



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2013 AUG 29 AM 10:22 **AGENDA REPORT**

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Memorandum of Agreement for
1835 Trestle Glen Road

DATE: August 19, 2013

City Administrator
Approval

Date

8/26/13

COUNCIL DISTRICT: 5

RECOMMENDATION

Staff Recommends that the City Council adopt:

A Resolution Authorizing the City Administrator or Her Designee to Enter into a Memorandum of Agreement with the City of Piedmont for the Development of a Secondary Unit at 1835 Trestle Glen Road, a Property Located within Both Jurisdictions.

OUTCOME

If adopted, this resolution would authorize the City Administrator to enter into a Memorandum of Agreement ("MOA") that transfers all planning and building permit responsibilities related to development of a secondary unit at 1835 Trestle Glen Road to the City of Piedmont.

BACKGROUND/LEGISLATIVE HISTORY

Cherepy Nerine seeks to construct an approximately 700 square foot secondary (in-law) unit within a new structure that would straddle the Oakland-Piedmont border at 1835 Trestle Glen Road (see *Attachment A*). The lot is 10,440 square feet and currently contains a single-family home. Approximately 7,532 square feet or 72% of the property is located in Piedmont and approximately 2,906 square feet or 28% is located in Oakland. The property spans between Trestle Glen Road in Piedmont on the north and Cavendish Lane in Oakland on the south.

The proposed secondary unit currently meets all City of Oakland zoning standards.

Item: _____
CED Committee
September 10, 2013

ANALYSIS

Ms. Nerine has requested that all required permits for land use and building inspections be processed by the City of Piedmont. Staff supports request for the following reasons:

- The orientation of the existing home is toward Piedmont;
- The majority of the lot is in Piedmont;
- The Zoning requirements regarding secondary units in Piedmont are substantially the same as those in Oakland;
- The City of Piedmont uses the same State mandated building codes as Oakland; and
- Piedmont will provide the secondary unit with 911 services, municipal waste removal services, access to the Piedmont Unified School District schools, and other municipal services.

The draft MOA is contained in **Attachment B** and contains the following terms to assure that Oakland will not be negatively impacted by the proposal:

- Piedmont will be the lead agency for all land use approvals regarding the property;
- Piedmont will be responsible for building permit issuance, plan check, issuance of certificates of occupancy, building inspections and similar activities for the entire project consistent with the appropriate procedures, fees, and standards of Piedmont;
- The Piedmont Fire Department will be responsible for the provision of emergency and public safety services to the project, including those portions located in the City of Oakland;
- Piedmont will provide notification to all property owners within 100 feet of the proposal pursuant to the City of Piedmont Planning Code; and
- Piedmont will provide municipal waste removal services, access to the Piedmont Unified School District schools, and other municipal services to the secondary unit.

POLICY ALTERNATIVES

<i>Alternative</i>	Reserve land use control for the portions of the property within Oakland and allow the City of Piedmont to review building permits
<i>Pros</i>	The City of Oakland keeps the ability to control land uses within its boundaries on the project site.
<i>Cons</i>	Requiring the applicant to apply for permits in two jurisdictions creates an inefficient process.
<i>Reason for not recommending</i>	Staff believes the most efficient approval process is to allow one jurisdiction to review all the permits on the property subject to safeguards regarding notice and Piedmont's provision of public safety services to the secondary unit.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

The City Attorney's Office has worked closely with staff on the preparation of the Memorandum of Agreement and has reviewed this staff report and resolution, as has the City Budget Office.

COST SUMMARY/IMPLICATIONS

Adopting this resolution would likely be revenue neutral. While fees would not be paid to the City, there would also be no cost to the City because Planning and Building Division staff would not work on the project. Construction of the secondary unit will increase property taxes that accrue to the City of Oakland. Also, the residents of the secondary unit may increase sales tax revenue by shopping in Oakland.

SUSTAINABLE OPPORTUNITIES

Economic: The residents of the secondary unit will increase the number of potential customers who live near the Leimert Boulevard Commercial District.

Environmental: The new structure will be required to meet modern standards for energy efficiency and Green Building.

Social Equity: The relatively small unit will provide a housing opportunity for people of a variety of income levels.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

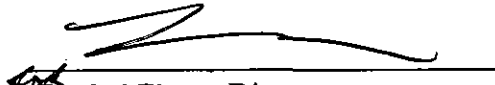
The California Environmental Quality Act (CEQA) Guidelines exempts specific types of projects from environmental review. The following is an analysis citing the two CEQA exemptions that apply to this project, both of which provide a separate and independent basis for CEQA clearance.

Section 15268 – Ministerial Projects: Section 15268(b) of the CEQA Guidelines states that ministerial projects such as the issuance of building permits are exempt from CEQA.

Section 15303 – New Construction or Conversion of Small Structures: Section 15303(a) of the CEQA Guidelines states that one single-family residence, or a second dwelling unit in a residential zone, is exempt from CEQA.

For questions regarding this report, please contact Neil Gray, Planner III, at (510) 238-3878.

Respectfully submitted,


Rachel Flynn, Director
Department of Planning and Building

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
Neil Gray, Planner III
Zoning Division

Attachments:

- A. Site Plans
- B. Draft Memorandum of Agreement

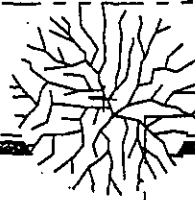


ATTACHMENT A

2/23/13

PROPERTY LINE

5'-0"



Carport

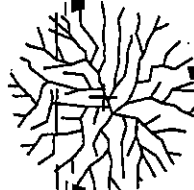
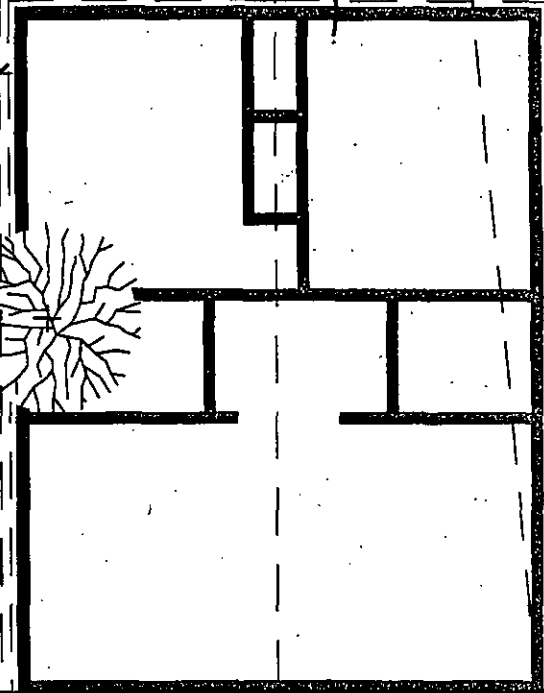
CITY OF PIEDMONT CITY LIMITS
CITY OF OAKLAND CITY LIMITS

To Trestle
Glen Rd. →

CAVENDISH LANE

Proposed secondary unit

20'-0"



PROPERTY LINE

Deck

5'-0"

Cherapy

Second Unit for:

~~GAMEZ~~

1835 Trestle Glen Road
Piedmont, CA 94513

PROPERTY LINE

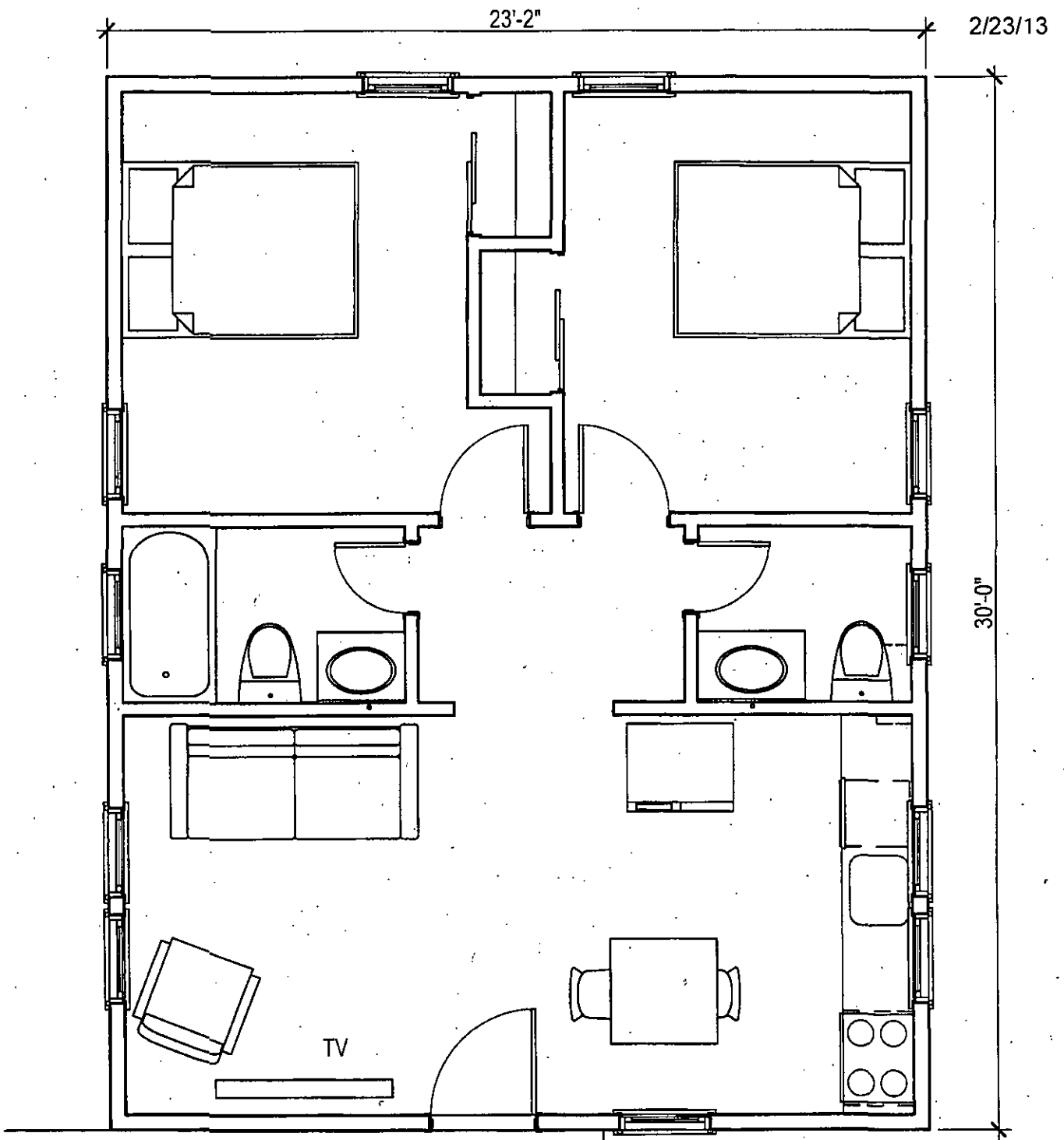
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SITE PLAN-Sch. A

SCALE: 1/8" = 1'-0"

DOUG COE
ARCHITECT

2111 Ashby Avenue #10
Berkeley, CA 94705
510-540-5029



1

FLOOR PLAN - Scheme A

SCALE: 1/4" = 1'-0"

Second Unit for:
~~James~~ Cherepy
 1835 Trestle Glen Road
 Piedmont, CA 94513

DOUG COE
 ARCHITECT
 2111 Ashby Avenue #10
 Berkeley, CA 94705
 510-540-5029

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MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT ("MOA"), dated as of this _____ day of _____, 2013 ("Effective Date"), is entered into by and between the City of Piedmont, a municipal corporation ("Piedmont") and the City of Oakland, a municipal corporation ("Oakland"), with reference to the following facts and circumstances:

RECITALS

- A. The property located at 1835 Trestle Glen Road (the "Property") consists of one lot, comprised of two parcels (APN Nos. 051-4808-036-00 and 051-4808-035-00), that straddles the Piedmont/Oakland border. The Property is depicted in Exhibit A attached hereto and incorporated herein. The Property is generally bounded by Trestle Glen Road on the North, Cavendish Lane on the South, a single family home at 1841 Trestle Glen Road (Piedmont) on the East, and a single family home at 8 Cavendish Lane (Piedmont) on the West. The Property consists of 10,440 square feet (determined by Alameda County Assessor's Office), approximately 7,532 square feet or 72% of which is located in Piedmont, and approximately 2,906 square feet or 28% of which is located in Oakland. An existing single family residence is built entirely on the Piedmont portion of the lot, and fronts Trestle Glen Road. The lot slopes up from Trestle Glen Road to Cavendish Lane, and the rear of the lot, fronting Cavendish Lane, is unimproved.
- B. Almost all of the lots in this area between Trestle Glen Road and Cavendish Lane are partly in Piedmont and partly in Oakland. By long-standing agreement between the cities, certain properties are considered Piedmont properties for the purposes of providing 911 and other municipal services, and certain properties are considered Oakland properties for the purposes of providing 911 and other municipal services. The Property is considered a Piedmont property eligible for Piedmont 911 services, municipal waste removal services, access to the Piedmont Unified School District schools, and other municipal services. The residences immediately to the East and West, which have vehicular and pedestrian access to Cavendish Lane, are also considered Piedmont properties for those same services.
- C. Cherepy Nerine ("Applicant") desires to construct a small secondary unit, sometimes referred to as an in-law unit, and a two- or three-car garage, and make other site improvements to the rear portion of the Property fronting Cavendish Lane (collectively, "Project").
- D. Currently, jurisdiction of the Project is shared between the cities of Piedmont and Oakland. The City of Piedmont is responsible for all Planning and Building

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approvals for the existing residence. The City of Oakland is responsible for ongoing permitting and approvals for improvements wholly within the City of Oakland. The City of Piedmont is responsible for ongoing permitting and approvals for those buildings wholly and partially within the City of Piedmont.

- E. Both Piedmont and Oakland desire to see this site's use compatible with the surrounding properties and consistent with the cities' plans.
- F. In order to efficiently consider the Project, the cities desire to enter into this Memorandum of Agreement to codify the designation of Piedmont as the lead agency for the purposes of both land use approvals and building inspection of the Project, including but not limited to issuance of building and occupancy permits, and the provision of 911 and other municipal services to the Project, consistent with the terms and conditions contained in this Memorandum of Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

I. Lead Agency under CEQA

Piedmont shall serve as Lead Agency for purposes of review under the California Environmental Quality Act (CEQA).

II. Planning Approval Process

The City of Piedmont will be the approval authority for all land use approvals regarding the Project, including but not limited to zoning approvals, variances, and issuance of conditional use permits or the like, to the extent any such approvals may be necessary. Piedmont shall apply its land use regulations, except as may be otherwise stated in this MOA.

- A. Applications. In the event the Project applicant submits a planning application to the City of Piedmont Planning Commission, a notice regarding the Project will be sent to the City of Oakland at the same time as the notices are sent to neighbors as required by the City of Piedmont Planning Code. Any staff reports will be sent to the City of Oakland prior to a Planning Commission hearing at the same time the report is made available to the public.
- B. Noticing. In undertaking noticing for actions by the City of Piedmont, all property owners within a 100-foot radius of the Property will be notified to

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ensure that neighbors from both jurisdictions are notified of the project.

- C. Conditions of Approval. The City of Piedmont will provide the City of Oakland a copy of the Conditions of Approval for the Project if and when the Project is approved.
- D. Ongoing Jurisdiction. Both Piedmont and Oakland understand that, by virtue of the proposed location of this Project, a portion of the Project, if approved, will be constructed within the City of Piedmont, and a portion of the Project will be constructed within the City of Oakland. As a consequence, except as otherwise provided in this MOA, the residents of the Project will be subject to the laws of both cities.

Oakland acknowledges the continuing jurisdiction of the City of Piedmont and its Municipal Code within those portions of the Project located within the City of Piedmont, and will not undertake any action or approval that will result in any violation of any of those laws. Piedmont acknowledges the continuing jurisdiction of the City of Oakland, its Charter and Municipal Code within those portions of the Project located within the City of Oakland and will not undertake any action or approval that will result in any violation of those laws, except as may regard planning or building approvals for buildings partially located in the City of Piedmont. The City of Piedmont shall have jurisdiction over planning and building approvals for those buildings partially and wholly in the City of Piedmont.

The City of Oakland and the City of Piedmont both reserve the right to take such actions as necessary to enforce the laws, conditions or requirements within each city. Both cities agree to cooperate with the other city in any action undertaken to enforce any condition or requirement imposed on the Project.

III. Building and Permit Issues

- A. Building Permit and Plan Check. Piedmont will be responsible for building permit issuance, plan check, issuance of certificates of occupancy, building inspections and similar activities for the entire Project consistent with the appropriate procedures, fees, and standards of Piedmont. Except as set forth elsewhere in this MOA, inspections of the Project will be conducted by the City of Piedmont. Prior to the issuance of a building permit, the City of Piedmont Fire Department shall review and approve the fire and life safety systems including, but not limited to, fire hydrants; fire sprinkler systems, fire alarm systems, fire department access, and water distribution systems. In addition, prior to the issuance of a building permit,

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Memorandum of Agreement between City of Piedmont and City of Oakland

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the Piedmont Planning Department shall review the building permit plans to ensure compliance with the approved Conditions of Approval. The City of Piedmont retains the authority to issue future building permits for buildings located either partially or wholly within its jurisdiction.

- B. Building Address. The existing residence will retain the address of 1835 Trestle Glen Road, Piedmont, and the Project will have a Piedmont address on Trestle Glen Road or Cavendish Lane.

IV. Emergency Service

The Piedmont Fire Department shall be responsible for the provision of emergency and public safety services to the Project, including those portions located in the City of Oakland. Each City shall provide reciprocal response assistance as needed.

V. Fees

- A. Public Improvement Fees. The Applicant shall be responsible for paying any public improvement fees required for the Project in Piedmont, including sewer connection fees and sewer user fees as applicable. The Applicant shall be responsible for paying sewer connection fees to the City of Piedmont for those units in the Project that discharge to the City of Piedmont sewer system. The sewer user fees are collected by East Bay Municipal Utility District as a part of monthly water bills.
- B. Other Fees. The Applicant shall be responsible for paying any fees required by Piedmont for staff review of encroachment permits, building permit plans, public improvement plans, and subdivision maps for consistency with Project approvals and city design standards.
- C. Not Comprehensive. The listing of specified fees in this Section V is not intended to serve as a comprehensive list of applicable fees from either jurisdiction.

VI. Indemnification

- A. No Liability To Third Parties. Nothing in this MOA shall be deemed to create rights or obligations in the Applicant or third parties not signatories to this MOA.
- B. Indemnification.
Oakland. Oakland shall defend, indemnify and hold harmless Piedmont

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Memorandum of Agreement between City of Piedmont and City of Oakland
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Phone: (510) 238-3878
FAX: (510) 238-4730
Email: ngray@oaklandnet.com

With a copy to: Office of the City Attorney
1 Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attention: Celena H. Chen
Phone: (510) 238-7040
FAX: (510) 238-6500
Email: cchen@oaklandcityattorney.org

- b. Headings. The headings in this MOA are for reference and convenience of the parties and do not represent substantive provisions of this MOA.
- c. Governing Law. This MOA shall be governed by the laws of the State of California.
- d. Modifications. Any modification of or amendment to this MOA will be effective only if it is signed in writing by all parties.
- e. Counterparts. This MOA may be executed in any number of counterparts (including by fax, PDF, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, Piedmont and Oakland have each caused this Memorandum of Agreement to be duly executed on its behalf as of the Effective Date.

City of Piedmont

City of Oakland

Authorized by Resolution No. _____
adopted _____

By: _____
Name: John Y. Chiang
Title: Mayor

By: _____
Name: Deanna Santana
Title: City Administrator

Attest:

Approved as to form and legality:

By: _____
Name: John O. Tulloch
Title: City Clerk

By: _____
Name: Celena H. Chen
Title: Deputy City Attorney

Approved as to form and legality:

By: _____
Name: Thomas Curry
Title: City Attorney

2013 AUG 29 AM 10: 23

Approved as to Form and Legality


Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE CITY OF PIEDMONT FOR THE DEVELOPMENT OF A SECONDARY UNIT AT 1835 TRESTLE GLEN ROAD, A PROPERTY LOCATED WITHIN BOTH JURISDICTIONS

WHEREAS, the property owner of 1835 Trestle Glen Road, which is located in the Cities of Oakland and Piedmont, approached both jurisdictions regarding construction of a secondary unit at 1835 Trestle Glen Road; and

WHEREAS, the property owner requests that land use and building permits for the proposal be processed by the City of Piedmont; and

WHEREAS, the City of Oakland agrees that the issuance of planning and building permits and building inspections should be solely handled by the City of Piedmont as there is little difference between Piedmont and Oakland's Codes in regards to secondary units; and

WHEREAS, the City of Oakland is committed to seeing properties developed in as efficient a manner as possible; and

WHEREAS, the City Council hereby finds and determines that CEQA exemptions 15268(b) (Projects that are Ministerial) and 15303(a) (Construction of Second Dwelling Unit in a Residential Zone) apply to this project, both of which provide a separate and independent basis for CEQA clearance; now, therefore be it

RESOLVED: That the City Administrator or her designee is authorized to negotiate and execute a Memorandum of Agreement for the development of a secondary unit at 1835 Trestle Glen Road that is consistent with the Agenda Report and to negotiate and execute all documents, amendments, agreements and instruments reasonably necessary or required to implement this Resolution; and be it

FURTHER RESOLVED: That the Memorandum of Agreement and all such other documents, amendments, agreements and instruments, shall be reviewed and approved by the City Attorney's Office as to form and legality prior to execution.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California