sites do justify a high level of refinement in architectural design and detail."

Solution:

- R2 Parcel containing creek should remain R2 to keep neighborhood transitions intact and result in a smaller/less massive building.
- Maximum 2-3 story development fronting El Camino Real, in line with Burlingame General Plan
- Maximum 2 story development facing the Easton Addition/Ray Park Neighborhoods (Balboa, Adeline, Albemarle).
- All trees currently on the property should remain.
- Maintain the "Tunnel of Trees" by planting NEW trees along the frontage of the property facing El Camino Real
- Plant NEW screening trees to screen views from 1400-1500 Blocks of Balboa, Adeline, and screening trees to hide views from Albemarle.
- To further minimize visual effects from 1400 and 1500 Blocks of Balboa, plant trellised vines that go up side of building.
- Improve articulation and high end materials to prevent "wall" look to surrounding neighborhoods.
- New proposal needs to be made from scratch incorporating the above, thereby subjecting proposal to Design Review, thereby benefit from the architectural and design expertise of the City Planners and Planning Commission members.
- Renderings and story poles should be as realistic as possible and from multiple angles (both favorable and unfavorable).
- Refinement required in architectural design and detail as this is a Gateway Site.

## V. Biological Resources - Trees and Tree Ordinance

Concerns:

- Tree permit rescinded by City of Burlingame due to error RE municipal code.
- MND states that a “tree permit will be issued” for tree removal; tree permit stated that removal would be approved upon approval of project. Circular argument that defies logic.
- MND implies trees to be removed, including Bunya-Bunya, are not part of the ECR “Scenic Highway”/ Tunnel of Trees.
- We believe this is the LAST Bunya-Bunya in Burlingame (other two sites from Burlingame Tree Guide were visually inspected and those trees no longer remain) as potential historical resource.
- Tree grove slated to be removed removes shield vs. Adeline market and ECR.
- Tree grove is an Aesthetic factor under CEQA and is visible from houses Balboa/Adeline
- CAFW report states that trees are important to riparian environment and provide solar radiation screening.
- Trees deemed by Burlingame Arborist as Healthy vs. Environmental Consultant which says several trees are not healthy and that the Bunya-Bunya is a danger to residents.
- Bunya-Bunya is not a safety danger as alleged given there are two chairs and foot stools directly under the tree for residents to relax (photo per Wallach letter).
- Tree removal/re-mulching may result in Termites.

Solution:

- All trees should remain, which would be solved with smaller building.
- Additional trees planted on frontage of any proposed structure, to maintain the “Tunnel of Trees” and break up mass of building.
- Additional screening trees should be planted to screen views from Balboa/Adeline and Albermarle (See Don Mitchell Letter, Mark Haberecht letter, Helen Johnson letter).

## VI. Biological Resources -Fish & Wildlife In Riparian Environment

Concerns:

- Per CA Fish & Wildlife (CDFW) letter addressing 2012 proposal: Construction in riparian zone would reduce overall habitat value of the stream zone, reduce overall habitat value of stream zone, decrease biological integrity and function of riparian corridor, impact long-term viability of riparian corridor and stream habitat, which in turn may impact aquatic and terrestrial species.
- Development can increase sedimentation and pollution into Mills Creek (CDFW).
- Loss of trees can increase solar radiation, reduce prey base and potentially modify the nutrients that establish food chain (CDFW)
- Non-native vegetation planted by new property owners could become established and potentially-out-compete riparian vegetation (CDFW).
- CDFW recommends stream setback to be increased to minimize projects (typo) impacts on stream, riparian habitat, and fish and wildlife resources that utilize those habitats.
- No mitigation for loss of habitat provided by trees (CDFW).
- Light and glare may affect biological resources include rodents, mammals, owls, bats, insects, and birds; nighttime light can affect raptor/owl foraging behavior, disrupt birds sleep and flight patterns, deter foraging, affect breeding cycles.
- Environmental consultant report also recommends that creek bank wall be repaired and erosion mitigation measures be implemented.
- Creek bank disrepair is currently damaging riparian environment, results in further erosion, and may endanger residents (Wallach Flooding).
- Several in Community believe current owners to be poor “steward” of existing property with respect to Creek Bank Failure, Erosion, Trash/branches along creek.

- During 2007 proposal, Planning Commissioners suggested to clean the property up; this has not been accomplished, thereby creating a self-fulfilling condition that now “requires” that the old building be torn down.

Solution:

- Creek bank should be repaired ASAP to prevent any further damage to wildlife and ensure public safety.
- Full environmental impact report should ascertain specific concerns of CDFW.
- Smaller building with smaller footprint would be further from creek.
- Keeping all trees and planting new ones for screening will not only preserve, but encourage wildlife habitats.
- Smaller, 2-3 story building with larger setbacks can protect wildlife.
- Keeping trees helps prevent A/C units from being run more often (is actually noise mitigant).
- Landscaping vegetation should be native to avoid out-competing vegetation sustaining riparian environment.

## VII. Geology & Soils - Bank Creek Failure/Erosion

Concerns:

- Soil on creek bank is already unstable due to retaining wall failing and erosion (CDFW)
- FEMA maps were updated in 2010 to indicate liquefaction potential with San Andreas shaking scenario; Soils study should incorporate this new information (was based on 2007 information).
- Failure to incorporate concerns in a failure could result in significant liability to City and/or developer
- Proposed building should be moved back from top of bank (CDFW)
- 1998 Flood (Wallach Video) resulted from bank collapse. Given failing retaining wall, a repeat of incident could endanger current and/or prospective residents and expose developer and/or city to liability given concerns brought up in numerous public letters/discussions.

Solution:

- Perform soils study with deeper bores going past foundation depth
- Foundation Plan must be submitted as part of application to the Planning Department
- Creek bank should be repaired ASAP to prevent any further erosion.
- Full environmental impact report should ascertain specific concerns of CDFW.
- Smaller building with smaller footprint would be further from creek.
- Smaller, 2-3 story building with less impervious surfaces would help reduce erosion.
- Landscaping vegetation should be native to avoid out-competing vegetation in order to reduce stream alternation and/or erosion.

## VIII. Hydrology & Water Quality

Concerns:

- Erosion of creek bank is already occurring (CDFW, Wallach photos).
- Creek Bank Wall is failing (CDFW, Wallach photos)
- Non-native vegetation planted could out-compete riparian vegetation which would further impact stream and riparian corridor (CDFW).
- Proposed structure will be constructed on piers that sink to an unspecified depth below the water table found at 7' below grade, there is a heightened likelihood that drainage measures, including sump pumps will be employed to prevent erosion or any other hazard to protect foundation pier intervals.
- If ground water is removed at regular intervals, this could lead to water table depletion, which would deplete the groundwater that supplies the creek.
- Ground-water feed the creek may suffer in provision of downstream water needs to support riparian wildlife/habitat.

- Any freshwater discharge to Mills Creek would be a violation of California Department of Fish and Game provisions.

Solution:

- Build smaller building/footprint which will increase stream setback (recommendation made by CDFW), reduce foundation requirements, reduce impervious surfaces.
- Plant native vegetation.
- Repair bank creek wall.
- Provide erosion mitigation measures (recommended by Environmental Consultant to developer).
- Plant additional trees for screening and erosion control.

## IX. Transportation/Parking/Traffic

Concerns:

- Current proposal has 50% compact spaces, lack of storage units, lack of bike storage, larger building/more units will likely result in more traffic/increased parking difficulties.
- Residents from building wanting to travel North on El Camino would instead have to perform a series of right turns and use Adeline/Balboa/Ray to eventually travel north on El Camino thereby increasing exposure to 7 school crossings.
- If a child is injured due to negative effects of project that substantially increased actual traffic, the City would be subject to significant City and personal City Employee liability that would far outweigh any property tax benefit and could actually result in financial distress for the City.
- Absent from MND is acknowledgement of Parking difficulties in area.
- Conclusion of generating only two additional trips during peak am hours and 11 fewer trips during PM house was generated using generic cost curves and defies Reasonable (typo) Person standards; Burlingame parking study was not performed.
- Makes little sense that number of bedrooms will be doubled, number of cars more than double, couples/families more likely to be dual income, more children likely to live in unit, but trips generated are declining.
- Does not take into account Recreational Activities at Ray Park which affects parking in neighborhoods.
- Developer in 2007 discussion (per City recordings) states that there were 23-24 vehicles parked at the current property (1.9x vehicles per bedroom and 2.2 vehicles per unit). New project would require between 33-45 spaces based on these ratios.
- Project not compliant with the California Complete Streets Act—There should be at-grade indoor bicycle parking
- Any storm drain box culvert drain gratings be installed anywhere in the Caltrans ROW, a safety hazard would be produced (storm water discharge).
- Neighbors including myself brought up traffic/parking issues to TSPC meetings in 2014. TSPC had 1400 and 1500 blocks of Balboa as agenda item. 3 of TSPC Commissioners had to recuse themselves due to their proximity to both blocks, a quorum couldn't be reached to hear the item. The very fact that TSPC acknowledged traffic/parking as issues on the blocks of Balboa and wanted to hear the item is considered expert acknowledgement of the traffic/safety/parking issues along the 1400-1500 Blocks of Balboa.

Solution:

- 2-3 Story development will reduce number of residents and thereby subjecting school children (just typos) to similar traffic vs existing project.
- New development should include that all spaces be made sufficiently (large) to park SUVs. (How about "full size vehicles"?)
- Include 20% additional parking spaces (in addition to requirement) to handle guest parking, 3+ car families, service vehicles (UPS, delivery, etc).
- City should install Traffic Calmers (similar to Hillside Drive) on Balboa Ave to reduce additional traffic to be generated.
- City should install flashing speed limit sign and flashing reflectors around Balboa school crossing.

- Bicycle parking should be present. Could include locked cage, wall or ceiling mountings along with dedicated outdoor and secured parking facilities.
- Build smaller building to reduce impervious surfaces, potential culvert issues.

## **X. Noise**

### Concerns:

- A/C noise study via extrapolation of 1226 ECR Property not realistic.
- Cumulative dB effect of Airport perhaps more appropriate restricted to item below, Rooftop Garden, Rooftop A/C, Bocce Court, etc needs to be considered
- Proposed project surrounds are different vs 1226 ECR including trees, more airport noise, train, BART, Ray Park, all likely contribution to more noise vs 1226 ECR.

### Solutions:

- A/C units should be at front of property facing ECR.
- Perform real world noise study with cumulative effects (vs poor extrapolation methodology).
- Keeping existing trees plus more screening trees will help mitigate noise.
- Any A/C units should be of the “ultra-quiet” variety with the lowest dB ratings.

## **XI. Utilities -Storm Water Discharge and Runoff**

### Concerns:

- Project will increase over-all impervious materials lot coverage, thereby increasing amount of storm water runoff.
- Increased storm runoff will increase the amount of fresh water added to the Bay.
- There will be less absorption to the water table identified at 7 ft below grade.
- Non-native landscaping could result in out-competition of natural vegetation and increase storm water discharge.
- There is no identified location for the parcel storm water tie-in to the box culvert to discharge the runoff.

### Solution:

- Build smaller/shorter building (less depth of foundation).
- Plant native vegetation
- Plant screening trees
- Provide culvert discharge solution

## **XII. Population & Housing**

### Concerns:

- New 15 unit condo will displace long time residents of Burlingame and ruin the fabric of neighborhood with “new” high end expensive condo units.
- MND essentially indicates that rental units can be found in Burlingame, but fails to provide any evidence that these lower/middle income long-term tenants have any accommodations in Burlingame once the current place is demolished.
- No plans have been proposed to deal with the current residents, many of whom appear to have limited economic means, but who clearly are part of what makes Burlingame a mixed and diverse community.
- No evidence submitted how these long-time tenants will be able to stay in Burlingame or what opportunities the developer has offered to these tenants.
- Failure to consider the impact on these residents may invite potential litigation over the civil rights of these tenants as the “replacement” tenants will be of a higher economic status/”value”.

### Solutions:

- Population Impact should be included in an EIR and solutions provided by the City in conjunction with the developer.
- EIR should provide evidence to substantiate the claim that “Rental units can be found in Burlingame”
- Keep as rental property to low/moderate income residents.

### **XIII. Excess Developer Economics at the Expense of Residential Property Values**

#### **Concerns:**

- Rezoning creek parcel, which is unbuildable, in order to achieve greater square footage is a source of excess profits (see ROI and NOI analysis above).
- Project as described in MND would result in economic transfer of wealth from neighborhoods to developer. Per actual real estate valuations of recent new construction along east side Balboa Ave (1100-1200 blocks) abetting 2-3 story apartment buildings, and a comparable analysis performed on 50+ year old houses on Balboa imply a discount of \$40,000-\$100,000 for abetting properties. Applying this to every property that could see the 1509 ECR building, would result in net value transfer in the millions of dollars.
- Planning Commission comment 2007 proposal “Developer Profit is not a reason to approve this project”. Given larger scale/height/mass of MND project, would be the case even more today.

#### **Solution:**

- Smaller building can still result in good developer profit relative to cost and vs keeping property as rental (ROI and NOI approaches discussed above).

The above comments and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

Respectfully submitted,

Mark Haberecht

1505 Balboa Ave

TO: BURLINGAME PLANNING DEPARTMENT  
FROM: GARY W. JOYCE

[REDACTED]  
BURLINGAME, CAL.

DATE MARCH 23, 2015

COMMUNICATION RECEIVED  
AFTER PREPARATION  
OF STAFF REPORT

Received After  
03.23.15 PC Meeting  
Agenda Item 9b - 1509 El Camino Real  
Page 1 of 1

March 18, 2015

Dear Neighbors:

Thank you for signing the neighborhood petition last year in opposition to the large development proposed to be built at 1509 El Camino Real, next to Mills Creek. The developer eventually withdrew those plans. He has recently submitted new plans to the City, which are one story lower than the original building. It will be three stories high. + 9 FT. "TOWER"  
There will be no party room on the roof. In addition, the footprint of the building has been adjusted to preserve the trees on the south side of the property, including the very large Bunya Bunya tree.

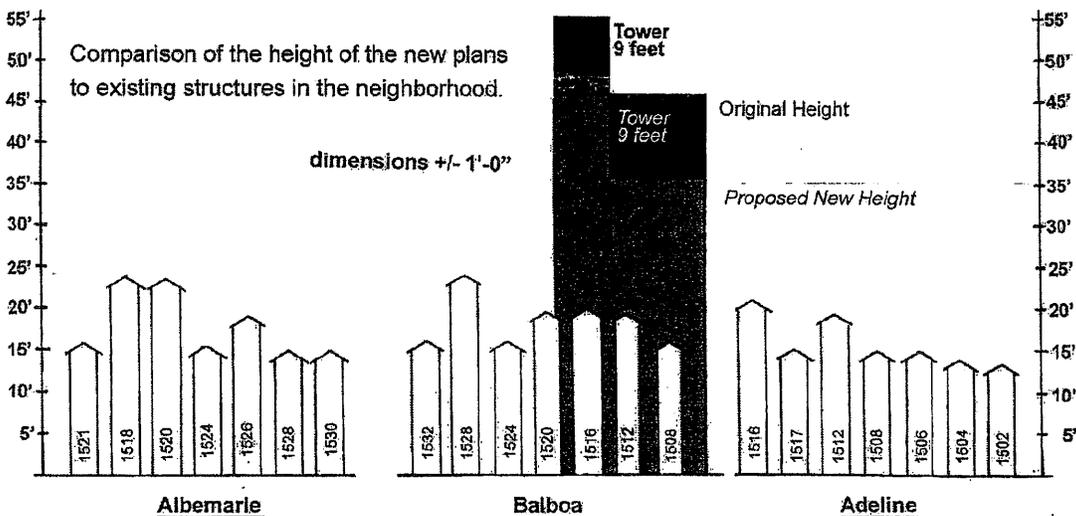
You are free to review the new plans at the Planning Department in City Hall. If you still have concerns, you are encouraged to speak up at the next Planning Commission meeting in Burlingame City Hall on Monday, March 23, 2015 at 7:00 pm. If you prefer not to speak, your presence will add importance to the proceedings. If you cannot attend the meeting, before next Monday you can write a letter addressing your concerns to the Planning Commission at:

Burlingame Planning Commission, Burlingame City Hall, 501 Primrose Road,  
Burlingame, CA 94010  
Or email them at: [planningcommissioners@burlingame.org](mailto:planningcommissioners@burlingame.org)

RECEIVED

MAR 23 2015

CITY OF BURLINGAME  
CDD-PLANNING DIV.



WHAT PURPOSE DOES THE 9 FT. TOWER SERVE? WHY IS IT NECESSARY? IF IT IS ELIMINATED THE STRUCTURE IS NOT SO IMPOSING - COULD IT BE INCORPORATED INTO ANOTHER FLOOR AT A LATER DATE, THUS FULFILLING THE ORIGINAL INTENT FOR A FOURTH FLOOR?  
Gary W. Joyce

**CD/PLG-Hurin, Ruben**

---

**From:** Patricia Gray <pat1936@gmail.com>  
**Sent:** Wednesday, March 18, 2015 10:18 PM  
**To:** GRP-Planning Commissioners; Patricia Gray  
**Subject:** Proposed apartment building at 1509 El Camino Real

RECEIVED

MAR 19 2015

CITY OF BURLINGAME  
CDD-PLANNING DIV.

I plan to attend the meeting at City Hall on March 23 at 7:00. I may not be able to attend and want my issues to be discussed before allowing these condos to be given a permit. I have two concerns---parking and traffic.

I would like to know how many apartments will be built, and how many parking spaces for normal sized cars are planned per condo.

The last plan, which was rejected, did not have adequate parking and many of the spaces were for compact cars.

How much parking is planned for guests? I live close by and parking is a problem now. It is really bad on the days the girl's soft ball league is playing in Ray Park. There is also a problem because people going to the airport park on Cortez and take a cab to the airport.

There is now a problem where Balboa narrows as it passes Ray Park. This transition to a narrower road takes place on a curve in the road. This is dangerous now, but increased traffic will only make things worse. The problem is not just when children are going to or from school---but all day long as children go to play in the park. There is a lot of pedestrian traffic on that street and the residents of the proposed building will add to the traffic danger. If residents from 1509 wants to go north on El Camino Real they may not cross the double yellow center line and must go south to Adeline to drive north on Balboa. This increases the danger to the children and if school crossing guards are hired, they will only be there before and after school. Children are crossing Balboa all day to go to the park.

Many parents drive their children to and from school. That adds to traffic problems in that where the road narrows there is not room for two cars to pass. One of them has to duck into a driveway or go in reverse for the cars to pass. These maneuvers increase the danger for the children in crossing the street.

Nina Weil  
1520 Balboa Avenue  
Burlingame, CA 94010  
650-348-6971; [nina@ninaweil.com](mailto:nina@ninaweil.com)

March 6, 2015

Community Development Department  
501 Primrose Road  
Burlingame, CA 94010

RECEIVED

MAR - 6 2015

RE: **Proposed Condominium Project**  
**1509 El Camino Real, Burlingame**

CITY OF BURLINGAME  
CDD-PLANNING DIV.

I would like to acknowledge and thank the developers, Pat Fellowes, Sheri Chow and Walter Renner, for having taken the time to meet with and listen to the neighbors in close proximity to their project, and make many modifications to their plans responding to some of the concerns expressed.

Thanks also to the planning department, especially Ruben Hurin, for ongoing communication and response to questions.

My sentiment expressed over the past 8 years regarding this project remains, that the project still is overbuilt in terms of bulk/mass and density. However, having read the newly implemented Housing Element for Burlingame I understand that this concern and desire is not necessarily in keeping with the direction that our city is moving in.

Regarding the project itself, I have several requests to be incorporated into the final plans. The first three concerns have been discussed with the developers and verbally agreed to in our meetings, but have not been incorporated into the plans as yet.

- **That a sound wall be installed along the back property wall prior to demolition and construction**
- **That the landscaping be modified to include fast growing, tall trees for screening along the rear of the property to mitigate the disparity between heights**
- **That an arborist be engaged to insure protection during construction of all of the trees on the property, and the trees, including the Acacia trees in the easement behind the project**
- **There seems to be a disparity on the current plans over the number of trees that exist on the property. The landscape plans do not match with the rest of the plans. This needs to be remedied to insure that all trees are accounted for and preserved.**

In the new housing element, it states that there needs to be provision for sensitive transitions between existing lower scale residential neighborhoods and other uses. It also states conserving neighborhood character. I believe the requests for screening and protecting the trees go along with this mandate.

Noise along the El Camino Real has increased significantly over the years. The traffic noise is somewhat mitigated by the current building. A sound wall will help mitigate the dramatic increase in noise that will occur with no building in place.

Thank you for your consideration. Respectfully yours,

Nina Weil

March 16, 2015

Burlingame Planning Commission

Re: 1509 El Camino Real

Dear Ladies and Gentlemen:

RECEIVED

MAR 16 2015

CITY OF BURLINGAME  
CDD-PLANNING DIV.

If you have had occasion to study the materials previously submitted regarding this application, you will find a dvd video of the flooding of my property, which abuts Mills Creek on the north, and 1509 ECR on the east. This flooding occurred when the bank on the 1509 ECR property collapsed during a winter storm and blocked creek flow. Our property and the 1509 property were inundated. Understandably, this occurrence left me with serious concerns about creek banks in general, and about the stability of the 1509 creek bank in particular.

Last Fall I had occasion to walk the creek with a Public Works inspector, on a matter unrelated to 1509 El Camino Real. However, in the course of his inspection of this other situation, the condition of Mr. Fellowes' retaining wall was noted. A length of bank under the wall has been undercut and several yards of material has bled into the creek bed. The inspector, Mr. Mik Lowrie, described to me the potential for seepage from above further eroding this area. Please see the attached image.

Thus far, there seems to be little evidence of interest in ensuring the stability of the creek bank and retaining wall on this property. In fact, notations on the plans clearly indicate, "No work to be done in creek bed." Really?

I also have observed that, generally, little notice appears to be given to the special nature of properties bordering Burlingame's creeks. I think this does a grave disservice to public safety, and to the protection of these rare natural resources and their riparian areas. I think this should be especially important in situations of multi-family or commercial buildings, where responsibility tends to be diluted: The "let Mikey do it" syndrome.

Mr. Fellowes and his partners have been most generous with their time to meet with us and to discuss their project. My husband and I are truly appreciative of Mr. Fellowes' efforts. However, we are still left with little assurance that the stability and health of the creek bank will be attended to prior to construction and most especially prior to the movement of heavy equipment adjacent to the creek.

This issue thus far has not been adequately addressed. I look forward to Commission comment.

Sincerely,

Ann Wallach

1524 Balboa Way





*Paul and Ann Wallach  
1524 Balboa Way  
Burlingame, CA 94010*

RECEIVED

February 18, 2013

FEB 19 2013

Planning Commission  
501 Primrose Road  
Burlingame, CA

CITY OF BURLINGAME  
CDD-PLANNING DIV.

Re: 1509 El Camino Real Development and Mills Creek

The Creek

Concern about the impact on Mills Creek by proposed development at 1509 El Camino Real has been voiced several times before the Commission. Nevertheless, neither Commission response nor the initial Mitigated Negative Environmental Impact Report adequately addresses this issue.

Flooding

In February 1998, during a not particularly heavy rainfall, the bank at 1509 El Camino Real collapsed and sent a significant amount of material into the creek: driveway paving, fencing and its supports, concrete, small trees, and assorted rubble. The creek clogged, flow was blocked, and water rose until it flooded our property and that of 1509 El Camino Real. It was only due to the swift efforts of tenants, private citizens, and fire department personnel that flow eventually was restored and the water receded. But not before six inches of water covered 1509 ECR carports and our property, rapidly approaching our home (please see video). Without that swift action, other nearby properties also would have flooded.

To our recollection, a year or so passed before, at the direction of Fish and Game and the City of Burlingame, a retaining wall was finally built in the area of the collapse. It spans less than half the length of the creek bank. That retaining wall is now in need of repair, as it and other parts of the bank are being undercut and in some places are seriously insufficient. In addition, there is no indication of what type of footing supports the retaining wall.

The track record for maintenance and for making the most of this natural area has not been good. In 2007 the developer, Mr. Fellowes, who had owned this property for several years, admitted to the Commission that he had never walked the creek to inspect its banks. To any objective observer it is clear that this area has not been adequately maintained. Its aesthetic potential has been completely ignored. It is a mess.

## Groundwater and Liquefaction

The latest report from ABAG indicates that 1509 El Camino Real sits in an area that is highly susceptible to liquefaction in the event of an earthquake, particularly one along the San Andreas Fault, less than a mile distant. The developer's answer to this hazard is to set the building on piers. Groundwater is prevalent in this area. Bore holes found water at 7 feet and at 12 feet. How will groundwater be prevented from collecting around and under these piers? Will sumps be used to drain this and other groundwater? The developer's current plans call for all drainage to be directed to the box culvert which sends Mills Creek under El Camino Real. This culvert is maintained by CalTrans, and has always been an issue of concern and contention, as maintenance is minimal at best. The dimension of this box culvert is 8 feet by 13 feet. The dimension of the creek upstream is greater than this. Besides normal creek volume, several storm drains enter into it from Balboa Way and Albemarle Avenue. In some seasons, the culvert is filled with a large amount of silt and debris, which decreases its size. Under these circumstances, will it be adequate to handle added drainage?

The newest USGS quake hazard report states that liquefaction "may cause buildings to settle and move downslope or toward stream banks." So, while piers may prevent building slippage during a quake, what of all the other materials which will be added to this property?

Although this area has been removed from 100 year flood hazard maps, the Mitigated NEIR does not adequately address potentials for flooding specific to 1509 El Camino Real. We who live on the creek, who have experienced its swift and vigorous flow during storms, and who regularly inspect and maintain its banks, have a more accurate experience of what it takes to prevent disaster.

The initial Mitigated NEIR does not adequately address any of the above.

## Rezoning of Creek Area

Many concerns have been raised about rezoning the portion of the lot which includes the south half of the creek. We do think that it is disingenuous to present the argument for this rezoning as mere tidying up of bookkeeping, when its sole purpose is to enhance developer profit. In its wisdom, when subdividing the Ray "Cloud" (Park), and Easton Addition blocks, Burlingame decided to allocate an R-2 designation to both sides of the creek at this location. The thinking around this decision appears to be lost to history; nevertheless, it should be respected. This petition should be denied.

Sincerely,

*Ann Wallach Paul Wallach*

Ann and Paul Wallach  
1524 Balboa Way

encl: .Maps (ABAG and USGS)  
Images of bank  
Architectural drawing of current creek bank support  
Two minute Video of 1998 flooding

<http://earthquake.usgs.gov/regional/nca/qmap/>



**Creek bed is 8-9 feet below bottom of bridge**







