

San Mateo County Board of Supervisors

AGENDA

Board Members	County Manager/ Clerk of the Board
Mark Church	John L. Maltbie
Jerry Hill	
Richard S. Gordon	
Rose Jacobs Gibson	County Counsel
Adrienne J. Tissier	Michael P. Murphy

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ADDENDUM

August 5, 2008

CONSENT AGENDA

The following has been added to the agenda:

COUNTY COUNSEL

Resolution authorizing a Memorandum of Understanding with the Town of Colma and Trestle Glen Associates relating to the Trestle Glen project



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Counsel

DATE: August 1, 2008

BOARD MEETING DATE: August 5, 2008

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Michael P. Murphy, County Counsel 

SUBJECT: Resolution authorizing a memorandum of understanding with the Town of Colma and Trestle Glen Associates relating to the Trestle Glen project.

RECOMMENDATION:

Adopt a resolution authorizing the President of the Board to execute a Memorandum of Understanding with the Town of Colma and Trestle Glen Associates related to the Trestle Glen Project located at 370 F Street, unincorporated Colma.

VISION ALIGNMENT:

Commitment: Responsive, effective and collaborative government.

Goal(s): County and local governments effectively communicate, collaborate and develop strategic approaches to issues affecting the entire County.

The proposed Memorandum of Understanding (MOU) contributes to this commitment and goal by ensuring that construction of the Trestle Glen project will abide by the agreements developed through the collaborative efforts of the County, the Town of Colma, and the project developer.

BACKGROUND:

The Trestle Glen Project is located at 370 F Street, in the unincorporated area of the County adjacent to the Town of Colma, and involves the construction of 119 affordable dwelling units, 32 market rate units, and a child care center for up to 56 children. The County Board of Supervisors approved the project on January 23, 2007. While there was significant support for the project at that time, there were some unresolved issues with the Town of Colma, such as: the type and extent of access and right-of-way improvements along the portion of F Street within the Town's boundaries; operation of the daycare facility; on-street parking along the

portion of F Street west of El Camino Real; the use of MTC grant funds to construct a new stairway and pedestrian enhancements from D Street to El Camino Real; reallocation of 35 housing units from the Town of Colma to the County in the County's Regional Housing Needs Allocation; and, monitoring and mitigating any substantial increase in public safety and first responder calls for service that may result from the project. The proposed MOU has been developed in coordination with the Town of Colma and the project developer to resolve these issues.

DISCUSSION:

The County has met with the Town of Colma and Bridge Housing over the past year to develop the MOU. Specifically, the MOU provides that:

- F Street improvements approved by the Town of Colma (including an 8 foot wide sidewalk, lighting, street trees, and other improvements) will be installed and maintained by Trestle Glen;
- \$250,000 in MTC Grant funds will be reassigned from Trestle Glen to the Town of Colma for the purpose of constructing the new D Street stairway;
- 35 housing units will be reallocated from the Town of Colma's Regional Housing Needs Allocation to the County's Regional Housing Needs Allocation for the 2007 – 2014 planning period, and the County shall make its best effort to reallocate 18 units from the Town's Regional Housing Needs Allocation to the County's Regional Housing Needs Allocation for the 2014 – 2021 planning period;
- A two-foot portion of the F Street right-of-way will be abandoned by the Town of Colma and used by Trestle Glen only for the purposes of access and landscaping;
- The Town of Colma will grant a temporary and permanent encroachment permit to Trestle Glen;
- The town of Colma will have the right to enact and enforce parking restrictions and regulations on F Street;
- Trestle Glen shall require the day care operator to abide by certain parking and safety regulations imposed by the Town; and,
- The Town of Colma will track calls for service by the Colma Police Department for a period of six months following full occupancy of the project, and if there is a substantial increase in service calls, the Town and County shall meet to determine what measures must be taken by the County to mitigate this impact, such as compensating the Town for the cost of responding to these additional calls.

FISCAL IMPACT:

There is no cost to the County to enter into the MOU. Its provisions, however, may result in future undetermined fiscal impacts due to the potential need for the County to compensate the Town of Colma for any significant increase in public service calls attributable to the project, and the need for the County to include additional housing units in its Regional Housing Needs Allocation.

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION AUTHORIZING THE PRESIDENT OF THE BOARD OF SUPERVISORS TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE TOWN OF COLMA AND TRESTLE GLEN ASSOCIATES RELATED TO THE TRESTLE GLEN PROJECT LOCATED AT 370 F STREET, UNINCORPORATED COLMA, CALIFORNIA

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, on January 23, 2007, this Board issued land use and other approvals for the construction of the Trestle Glen project, a multi-family residential project that would include 119 affordable swelling units and a 56-child day care center, to be located at 370 F Street, unincorporated Colma; and

WHEREAS, based on concerns and objections raised by the Town of Colma regarding the potential traffic-related impacts affecting the Town of Colma, the Board directed and authorized continued discussions with the Town to attempt to resolve issues raised by the Town related to F Street; and

WHEREAS, the result of those discussions has been the development of a Memorandum of Understanding, reference to which is hereby made for further particulars, which provides for an accommodation of the interests of the parties thereto; and

WHEREAS, all parties now wish to enter into an Memorandum of Understanding; and

WHEREAS, this Board has been presented with a form of such Memorandum of Understanding and has examined and approved same as to both form and content, and desires to enter into same:

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors be, and is hereby authorized to, execute the Memorandum of Understanding with the Town of Colma and Trestle Glen Associates, and the Clerk of this Board of Supervisors shall attest the President's signature thereto.

* * * * *

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made among Trestle Glen Associates, a California limited partnership ("Trestle Glen"), the County of San Mateo ("County") and the Town of Colma ("Town"), and is dated August ___, 2008 for reference purposes.

*Definitions of specially defined terms are set forth
in the section below entitled "Definitions."*

1. Recitals

- (a) Trestle Glen Associates ("Trestle Glen"), a California limited partnership seeks to construct and develop 119 affordable dwelling units and a 56-child day care center named the Trestle Glen Project ("Project") on that certain real property located in the County of San Mateo, California, commonly known as and located at 370 F Street ("Property").
- (b) A portion of the Project along its southerly boundary encroaches on to F Street.
- (c) County of San Mateo is a political subdivision of the State of California and is the Lead Agency for performing a CEQA review and granting entitlements for the Project. On January 23, 2007, the County Board of Supervisors ("Board") issued approvals for the Project. During the public hearings held with regard to approval of the Project by the Board, the Town registered certain objections to the Project, including but not limited to concerns about Trestle Glen's proposal to use portions of the Town's public right-of-way for driveway access and a passenger loading and unloading zone along F Street, adjacent to the Project. In approving the Project, the Board directed and authorized continued discussions with the Town to attempt to resolve issues raised by the Town related to F Street.
- (d) Town owns a right of way to that certain property commonly known as and located at F Street in the Town of Colma, from El Camino Real west to the Town limits. A portion of said right-of-way, being a strip of property approximately ten-feet wide along the northerly side of F Street, was previously used and is currently being used by the adjacent property owner for a sidewalk, landscaping and access. The remainder of said right-of-way is currently being used by the Town for a road.
- (e) Trestle Glen seeks permission from the Town to occupy and use a two-foot wide portion of Town property along the northerly side of F Street for access to and landscaping for the Project, which area is referred to herein as the "Vacated Easement Area," as shown on Exhibit A to this MOU.
- (f) Trestle Glen seeks permission to encroach upon a portion of Town right-of-way along the northerly side of F Street to construct an eight-foot wide sidewalk and to use for temporary construction staging from February 2008 to December 2009, which area is referred to herein as the "Licensed Area," as shown on Exhibit A to this MOU.

(g) Trestle Glen seeks assurances from the Town for permission to use a portion of F Street roadway for on-street parking and for unloading and loading of passengers and goods.

(h) Town is willing to grant Trestle Glen certain rights and licenses on the terms and conditions herein.

2. F Street Improvement Plan. Trestle Glen has prepared and submitted to the Town and the Town has approved the F Street Improvement Plan, dated and stamped as of _____ ("F Street Improvement Plan"). The F Street Improvement Plan sets forth the improvements to be made by Trestle Glen in the Vacated Easement Area and the Licensed Area.

3. Vacation of Easement for Access and Landscaping Purposes

Upon satisfactory completion of the conditions described in the section below entitled "Conditions", which conditions shall be the only conditions, Town shall abandon or vacate a portion of its right of way on F Street, to wit: a two foot wide strip of property along the north side of F Street (Vacated Easement Area). Upon recordation of the resolution vacating said portion, ownership of the Vacated Easement Area will revert to Trestle Glen.

Trestle Glen covenants to use the Vacated Easement Area for landscaping and access to the Project and for no other purposes.

4. Encroachment Permit and License

(a) Trestle Glen has prepared and submitted to the Town and the Town has approved a Construction Staging Plan, which includes:

- (i) Safe pedestrian access along F Street;
- (ii) Construction of an eight-foot wide public sidewalk; and
- (iii) Temporary construction staging, from February 1, 2008 to December 31, 2009;

(b) Provided that Trestle Glen is not in material default of any provision herein at the time that Town's performance is due, Town shall grant Trestle Glen an Encroachment Permit to use the Licensed Area as set forth in the Construction Staging Plan.

(c) Provided that Trestle Glen is not in material default of any provision herein at the time that Town's performance is due, Town shall grant an encroachment permit to use a portion of the northerly lane on the F Street roadway for temporary construction staging purposes, from February 1, 2008 to December 31, 2009, as set forth in the Construction Staging Plan. (This encroachment permit is for property other than the Licensed Area.)

(d) Upon satisfactory completion of the conditions described in the below section entitled "Conditions", which conditions shall be the only conditions, Town shall grant Trestle Glen a Revocable License to use the Licensed Area for a sidewalk, landscaping and access to its property. Town may, upon six months written notice to Trestle Glen and County and at Town's expense, revoke the license and remove all or any portion of the sidewalk and driveways on the

Licensed Area if the City Council finds, in an open and public hearing, based on a traffic study documenting traffic levels of service, that the Level of Service(LOS) at the intersection of F Street and El Camino Real is at Level of Service E or F, provided that the removal of sidewalks and driveways is part of a road widening project to be implemented by the Town.

5. Parking Restrictions

(a) Town will allow short-term, e.g., between thirty minutes and two hours, on-street parking along the northerly side of F Street westerly of Lot 1, subject to final review and approval by the City Council, consistent with the F Street Improvement Plan.

(b) Notwithstanding the foregoing, the City Council may prohibit parking, loading or stopping anywhere along the northerly side of F Street west of El Camino Real if it reasonably finds, based on substantial evidence, that parking, loading or stopping restrictions are warranted for vehicular or pedestrian safety. At least sixty (60) days prior to taking any action to eliminate parking, loading or stopping along the northerly side of F Street west of El Camino Real, the Town shall provide Trestle Glen and the County with notice of its intention to consider such a prohibition and shall meet and confer with Trestle Glen at Trestle Glen's request to discuss implementation of other options for protection of traffic and pedestrian safety. Following such meeting, should further action still be deemed necessary by the Town, Town shall present to the City Council any information or alternatives provided by Trestle Glen to mitigate traffic and pedestrian safety concerns.

6. Cost of Modifications

(a) Town shall be responsible for, and shall bear all expenses of modifications on Town property to implement Town's actions under sections 4 or 5 of this MOU.

(b) Trestle Glen shall be responsible for, and shall bear all expenses, of any modifications on its Property made necessary or desirable because of Town's actions under sections 4 and 5 of this MOU.

7. Conditions

The Town's abandonment of its easement over the Vacated Easement Area described in section 3, and grant of the Revocable License described in section 4(c) are subject to and conditioned on full and faithful performance of each of the following conditions:

(a) Trestle Glen is not in material default of any provision herein at the time that Town's performance is due;

(b) Bridge, Trestle Glen and the County shall have irrevocably assigned to the Town, to the extent of their respective interests, not less than \$250,000 of Metropolitan Transportation Commission project grant funds for use to construct a new stairway from D Street to El Camino Real in the Town of Colma. Said grant shall come from the MTC Transportation for Livable Communities (TLC) Capital Grant program. The Town understands and covenants to match said grant with sufficient funds to qualify for the grant and complete the D Street stairway, in accordance with the required provisions of

the TLC program. The Town understands the regulations associated with the MTC program and understands the obligations MTC requires in order to retain that grant. Town shall be solely responsible for complying with all such requirements;

(c) The reallocation, or transfer of 35 housing units from the Town's Regional Housing Needs Allocation to the County's Regional Housing Needs Allocation fixed by the ABAG Regional Housing Need Allocation for the 2007-2014 planning period; prorated by income level on the same basis as all jurisdictions in San Mateo County.

(d) County using its best efforts to reallocate or transfer an additional 18 housing units from the Town's Regional Housing Needs Allocation to the County's Regional Housing Needs Allocation fixed by the ABAG Regional Housing Need Allocation for the 2014-2021 planning period, prorated by income level on the same basis as all jurisdictions in San Mateo County.

(e) Trestle Glen's full and faithful performance of terms and conditions set forth herein and of all reasonable conditions for use of the Licensed Area set forth in the Encroachment Permit.

8. Construction and Maintenance.

(a) Trestle Glen and the County, shall, at their expense, install all improvements described in the F Street Improvement Plan, including sidewalk, landscaping and driveways, in Parcels A and B.

(b) Trestle Glen shall enter into a Maintenance Agreement with the Town to maintain all improvements described in the F Street Improvement Plan. The Agreement shall provide, *inter alia*, for diligent maintenance and care of the landscaping, use of generally accepted methods of cultivation and watering, and remedies exercisable by the Town in the event of default. The Agreement must be in recordable form and approved by the City Planner and City Attorney prior to final inspection and shall be binding on Trestle Glen's assignees and successors.

(c) Trestle Glen acknowledges that there is a sanitary sewer line in F Street (hereinafter, the "lateral sewer line"), adjacent to the Property, to provide a connection to the main sanitary sewer line. Trestle Glen shall maintain the lateral sewer line, even though it is located in F Street. Town represents and warrants that it will not issue an Encroachment Permit to allow work in F Street within three feet of the lateral sewer line, unless it obtains reasonable assurances from the contractor that the contractor is insured for property damages with coverage limits of not less than \$1,000,000 per occurrence (using Insurance Services Office form CG 0001 or equivalent).

(d) Trestle Glen also acknowledges that it installed two storm sewer lateral lines for the Project that extend into F Street and used a blind connection instead of a manhole to connect to the main storm sewer line. Trestle Glen shall maintain the two storm sewer laterals up to the point where they are connected into Colma's Storm Sewer System, and the Town shall maintain the main sewer line.

9. Daycare Operations.

Trestle Glen shall include in any lease with the operator of the daycare center provisions requiring the operator to:

- (a) inform parents of parking restrictions along F Street, including prohibitions against double parking;
- (b) meet with Town police officials to discuss safety issues prior to opening the facility;
- (c) post in a prominent place within the daycare center, parking restrictions and general safety precautions related to drop off and pick up procedures for children attending the daycare center;
- (d) require the daycare center operator to obtain an endorsement naming the Town as an additional insured on any liability insurance policies required as a term of the lease;
- (e) meet all State licensing requirements regarding child drop-off and pick-up procedures; and
- (f) use reasonable efforts to require parents and guardians to comply with the Town's parking and stopping restrictions along F Street.

10. Indemnification.

- (a) Trestle Glen shall defend, hold harmless and indemnify the Town from any and all Liabilities arising out of or in any way connected with Trestle Glen's use of the Vacated Easement Area and the Licensed Area for the purposes described herein.
- (b) The persons benefited and protected by this promise are the Town and its City Council members, officers, agents and employees.
- (c) "Liabilities" means any and all losses, claims, actions, and liabilities, of any kind suffered, incurred or threatened because of actions described herein, and include claims for damages for personal injury, death, property damage, inverse condemnation, or any combination of these, and shall also include the defense of any suit(s), action(s) or other proceeding(s) asserting those liabilities.

11. Insurance.

- (a) *Required Insurance.* Trestle Glen shall maintain, at all times during the term of this Contract and at Trestle Glen's sole cost and expense:
 - (i) Commercial General Liability insurance (using Insurance Services Office form CG 0001 or equivalent), with a minimum combined single limit in the amount of two million dollars (\$2,000,000) per occurrence for bodily or personal injury to, illness of, or death of persons, and damage to property. Each such liability insurance policy shall, by an endorsement thereto:

- (1) Name Town, its council members, its appointed officials, its officers and its employees as an additional insureds;
- (2) Be primary and noncontributing with any insurance which may be carried by Town;
- (3) Afford coverage for all claims based on any act, omission, event or condition that occurred (or the onset of which occurred) during the policy period;
- (4) Apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsement).
- (5) Expressly provide that Town, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Town and that the insurer waives all rights of subrogation against Town, its officers, agents, employees and volunteers for losses arising from work performed by Trestle Glen for Town; and
- (6) Expressly provide that the policy shall not be cancelled or altered without thirty (30) days prior written notice to Town.
 - (ii) Worker's compensation insurance and employer's liability insurance as required by the laws of the State of California. Said insurance policy shall provide that the insurer waives all rights of subrogation against Town, its officers, agents, employees and volunteers for losses arising from work performed by Trestle Glen for Town.
- (b) *Insurer's Qualifications.* All insurance required under this section and all renewals of this contract shall be issued by good and responsible companies approved to do and doing business in the State of California and which are rated A- : VII or better by Best's Insurance Guide.
- (c) *Endorsements and Certificates.* Upon the issuance thereof, and on or before the expiration of each such policy and a replacement thereof, Trestle Glen shall deliver to Town a certified copy of each policy required by this agreement, or a certificate thereof, and each endorsement required by this agreement.
- (d) *Remedy.* If Trestle Glen fails to insure or fails to furnish to Town upon notice to do any such policy or certified copy and certificate thereof as required, Town, in addition to any other remedy provided by law, shall have the right from time to time to effect such insurance for the benefit of Trestle Glen or Town or both of them and all premiums paid by Town shall be payable by Trestle Glen as an Additional Service Fee on demand.
- (e) *Right to Increase Coverage.* Town reserves the right from time to time in its reasonable discretion to require Trestle Glen to obtain additional liability insurance coverage and to increase existing limits of insurance coverage to levels then generally maintained by prudent business organizations operating a similar business in light of inflation, awards for personal injury or wrongful death and other risks.

12. Bonds

Trestle Glen has provided at its own expense to the Town and the County, and will

maintain in full force and effect until such time as the Town has accepted the improvements in the Encroachment Area, a bond for the faithful performance of the construction obligations in this MOU and a bond for payment of all labor and material obligations under this MOU. The surety and form of bonds shall be subject to the approval of Town, which approval shall not be unreasonably withheld.

13. Public Safety Calls for Service

(a) Town shall track calls for service by residents of the Project that require responses from the Town Police Department for a period of six (6) months after full occupancy of the Project (defined as the point in time when all units have been leased and/or sold or eight months following final construction completion of all units, whichever is sooner) for the purpose of determining whether the Project results in a significant increase in calls for service to the Town.

(b) If, after any six-month period, there is a substantial increase in the number of calls for service from or because of the Project to the Colma Police, the County shall, at the request of the Town, meet and confer in good faith with the Town to decide on what measures the County shall take to mitigate the service impacts associated with the Project, which may include compensation by the County to the Town for such additional calls.

14. Notices

(a) *Manner of Giving Notice:* All notices to be given under this MOU shall be in writing and either:

(i) Delivered personally; or

(ii) Sent by first class mail through the U.S. Postal Service, postage prepaid, in which case notice shall be deemed delivered five (5) business days after deposit

(iii) Sent by certified mail through the U.S. Postal Service, postage prepaid, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit; or

(iv) Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier, or

(v) Sent by telecopy or similar means, if a copy of the notice is also sent by a nationally recognized overnight courier or by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by telecopier or other similar means provided that a transmission report is generated which records the accurate transmission of the notice.

(b) *Addresses.* The addresses to whom notices shall be sent are:

Town of Colma
Attn: Diane McGrath, City Manager
1198 El Camino Real
Colma, CA 94014

FAX 625-997-8308

Trestle Glen Associates
Attn: Lydia Tan, Vice President
345 Spear Street, Suite 700
San Francisco, CA 94105-1675

County of San Mateo
Attn: Lisa Grote, Director of Planning
San Mateo County Planning & Building Department
455 County Center
Redwood City, CA 94063

County of San Mateo
Attn: Duane Bay, Director of Housing
264 Harbor Blvd., Bldg. #A
Belmont, CA 94002

15. Additional Documents

Each party shall be obligated to execute and record, on demand, all documents necessary to implement the provisions of this Memorandum of Understanding, including a Revocable License, vacation or Grant of Easement and a summary of this MOU.

16. Ambiguities

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

17. Attorneys' Fees.

If an action is commenced by either party in connection with this agreement the prevailing party shall be entitled to an award of reasonable attorneys' fees.

18. Definitions

The following words and phrases shall have the respective meanings described herein:

"City Engineer" means the Engineer of the Town of Colma.;

"County" means the County of San Mateo, a political subdivision of the State of California;

"Licensed Area" means an eight-foot wide strip of property, south of the Vacated Easement Area, along the northerly side of F Street from El Camino Real west to the Town limits, as shown in the conceptual drawing attached to this MOU;

"Project" means that certain development project on the Property named the Trestle Glen Project, consisting of 119 affordable dwelling units and a 56-child day care center;

"Property" means that certain real property located in the County of San Mateo, California, commonly known as and located at 7880 El Camino Real at F Street;

"Town" means the Town of Colma, a general law city of the State of California;

"Trestle Glen" means Trestle Glen Associates, a California limited partnership organized and operated to promote affordable housing.

"Vacated Easement Area" means a two foot wide strip of property along the northerly side of F Street, from El Camino Real west to the Town limits, as shown in the conceptual drawing attached to this MOU.;

Whereas, the undersigned duly authorized signatories have executed this MOU on the respective dates shown:

Dated _____ Town of Colma

By: _____
Helen Fisicaro, Mayor

Dated _____ TRESTLE GLEN ASSOCIATES,
a California limited partnership

By: BRIDGE Norcal LLC, a California
limited liability company, its General Partner

By: MCB Family Housing Inc., a California
nonprofit public benefit corporation,
its sole member

By: _____
Lydia Tan, Vice President

Dated _____ County of San Mateo

By _____
Name and Title

EXHIBIT A – CONCEPTUAL DRAWING

