

**SUBJECT:** P14-0704

**APPLICANTS:** Bradley Hirst

**PROPERTY OWNER:** Charles Austin, Scott Austin, and Ian P. Austin

**PURPOSE:** Application for a Development Agreement to vest the development approvals of the Austin project (PUD-58 and Tentative Tract 7813) consisting of eight (8) single-family residential lots and 22 acres of permanent open space at 3459 Old Foothill Road for a ten-year period from 2014 to 2024 with a five-year option.

**GENERAL PLAN:** Low Density Residential (< 2 du/ac) on approximately 8 acres and Open Space - Agriculture and Grazing on the remaining 22 acres

**ZONING:** PUD – LDR (Planned Unit Development – Low Density Residential) District on 8 acres and PUD-OS/AG (Planned Unit Development – Open Space/Agriculture and Grazing) District on the remaining 22 acres

**LOCATION:** 3459 Old Foothill Road

**ATTACHMENTS:** [Exhibit A, Draft Development Agreement with Map Exhibits](#)  
[Exhibit B, PUD-58 - Ordinance No. 1942](#)  
[Exhibit C, Tentative Map 7813 - Resolution No. PC-2007-25](#)  
[Exhibit D, Location Map](#)

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## BACKGROUND

The subject property is the 30-acre Austin property (3459 Old Foothill Road). The approved project (PUD-58 and Vesting Tentative Subdivision Map 7813) will subdivide the 30.4-acre Austin property into eight lots for new custom homes, four parcels that will be transferred to the property owners on Jorgenson Lane, and one 22-acre parcel that will be dedicated to the City as permanent open space. The approved development plan will preserve the open area surrounding the development portion in perpetuity and presents the opportunity to augment Alviso Adobe Park site. The custom home building and landscape designs are covered by design guidelines.

The public infrastructure improvements that are part of the overall development will include the reconstruction of a portion of the southernmost end of Old Foothill Road to accommodate Austin Place and the entrance to the parking area for the Alviso Adobe park, the construction of Austin Place, and the installation of utilities necessary to provide services to the site.

At a public hearing held on October 17, 2006, the City Council introduced Ordinance No. 1942, Exhibit A, approving PUD-58, the PUD Development Plan for the development of the approximately 30-acre Austin property (3459 Old Foothill Road). At a public hearing on May 23, 2007, the Planning Commission introduced Resolution No. PC-2007-25, Exhibit B, approving Vesting Tentative Subdivision Map 7813, for the development subdivision. The final Tract Map has not been submitted for City Council consideration or approval at this time.

A requirement of the original Development Plan was to dedicate a 22-acre open space parcel to the City to be set aside as permanent open space at the time of the Final Map approval. As part of this Development Agreement (Exhibit A), the property owner has agreed to dedicate the parcel to the City at this time.

City Development agreements are contracts specifically authorized by State law with the intended purpose of giving property owners more certainty about policies which will apply to their property and, therefore, encourage investment, including the provision of public facilities. This Development Agreement sets forth the development rights and responsibilities related to the planned unit development. This Development Agreement also outlines the dedication of the 22-acre open space parcel concurrently with the execution of the Development Agreement with the City.

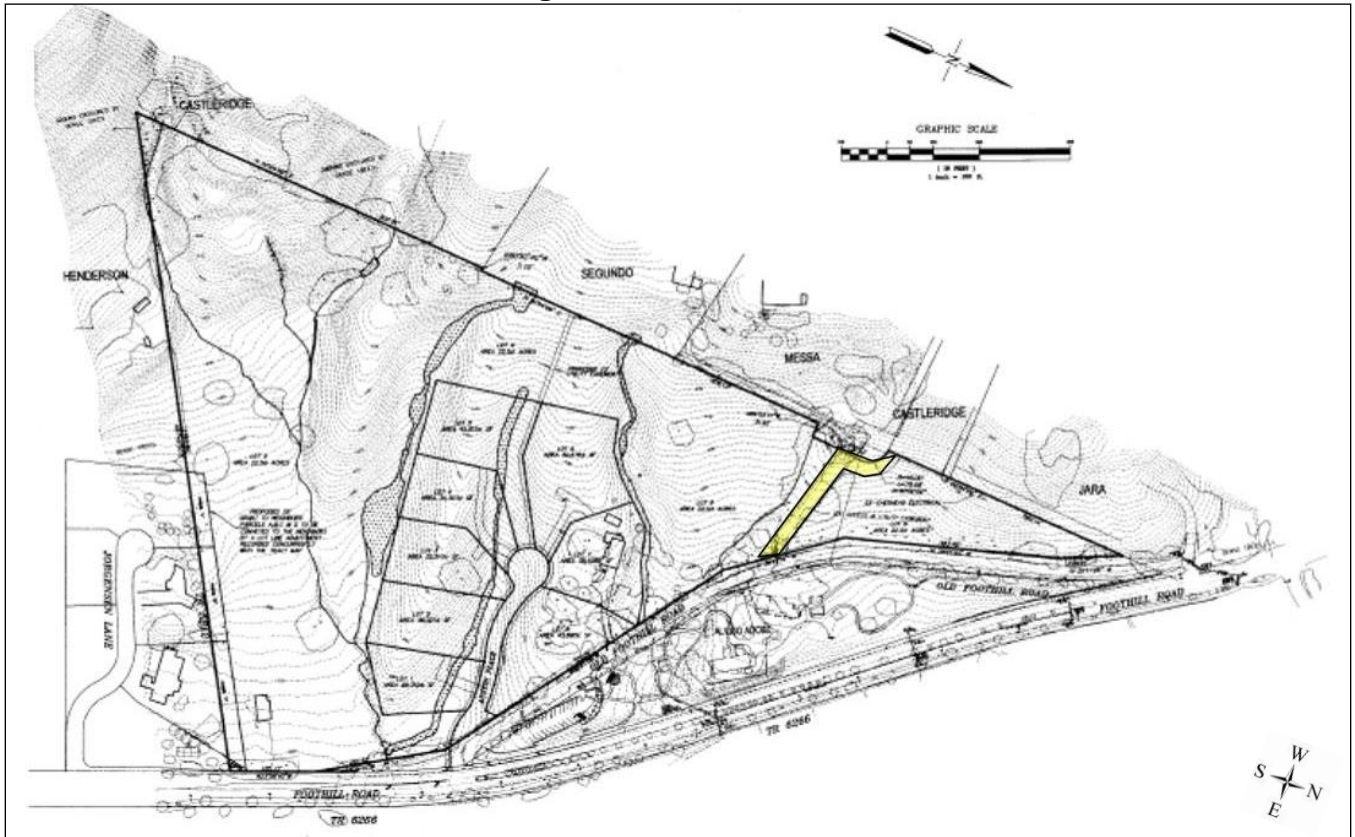
## **SITE DESCRIPTION**

The Austin property consists of one parcel totaling approximately 30 acres in area located at 3459 Old Foothill Road. Figure 1 on the next page is an aerial photograph/location map of the site and surrounding area. The Austin property was once part of the Meadowlark Dairy facility, owned and operated by the Austin family. Walter Briggs, great grandfather of Charles and Scott Austin, founded the Meadowlark Dairy in 1919. It was, at one time, the primary supplier of dairy products to Oakland's Children's Hospital. In 1925, it became the first California dairy certified for product purity and quality and continued operation until closing in 1969.

Overall access to the site is from Foothill Road, a major north/south City arterial. Old Foothill Road provides direct, southerly access to the site from Foothill Road and provides access to the parking area of the Alviso Adobe Park. Access to the adjacent Messa, Segundo and Castleridge Property is provided through an existing access easement across a portion of the property to be dedicated to the City off of Old Foothill Road. The Castleridge property was recently acquired by the East Bay Regional Park District (EBRPD).



Figure 1: Aerial Photo

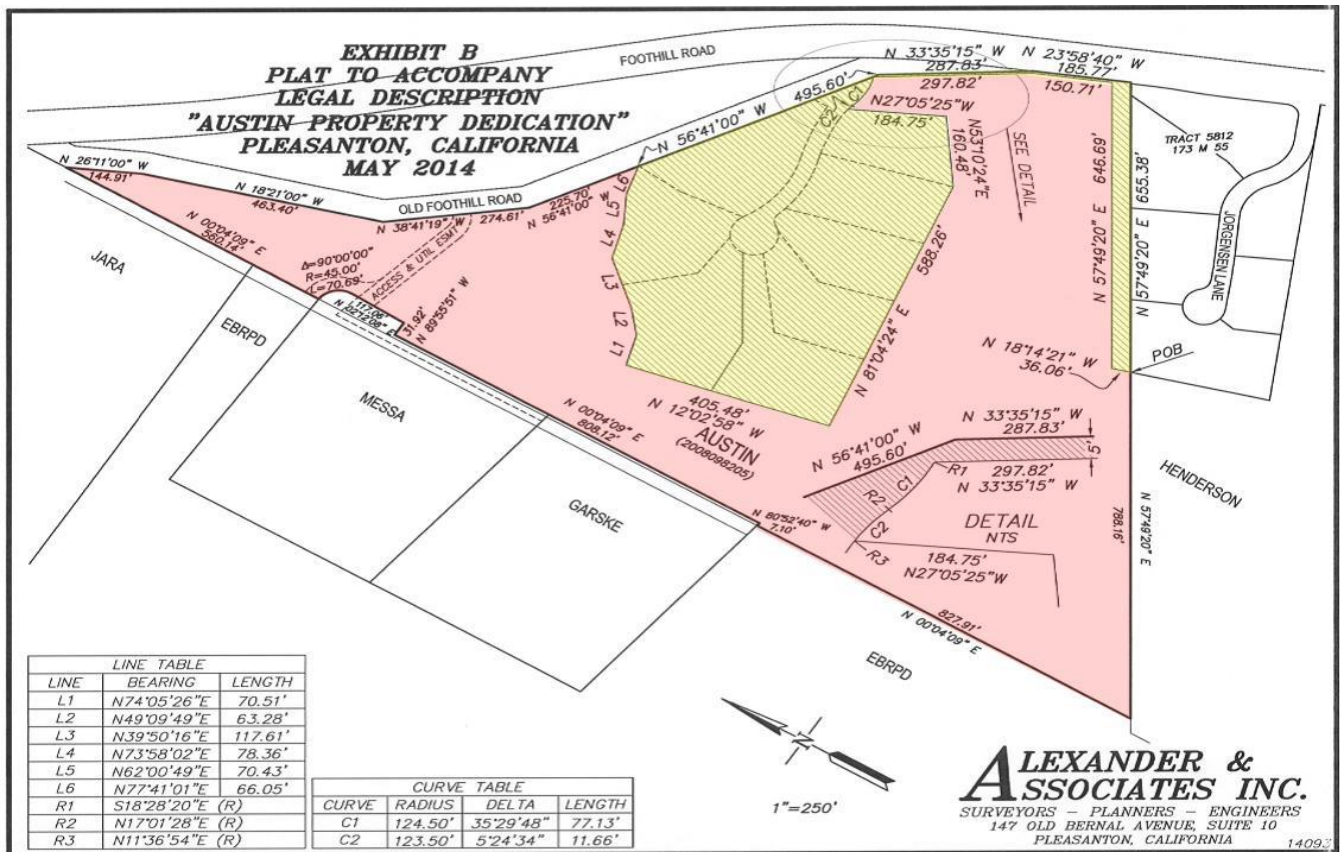


**Figure 2: Tentative Map with Access Easement**

**PROJECT DESCRIPTION**

The applicant requests that PUD-58 and Tentative Tract Map - 7813 be vested for a ten-year period from 2014 to 2024 with a five-year option. The applicant has also proposed to deed to City in fee, concurrently with the execution of the Development Agreement with the City, approximately 22 acres of open space designated as Lot 9 and as more particularly shown on the Site Plan Vesting Tentative Tract Map 7813 within the Development Agreement Exhibits. The transfer of the 22 acre site to the City will allow the City greater control with the recent purchase of an adjoining parcel of 231.57 acres by the EBRPD in order that the public may utilize the City open space to access EBRPD's new park land. To help facilitate the transfer of the property to the City at this time, the 22 acre parcel will exclude a 5 foot strip of land adjacent to Foothill Road as shown on the diagram below and attached hereto within the Development Agreement Exhibits to allow for the Austins to maintain their 8 acre parcel as well as the 35 feet along the four Jorgensen Lane parcels to be dedicated at the time of the final map. The applicant will make an irrevocable offer of dedication to the City of the 5-foot strip of land abutting Foothill Road at the time of the final map. As required through the original conditions of approval, at the recording of the final map, the applicant will deed 35-foot wide parcels to the Jorgensen Lane neighboring property owners, and the City will accept the offer of dedication of the five foot strip.

The Development Agreement process requires that the Planning Commission provide a recommendation to the City Council for action.



### Figure 3: Austin Dedication

#### ANALYSIS

The current PUD and Vesting Tentative Tract Map will expire on June 8, 2016, and the applicant would like to extend their entitlements beyond that current expiration date. Under current conditions of approval, the property owner is not required to grant the open space within the project to the City until their final map is recorded. The City wishes to coordinate the Developer's granting of open space to the City at this time with the recent purchase of an adjoining parcel of 231.57 acres by the EBRPD in order that the public may utilize the City open space to access EBRPD's new park land. With a Development Agreement, the development rights and responsibilities described in the original approvals (Exhibits B and C) as amended by this Development Agreement (Exhibit A), would remain in effect during this extended ten year period. An additional five year extension option has also been included within the Development Agreement if mutually agreed to in writing by all parties.

Access to the newly acquired EBRPD land was previously anticipated and included within the City's Parks and Trails Master Plan which shows a park staging area near the northernmost corner of the Austin property. PUD-58 was reviewed by the Trails Ad Hoc Committee and by the Parks and Recreation Commission at the time the project was originally approved and determined unanimously that the Alviso Adobe parking area would function as a park staging area and, therefore, no staging area would need to be located on the Austin property (to be granted to the City). Staff believes that there have been no changes regarding access and circulation for the new trail and that the transfer of the property to the City at this time allows the City greater ability to explore all options in the future.

No other changes to the approved planned unit development and tentative tract map are being proposed as part of this Development Agreement therefore the underlying planned unit development and tentative tract map remain consistent with the current General Plan.

Because of the current challenging economic climate, staff supports the request to vest the entitlement and recommends that the Planning Commission provide a positive recommendation to the City Council.

#### PUBLIC NOTICE

Notice was mailed to all property owners and residents within a 1,000-foot radius of the project site. Staff has provided the location and noticing maps as Exhibit D for the Commission's reference. The public notice was also published in *The Valley Times*. At the time this report was prepared, staff has not received any comments or concerns.

#### ENVIRONMENTAL ASSESSMENT

The environmental effects of the project were reviewed at the PUD stage and a Mitigated Negative Declaration was adopted pursuant to California Environmental Quality Act (CEQA).

As the physical environment has not significantly changed since that time, and the Development Agreement to vest the entitlement for ten years does not modify the approved project, no further environmental document accompanies the consideration of this Development Agreement. [See §15162(a)]

## **CONCLUSION**

The request for a Development Agreement to vest the approved entitlements for ten years with a five year extension option would allow the applicants to proceed with the intended development when the economic climate improves. This approval would not alter the obligations and responsibilities described in the original entitlements, which remain consistent with the current General Plan.

## **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission adopt a resolution recommending approval to the City Council of this Development Agreement between the City and the Austins.

Staff Planner: Jennifer Wallis, Associate Planner, 925.931.5607, or email: [jwallis@cityofpleasantonca.gov](mailto:jwallis@cityofpleasantonca.gov)