

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

City of Pleasanton  
City Clerk's Office  
123 Main Street

P.O. Box 520  
Pleasanton, CA 94566

Recording Fees Exempt Pursuant to Government Code  
§ 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEVELOPMENT AGREEMENT  
FOR THE AUSTIN PROPERTY  
3459 OLD FOOTHILL ROAD, PLEASANTON, CA**

[Type text]

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into in the City of Pleasanton on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Pleasanton, a municipal corporation (the "**City**"), and Charles Austin, and Scott Austin, and Ian P. Austin, as tenants in common (the "**Developer**"), pursuant to the authority of California Government Code sections 65864 *et seq.*

**RECITALS**

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code sections 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Developer has a legal interest in certain real property located in the City of Pleasanton, County of Alameda, California consisting of approximately 30.4 acres located at 3459 Old Foothill Road, as more particularly described in **DA Exhibit A-1** attached hereto, and as shown on the PUD Development Plan and tentative tract map attached hereto as **DA Exhibit A-2**. Developer contemplates subdividing the property into eight custom home lots with 22 acres to be maintained as open space and deeded to the City of Pleasanton for open space purposes consistent with the terms of this Agreement and consistent with the conditions of approval adopted of PUD-58 and Vesting Tentative Tract Map (PTR-7813), as more particularly described in **DA Exhibit C**.

C. Developer's PUD Development Plan (PUD-58) for the property was approved by the City Council on October 17, 2006, extended by the Community Development Director on January 6, 2010, and by operation of State law has been extended until June 8, 2014. Developer's Vesting Tentative Tract Map (PTR-7813) was approved by the Planning Commission on June 8, 2007, and by operation of State law has been extended until June 8, 2016.

D. Developer wishes to extend the length of time its development approvals for PUD Development Plan (PUD-58) and Vesting Tentative Tract Map (PTR-7813) (hereinafter referred to as the “Project or Project Approvals”) are valid.

E. A condition of approval of PUD-58 requires Developer to offer a 35’ strip of land along the southern property line to the Jorgensen Lane homeowners, as more particularly shown as Parcels A, B, C and D on the Site Plan Vesting Tentative Tract Map 7813, Sheet 1 of 6, dated April 2007.

F. Proximate and prior to the issuance of the first building permit for construction on any of the eight lots to be developed on Developer’s property, Developer shall create four separate parcels by way of a lot line adjustment. The parcels, each 35’ deep, shall be as more particularly shown as Parcels A, B, C and D on the Site Plan Vesting Tentative Tract Map 7813, Sheet 1 of 6, dated April 2007. The Developer shall deed the parcels to the four adjacent property owners to the south of the Project, as more particularly provided herein, and consistent with the conditions of approval adopted as part of PUD-58.

G. City wishes to coordinate Developer’s grant of open space to the City with the recent purchase of an adjoining parcel of 231.57 acres by the East Bay Regional Park District (hereinafter “EBRPD”) in order that the public may utilize the City open space to access the EBRPD new park land. And, the parties agree that City is in a better position to determine the timing and necessary improvements for such public access while the 22 acres of open space dedicated to City by Developer are within City’s control.

H. General Plan Amendment (PGPA-11) was approved by the City Council on October 17, 2006, to change the land use designation for the approximately 22 acres of land to be granted to the City from Rural Density Residential to Open Space/Agriculture and Grazing. The City encourages the implementation of General Plan goals and policies, including Policy 7 within the Open Space and Conservation Element to preserve and expand open-space opportunities, including open-space access to the public. The City supports the expansion of the EBRPD’s Pleasanton Ridge in areas designated as Open Space.

I. A Mitigated Negative Declaration regarding this project was approved by the City Council on October 17, 2006. Environmental review for the custom lots is anticipated to be accomplished on a lot by lot basis. Environmental review relating to public access to the EBRPD parcel is to be addressed by EBRPD.

J. Following review and recommendation by the City Planning Commission and after a duly noticed public hearing, the City Council, by Ordinance \_\_\_\_, determined that this Agreement was consistent with the City’s General Plan and approved this Agreement.

The prior approvals described in these Recitals are collectively referred to herein as the “**Project**” or the “**Project Approvals**” and apply only to the property at 3459 Old Foothill Road. In exchange for the benefits to City described in these recitals, including but not limited to assurance that a residential project consistent with the PUD Development Plan approval referred to above, public access easement, dedication of open space to the City, and Design Guidelines can proceed together with the other public benefits that will result from the development of the

Project Site, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with the “**Applicable Law**” (defined below), and more particularly the expiration of Developer’s Project Approvals shall be extended through DATE, 2024 (with the option of an additional five year extension to DATE 2029), and therefore desires to enter into this Agreement.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

## **AGREEMENT**

### **Article I. Description of Property, Effective Date and Term.**

Section 1.01 Description of Property. The real property which is the subject of this Agreement is at 3459 Old Foothill Road, as described in the attached **DA Exhibit A-1, DA Exhibit A-2 and DA Exhibit D** (the “**Property**”).

Section 1.02 Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the “**Effective Date**”).

Section 1.03 Term. The term of this Agreement shall commence on the Effective Date and extend ) ten (10) years, with the option of a five (5) year extension if mutually agreed to in writing by the parties, thereafter (the “**Term**”).

### **Article II. Standards, Laws and Procedures Governing the Project.**

Section 2.01 Vested Right To Develop. Developer shall have a vested right to develop the Project Site in substantial conformance with the terms and conditions of the Project Approvals, the Subsequent Approvals (defined below) (as and when issued, if applicable), the Applicable Law (defined below) and amendments as shall, from time to time, be approved pursuant to this Agreement.

Section 2.02 Permitted Uses. The permitted uses and the density and intensity of use of the Project Site; the maximum height, bulk and size of the proposed buildings, apartments and single family homes; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in any limitation of any right to develop as set forth in the Project Approvals), any Subsequent Approvals (defined below).

Section 2.03 Applicable Law. “Applicable Law” shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses on the Project Site, governing density, and governing the design, improvements, the City’s Residential Growth Management Program (as set forth in Chapter 17.36 of the Pleasanton Municipal Code), and applicable City regulations, and construction standards and specifications applicable to the Project Site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date. During the Term, to the extent there are any conflicts between the Project

Approvals (including but not limited to conditions to any of the Project Approvals) and this Agreement, the terms and conditions of this Agreement shall govern..

Section 2.04 Moratorium, Initiatives and Conflicting Enactments. To the extent consistent with state law (and excepting a declaration of a local emergency or state emergency as defined in Government Code section 8558), if any ordinance, resolution or other measure is enacted subsequent to the Effective Date, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project or Project Approvals or Subsequent Approvals on all or any part of the Project Site (“**City Law**”), City agrees that such ordinance, resolution or other measure shall not apply to the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the Term.

Section 2.05 Life of Project Approvals or Subsequent Approvals. The term of any Project Approval or Subsequent Approval shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The Term of this Agreement, any other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development or utility moratorium, lawsuit or the actions of other public agencies that regulate land use, delays construction of the Project.

Section 2.06 Development Timing. Subject to Applicable Law, Developer shall have the right to develop the Project on the Project Site in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

Section 2.07 Compliance with State and Federal Law. This Agreement is subject to Developer’s compliance with all applicable federal and state laws and regulations and compliance with the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* (“**CEQA**”).

### **Article III. Developer Obligations.**

Section 3.01 Obligations of Developer Generally. The parties acknowledge and agree that the City’s agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer’s agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer’s long term obligations set forth in this Agreement are in addition to Developer’s agreement to perform all the mitigation measures incorporated in the project’s design or identified within the conditions of approval.

Section 3.02 Development Impact Fees. Developer shall pay to City, in accordance with and subject to this Article 3, only those types and amounts of development impact fees and exactions, and other building permit and development-related fees, which are in effect as of the Effective Date. Developer shall pay those periodic cost of living or similar indexed increases, decreases or adjustments to such fees and exactions as are applicable and in effect at the time such fees or exactions would otherwise be payable to City. Included within attached **DA Exhibit B** is a complete list of the types and amounts of City development impact fees and exactions applicable

to the Project (including those set forth below in this Article 3) (collectively, “City Impact Fees”), as well as a complete list of all other building permit and development-related fees applicable to the Project and collectible by City (for City’s own account or on account of other agencies) (all such other fees collectible by City for its own account are hereinafter referred to collectively as “Other City Fees”). In the event Developer applies for multiple grading or building permits covering portions or phases of the Project, Developer shall only pay those City Impact Fees and Other City Fees (or prepare such study or studies) applicable to the portion or phase of the Project covered by the issued permits. Developer acknowledges that this Development Agreement does not control development related fees charged by entities other than the City of Pleasanton as more particularly described in the succeeding sections, and that Developer shall be responsible for payment of such fees charged by entities other than the City in effect at the time of building permit issuance notwithstanding the fact that the City may collect such fees on behalf of those other entities.

Section 3.03 Traffic Mitigation Measures; Traffic Impact Fees. Developer shall be obligated to mitigate the traffic related impacts of the Project, which shall be deemed full compliance with General Plan policy, by complying with each of the following:

- (a) Pleasanton Traffic Impact Fee. Developer shall pay to City the applicable Pleasanton Traffic Impact Fee in accordance with the City’s fee schedule in effect on the Effective Date of this Agreement, and
- (b) Tri-Valley Transportation Committee Fee. Developer shall pay to the City the Tri-Valley Transportation Committee Fee as may be applicable.

Section 3.04 School Fees. Developer, its successors and assigns, including subsequent purchasers of individual lots in the Project, shall pay school fees to Pleasanton Unified School District (“PUSD”) in accordance with the schedule promulgated by PUSD entitled Pleasanton Unified School District Summary of Applicable Developer Fees, as may be amended from time to time, or successor schedule, in effect at the time of application for a building permit. Developer shall provide to City, prior to building permit issuance, PUSD’s written confirmation of such payment.

Section 3.05 Processing Fees; Permit Fees

- (a) Building Permit. Developer shall pay those building permit fees in effect at the time of building permit issuance.
- (b) Processing Fees. Developer shall pay to City the City’s reasonable application processing fees for the Project in accordance with the City’s fee schedule in effect at the time Developer submits the applicable Project application for processing. In the event Developer sells its interest in the Project, its successor(s) shall pay those processing fees in effect at the time of building permit issuance.

Section 3.06 Park Fees. In light of Developer’s grant of open space to the City, as provided in Section 3.07 below, the payment of park fees is not required.

Section 3.07 Dedication of Open Space. Developer shall deed to City in fee, concurrently with the execution of this Agreement by 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, Sheet 1 of 6, dated April 2007, and the diagram attached hereto as **DA Exhibit A-2** and incorporated herein by reference. In addition, Developer shall make an irrevocable offer of dedication to City of a 5' (five foot) strip of land abutting Foothill Road from the adjacent lot at Jorgensen Lane and Foothill Road to the southern boundary of Developer's subdivision. Said five foot strip is more particularly show on the diagram attached hereto as **DA Exhibit D** and incorporated herein by reference. The parties contemplate that at the time Developer processes its final tract map and deeds Parcels A, B, C and D as shown on the Site Plan Vesting Tentative Tract Map 7813, Sheet 1 of 6, dated April 2007 to the Jorgensen Lane neighboring property owners, City shall accept the offer of dedication of the five foot strip. Furthermore, Developer shall, upon request by neighboring Jorgensen Lane property owners, at its expense remove existing fences at the current (at the time of entering into this Agreement) property lines, and construct new fences where Developer's subdivision abuts Parcels A, B, C and D on the final tract map. If requested by neighboring Jorgensen Lane property owners, the new fences shall connect with existing side fences, which will require the extension of such side fences by Developer at its expense.

Section 3.08 When a Final Tract Map is processed, it shall provide that a recorded deed of sale for all lots shall include a disclosure stating the City of Pleasanton owns the open space surrounding lots 1 through 8, that the open space area can be used by the public, that the open space area includes a trail which connects to the Pleasanton Ridge trail, and that the buyer recognizes that the activities that take place in the open area may result in noise, odors, dust, or other conditions that may affect the lots covered by this PUD Development Plan.

#### **Article IV. City Obligations.**

Section 4.01 Protection of Vested Rights. To the maximum extent permitted by law, City shall take any and all actions as may be necessary or appropriate to ensure that the vested rights provided by this Agreement can be enjoyed by Developer and to prevent any City Law from invalidating or prevailing over all or any part of this Agreement. City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall not support, adopt, or enact any City Law, or take any other action which would violate the express provisions or intent of the Project Approvals or the Subsequent Approvals (defined below).

Section 4.02 Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Developer in reserving capacity for sewer, water and any other services as may be necessary to serve the Project.

Section 4.03 Processing Subsequent Approvals. "**Subsequent Approvals**" shall mean those certain other land use approvals, entitlements, and permits other than the Project Approvals which are necessary or desirable for the development of the Project on the Project Site. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, lot line adjustments and/or subdivision maps, improvement agreements, grading permits, building permits, sewer and water connection permits, and certificates of occupancy.

The Subsequent Approvals shall be deemed tools to implement those final policy decisions reflected by the Project Approvals and shall be issued by City so long as they comply with this Agreement and Applicable Law and are not inconsistent with the Project Approvals. Without limiting the preceding provisions of this Section 4.03 or Sections 2.01-2.02, City shall not (a) impose any conditions of approval or other requirements upon any Subsequent Approvals that conflict with any Project Approvals or that could prevent or materially increase the cost of development of the Project pursuant to the Project Approvals; or (b) require any further legislative level entitlements to enable Developer to build out the Project on the Project Site.

**Article V. Miscellaneous.**

**Section 5.01 Amendment to Project Approvals.**

- (a) Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the Director of Community Development or his/her designee shall determine (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is substantially consistent with this Agreement and Applicable Law. If the Director of Community Development or his/her designee finds that the proposed amendment or modification is minor, substantially consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the IS/MND, the amendment shall be determined to be an “Administrative Project Amendment” and the Director of Community Development or his designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.
- (b) Other Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which does not satisfy the requirements for an Administrative Project Amendment shall be subject to the review, consideration and action by City pursuant to the Applicable Law and this Agreement.

**Section 5.02 Amendment of Agreement.** This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:

- (a) Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms,



restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings, or (vi) monetary contributions by Developer, shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. Such amendment may be approved by the Community Development Director who shall make the determination in the context of the overall Project.

- (b) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval shall require an amendment to this Agreement. Instead, any such amendment automatically shall be deemed to be incorporated into the Project and vested under this Agreement.
- (c) Scope of Amendment. An amendment to this Agreement may properly address new impacts, if any, resulting from the proposed amendment and shall not serve as an opportunity for City to revisit vested rights unrelated to such amendment.

Section 5.03 Cooperation in Event of Legal Challenge. In the event of an administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of this Agreement or any Project Approval or Subsequent Approval, the parties shall cooperate in defending such action or proceeding. The parties shall use best efforts to select mutually agreeable legal counsel to defend such action, and Developer shall pay compensation for such legal counsel; provided, however, that such compensation shall include only compensation paid to counsel not otherwise employed as City staff and shall exclude, without limitation, City Attorney time and overhead costs and other City staff overhead costs and normal day-to-day business expenses incurred by City. Developer's obligation to pay for legal counsel shall not extend to fees incurred on appeal unless otherwise authorized by Developer. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel at its own expense.

Section 5.04 Defaults. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided under law. No default hereunder shall render invalid the lien of any deed of trust, mortgage or security interest in or upon the Project Site or any improvements or fixtures at any time located thereon.

Section 5.05 Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement.

Section 5.06 California Law. This Agreement shall be construed and enforced in accordance with California Law.

Section 5.07 Attorneys Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees and any related costs incurred in that proceeding in addition to any other relief to which it is entitled.

Section 5.08 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent

jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

Section 5.09 Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law *including, without limitation, California Civil Code section 1468.*

Section 5.10 Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project Site or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities. However, notwithstanding the previous sentence, purchasers of lots shall pay fees in place at time of building permit issuance as set forth in Section 3.05.

Section 5.11 Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by telefacsimile (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal or other similar courier promising overnight delivery to the respective addresses specified by each party. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:                   City of Pleasanton  
  City Hall  
  123 Main Street  
  P.O. Box 520  
  Pleasanton, CA 94566  
  Attn: Nelson Fialho, City Manager  
  Telephone: (925) 931-5002  
  Facsimile: (925) 931-5482

With Copies to:                City of Pleasanton  
  City Hall  
  123 Main Street  
  P.O. Box 520 Pleasanton, CA 94566  
  Attn: Jonathan Lowell, City Attorney  
  Telephone: (925) 931-5015  
  Facsimile: (925) 931-5482

If to Developer, to:

With Copies to:        Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

DA EXHIBIT A-1.....Legal Description

DA EXHIBIT A-2.....Diagram of Austin Property Subdivision and Open Space

DA EXHIBIT B .....List of City Development Impact Fees

DA EXHIBIT C .....Conditions of Approval: PUD-58 and PTR-7813

DA EXHIBIT D.....Diagram of Open Space, Irrevocable Offer of Dedication

Section 5.12 Entire Agreement, Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of \_\_\_ pages and three exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer.

Section 5.13 Estoppel Certificate. Developer may, at any time, and from time to time, deliver a written notice to City requesting City to certify in writing that: (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments entered into by the parties, and (c) to the knowledge of City, neither party is or has been in default under this Agreement, or if any such default has to City’s knowledge occurred, describing the nature of any such event of default and any cure thereof. City shall execute and return such certificate to Developer within ten (10) days following City’s receipt thereof, and if City fails so to do within such 10-day period, the information in Developer’s notice shall conclusively be deemed true and correct in all respects. The Director of Community Development, on behalf of City, shall execute certificates requested by Developer hereunder. City acknowledges that any certificate hereunder may be relied upon by any transferee or mortgagee of any interest of Developer hereunder.

Section 5.14 Further Assurances. Each of the parties covenants, on behalf of itself and its successors and assigns, to take all actions and to execute, with acknowledgment or affidavit if required, any and all documents and writings, that may be reasonably necessary, proper or convenient to achieve the purposes and objectives of this Agreement.

Section 5.15 Interpretation. Captions and headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as “herein,” “hereto,” and “hereunder” shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms “include,” “including,” and similar terms shall be construed as though followed immediately by the phrase “but not limited to;” (d) “shall,” “will,” “must,” “agrees,” and “covenants,” are mandatory and

“may” is permissive; and (e) “or” is not exclusive. The parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this Agreement.

Section 5.16 Recordation of Development Agreement. Pursuant to California Government Code section 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Alameda.

[Signatures on next page]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

**“CITY”**

Dated: \_\_\_\_\_

CITY OF PLEASANTON,  
a municipal corporation

By: \_\_\_\_\_  
Nelson Fialho  
City Manager

Dated: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Jonathan Lowell  
City Attorney

**“DEVELOPER”**

Dated: \_\_\_\_\_

By:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DA-EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Pleasanton, County of Alameda, State of California, described as follows:

BEING ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN THE GRANT DEED TO CHARLES B. AUSTIN, A MARRIED MAN AND SCOTT M. AUSTIN, A MARRIED MAN AND IAN P. AUSTIN, A MARRIED MAN, AS HIS SOLE AND SEPARATE PROPERTY, AS TENANTS IN COMMON, AS RECORDED MARCH 21, 2008 UNDER SERIES NO. 2008098205, ALAMEDA COUNTY OFFICIAL RECORDS.

2008 Austin Vesting Deed NO. 2008098205

Beginning at the point of intersection of the Western Line of the Rancho Santa Rita with the Southwestern Line of Foothill Road; running thence along said line of Foothill Road, the six following courses and distances;

- 1) South 26°11'00" East, 144.91 feet;
- 2) South 18°21'00" East, 463.40 feet;
- 3) South 38°41'19" East, 274.61 feet;
- 4) South 56°41'00" East, 721.30 feet;
- 5) South 33°35'15" East, 287.83 feet;
- 6) South 23°58'40" East, 185.77 feet;

Thence leaving said line of Foothill Road South 57°49'20", West 1443.54 feet more or less, to the Western Line of the Rancho Santa Rita; thence along said Western Line of the Rancho Santa Rita North 00°04'09" East 827.91 feet to a point on the easterly prolongation of the southerly line of that certain parcel of land conveyed to Michael C. Segundo, a single man, by deed recorded December 22, 2006 under Recorder's Series No. 2006-466826, Official Records of Alameda County, thence along said easterly prolongation South 80°52'40" East 7.10 feet; thence North 00°04'09" East 808.13 feet; thence South 89°55'51" East 31.92 feet; thence North 02°12'08" East 117.06 feet to the beginning of a curve concave to the southwest having a radius of 45 feet; thence northerly, northwesterly, and westerly 70.69 feet along said curve through a central angle of 90°00'00" to a point on the said Western Line of the Rancho Santa Rita, thence along said line North 09°04'09" West 560.14 feet to the Point of Beginning.

DA-EXHIBIT A-2

DIAGRAM OF AUSTIN PROPERTY SUBDIVISION AND OPEN SPACE  
(VESTING TENTATIVE TRACT MAP PTR-7814)





DA-EXHIBIT B

LIST OF CITY IMPACT FEES AND OTHER CITY FEES

DA EXHIBIT C

CONDITIONS OF APPROVAL: PUD-58 AND PTR-7813

DA-EXHIBIT D

DIAGRAM OF OPEN SPACE, IRREVOCABLE OFFER OF DEDICATION  
(AUSTIN PROPERTY DEDICATION)

**EXHIBIT B**  
**PLAT TO ACCOMPANY**  
**LEGAL DESCRIPTION**  
**"AUSTIN-PROPERTY DEDICATION"**  
**PLEASANTON, CALIFORNIA**  
**APRIL 2014**

FOOTHILL ROAD

OLD FOOTHILL ROAD

JARA

EBRPD

MESSA

GARSKIE

AUSTIN

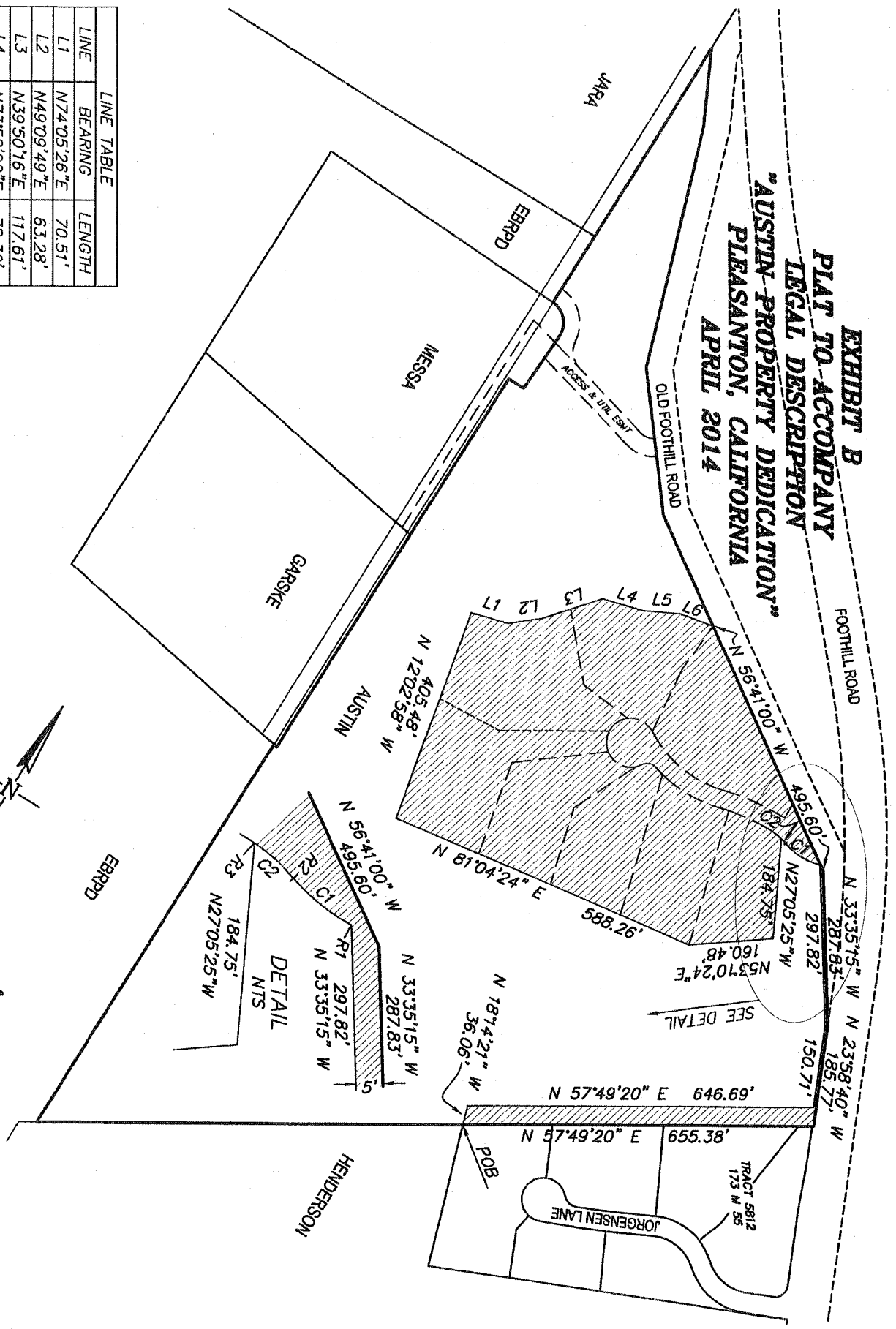
EBRPD

HENDERSON

JORGENSEN LANE

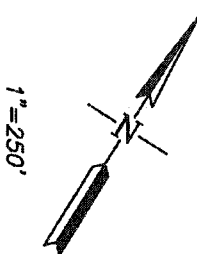
TRACT 5812  
173 N 55

POB



| LINE | BEARING         | LENGTH  |
|------|-----------------|---------|
| L1   | N74°05'26"E     | 70.51'  |
| L2   | N49°09'49"E     | 63.28'  |
| L3   | N39°50'16"E     | 117.61' |
| L4   | N73°58'02"E     | 78.36'  |
| L5   | N62°00'49"E     | 70.43'  |
| L6   | N77°41'01"E     | 66.05'  |
| R1   | S18°28'20"E (R) |         |
| R2   | N17°01'28"E (R) |         |
| R3   | N11°36'54"E (R) |         |

| CURVE | RADIUS  | DELTA     | LENGTH |
|-------|---------|-----------|--------|
| C1    | 124.50' | 35°29'48" | 77.13' |
| C2    | 123.50' | 52°4'34"  | 11.66' |



1"=250'

**ALEXANDER & ASSOCIATES INC.**  
 SURVEYORS - PLANNERS - ENGINEERS  
 147 OLD BERNAL AVENUE, SUITE 10  
 PLEASANTON, CALIFORNIA

**ORDINANCE NO. 1942**

**AN ORDINANCE APPROVING THE APPLICATION OF CHARLES AUSTIN AND SCOTT AUSTIN FOR PUD REZONING AND DEVELOPMENT PLAN APPROVAL, AS FILED UNDER CASE PUD-58**

**WHEREAS**, Charles Austin and Scott Austin have applied for PUD rezoning and development plan approval to rezone an approximately 30-acre hill property located at 3459 Old Foothill Road from A (Agriculture) District to PUD-LDR (Planned Unit Development – Low Density Residential) District, maximum of eight dwelling units, on eight acres and to PUD-OS/AG (Planned Unit Development – Open Space/Agriculture and Grazing) Districts on the remaining 22 acres, and to subdivide the subject property into eight custom home sites and 22 acres of permanent open space; and

**WHEREAS**, based on the Initial Environmental Study, a Negative Declaration was adopted by the City Council on October 17, 2006; and

**WHEREAS**, at its meeting of October 17, 2006, the City Council received the Planning Commission's positive recommendations for approval of the PUD rezoning and development plan; and

**WHEREAS**, a duly noticed public hearing was held on October 17, 2006; and

**WHEREAS**, after a review of the materials presented, the City Council determined that the proposed rezoning is appropriate for the site; and

**WHEREAS**, the City Council finds that the proposed PUD rezoning and development plan are consistent with the General Plan policies of the City of Pleasanton and the purposes of the PUD ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Approves the rezoning of an approximately 30-acre hill property located at 3459 Old Foothill Road from A (Agriculture) District to PUD-LDR (Planned Unit Development – Low Density Residential) District on eight acres and to PUD-OS/AG (Planned Unit Development – Open Space/Agriculture and Grazing) Districts on the remaining 22 acres, as shown on the attached Exhibit C, dated October 17, 2006, and incorporated herein by this reference.

**Section 2.** The Zoning Map of the City of Pleasanton, dated April 18, 1960, on file with the City Clerk, designating and dividing the City into zoning districts, is hereby amended by Zoning Unit Map No. 466, attached hereto as Exhibit A, dated October 17, 2006, and incorporated herein by this reference.

**Section 3.** Approves Case PUD-58, the application of Charles Austin and Scott Austin for PUD development plan approval to subdivide an approximately 30-acre hill property located at 3459 Old Foothill Road into eight custom home sites and to designate the remaining 22 acres for permanent open space, subject to the conditions shown on Exhibit B, attached hereto and incorporated herein by this reference.

**Section 4.** A summary of this ordinance shall be published once within fifteen (15) days after its adoption in "The Valley Times," a newspaper of general circulation published in the City of Pleasanton, and the complete ordinance shall be posted for fifteen (15) days in the City Clerk's office within fifteen (15) days after its adoption.

**Section 5.** This ordinance shall be effective thirty (30) days after its passage and adoption.

**INTRODUCED** at a regular meeting of the City Council of the City of Pleasanton on October 17, 2006.

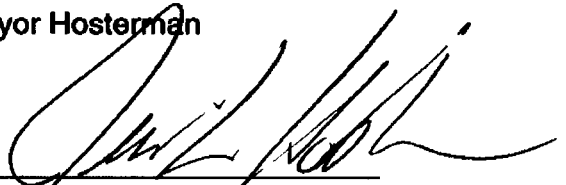
**ADOPTED** at a regular meeting of the City Council of the City of Pleasanton on November 7, 2006, by the following vote:

AYES: Brozosky, McGovern, Sullivan, Thorne, and Mayor Hosterman

NOES: None

ABSENT: None

ABSTAIN: None

  
Jennifer Hosterman, Mayor

ATTEST:

  
Karen Diaz, City Clerk

APPROVED AS TO FORM:

  
Michael H. Roush, City Attorney

**EXHIBIT B  
CONDITIONS OF APPROVAL**

**PUD-58 and PGPA-11, Austin Property  
3459 Old Foothill Road  
October 17, 2006**

**Project-Specific Conditions:**

1. The subdivision, public improvements and landscaping, and buildings covered by this approval shall be constructed/installed substantially as shown on the development plans, Exhibit A, dated "Received August 18, 2006" on file with the Planning Department, except as modified by the following conditions. Minor changes to the plans may be allowed subject to the approval of the Planning Director if found to be in substantial conformance to the approved exhibits.
2. The design, construction, and landscaping of the development covered by this approval including the individual homes shall be subject to the following design guidelines to the satisfaction of the Planning Director:
  - a. "Meadowlark Estates Subdivision Site Development and Architectural Review Guidelines", dated August 11, 2006 or as subsequently revised by City approval, prepared by Gorny & Associates and PGAdesign.
  - b. "Landscape Design Guidelines for Meadowlark, Austin Property", dated May, 2006 or as subsequently revised by City approval, prepared by PGAdesign.

The project developer shall work with staff to further refine the guidelines for clear guidance to future owners regarding all aspects of the designs of these homes. The guidelines shall state the design review procedures for these lots for approval by the Zoning Administrator and shall state the procedures to inform the Planning Commission of the Zoning Administrator's actions. The guidelines shall state that the colors of the custom homes shall be consistent with the colors of the existing environment in the Foothill area. The revised guidelines shall be subject to review and approval by the Planning Commission with its action on the tentative subdivision map.

3. The project developer shall pay any and all fees to which the properties covered by this PUD Development Approval are subject prior to issuance of building permits. The developer is exempt from the City's in-lieu park dedication fee. The type and amount of the fees shall be those in effect at the time the building permit is issued.

4. **Cattle grazing shall be allowed on the 22-acre open space area surrounding the eight-lot portion of this development. The grazing density shall be based on a combination of factors including, but not limited to, the type of grazing (free-range and/or supplemented with feed), the age of the animals, etc., and shall be determined with review of the tentative map and shall be subject to the approval of the Planning Commission. The applicant shall provide a cattle fence around the open space area as shown on the Landscape Design Guidelines. The existing cattle shed located near the southern side of the property is allowed to remain. Any future use for the open space area is subject to City review including the Trails Ad Hoc Committee and the Parks and Recreation Commission.**
5. **The applicant shall install or provide funding for a trail in the open space area, as determined by the Director of Parks and Community Services.**
6. **Lots 1 through 8 of the PUD Development Plan shall be subject to the following uses and site development standards:**
  - a. **The permitted and conditional uses of the R-1 (One-Family Residential) District as described under Chapter 18.32 of the Pleasanton Municipal Code.**
  - b. **Development Standards for Primary Structures: The following building setback and height standards shall apply to the primary structures and additions to primary structures including second units on these lots:**
    - **Frontyard Building Setback – 30 feet from the property line provided that any building is at least 10 feet from the top-of-bank of a swale/seep or slope bank.**
    - **Interior Sideyard Building Setback – 15 feet from the property line provided that any building is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
    - **Street Sideyard Building Setback – 20-feet from the property line provided that any building is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
    - **Rearyard Building Setback – 30-feet from the property line provided that any building is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
    - **Maximum Height – 30-feet.**
    - **Maximum Floor Area Ratio (FAR) – 25% or 8,000 square feet, exclusive of 700 square feet of garage area, whichever is less. (Note: Garage floor area over 700 square feet will be added to the building floor area.)**

**The Zoning Administrator may permit a minor reduction of the setback distance from a swale, seep, or slope bank for houses of high-quality**



design where the reduced setback is to allow a significant architectural design feature, e.g., a stepped-pad design reflecting the topographic character of the site.

- c. **Development Standards for Open Accessory Structures, e.g., Swimming Pools and Spas including, Arbors, Trellises, Open Patios, etc. (Note: These setback standards shall also apply to swimming pools and spas.)**
- **Maximum height – One-Story and 15-feet**
  - **Rearyard Setback – 15-feet from the property line provided that any structure is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
  - **Interior Sideyard – 10-feet for the structure or 5-feet for the swimming pool/spa equipment from the property line provided that any structure is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
  - **Street Sideyard for Corner Lots – 20-feet from the property line for the structure and for swimming pool/spa equipment provided that any structure is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
- d. **Development Standards for Enclosed Accessory Structures including Second Units:**
- **Rearyard Setback – 20-feet from the property line provided that any structure is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
  - **Interior Sideyard – 15-feet from the property line provided that any structure is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
  - **Street Sideyard for Corner Lots – 15-feet from the property line provided that any structure is at least 5 feet from the top-of-bank of a swale/seep or slope bank.**
  - **Maximum height – One-Story and 15-feet**
- (Note: The floor area for enclosed accessory structures shall be included in the sites' floor area ratios.)
- e. **Architectural projections and bay/oriel windows shall conform to the definitions and standards described under Section 18.84.120 of the Pleasanton Municipal Code.**
- f. **The maximum height for any primary or accessory structure on Lots 1 through 8 shall be measured vertically from the lowest point of the structure to the highest point of the structure, excluding towers, cupolas, chimneys and other such uninhabitable projections.**

- g. No sports courts shall be permitted.
7. The applicant shall post with the City prior to approval of final subdivision map, an additional performance bond for all subdivision improvements that are not to be accepted by the City of Pleasanton.
  8. The project developer shall obtain all agency environmental permits prior to the recordation of the final subdivision map or prior to the issuance of a grading permit.
  9. The project developer has offered to deed a 35-foot strip of land along the southern property line to the following Jorgensen Lane homeowners:
    - David C. and Judith Blaski Banks (8055 Jorgensen Lane, 946-3930-042-00),
    - Lawrence and Cynthia Atherton (8037 Jorgensen Lane, 946-3930-043-00),
    - Lide Family Trust (8001 Jorgensen Lane, 946-3930-045-00), and
    - Sandeep and Eena Duggal (8019 Jorgensen Lane, 946-3930-044-00)

In the event that the homeowners accept the 35-foot strip, this area shall be zoned PUD – LDR, matching the zoning of the Jorgensen Lane properties, and shall be incorporated into the zoning regulations of the Jorgensen Lane sites. The project developer shall process lot line adjustments to add this strip of land to each lot resulting in a single parcel for each Jorgensen Lane property. The land transfer must be entirely agreed to by these owners or their successors prior to the City Council's approval of the final subdivision map; however, if the Lide family decides not to participate, the strip of land may still be transferred to the remaining property owners. Otherwise, this property will remain with the open space area of the proposed development. The lot line adjustment shall be recorded concurrently with the recording of the final subdivision map unless otherwise approved by the City Engineer.

10. Prior to the demolition of any existing structure(s) located on the Austin property, the applicant shall have the structures examined for the presence of lead, lead-based paint, and/or asbestos by a qualified environmental professional. If lead and/or asbestos are found to be present, demolition of these structures shall be conducted in accordance with the applicable requirements of the California Department of Industrial Relations (Cal-OSHA) for lead, and Cal OSHA and the Bay Area Air Quality Management Board (BAAQMD) for asbestos. The applicant shall provide to the Planning Director a follow-up report within 30-days after demolition of the structure(s) is completed.
11. The project developer shall submit with the tentative subdivision map application a Wildland Fire Management Plan (WFMP) prepared by a licensed consultant covering the private lots and open space area for review by the Fire Marshall and review/approval by the Planning Commission. Measures identified in the WFMP

will be incorporated into the City's management/maintenance plan of the open space area.

12. The following changes shall be shown on the tentative subdivision map and/or grading plan to the satisfaction of the City Engineer and shall be subject to review/approval by the Planning Commission:
  - a. The typical street section for the public street/cul-de-sac accessing Lots 1 through 8 shall include an 8-foot wide Public Service Easement (PSE) measured from the back of curb. Unless otherwise approved by the City Engineer, the first 5 feet of the easement shall be graded at 2.0% towards the street.
  - b. The water, stormdrain system, and gravity sanitary sewer mains shall be public and maintained by the City. There shall be individual sanitary sewer and water laterals to each dwelling unit. The gravity sanitary sewer lateral shall have a two-way cleanout located at the back of curb. All water services shall be 2-inches unless otherwise approved by the City Engineer.
  - c. The width of the court/street between Foothill Road and the Old Foothill Road shall be increased to allow sufficient width for two, 12-foot wide exit lanes and a 16-foot wide entrance lane.
  - d. Old Foothill Road.

The project developer shall:

- Construct an earth swale along the westerly edge of pavement to capture surface drainage along the roadway.
- Unless otherwise required by the City Engineer based upon further information from P.G. & E., the project developer shall underground the overhead utility lines along Old Foothill Road as determined to the satisfaction of the City Engineer.
- Improvements to Old Foothill Road shall include a slurry seal or overlay as determined by the City Engineer, if any. If an overlay, a pro-rata cost sharing shall be established between the project developer and the City.

**e. Foothill Road**

**The project developer shall:**

- **Construct the new street tie-in to Foothill Road as shown on the plans (except as modified above).**
- **Re-stripe the median striping to create a left turn pocket into the development.**
- **Shorten the existing raised median north of the proposed entrance street/court as determine by the City Engineer to allow for a smooth transition while exiting the proposed street/court.**
- **Construct a de-acceleration lane for vehicles traveling southbound and turning into the site. The de-acceleration lane can be combined with the existing bike lane on the street. The City Engineer shall determine the exact length and width of the de-acceleration lane.**

**13. The project developer shall provide individual booster pumps on the domestic water service to Lots 4, 5 and 6, located above the 400-foot elevation. The proposed location of these pumps shall be shown on the tentative subdivision map to the satisfaction of the City Engineer and shall be subject to review/approval by the Planning Commission.**

**14. The project developer shall install the following:**

- a. A "V"-ditch located along the south property line of Lots 1 through 5 and along the north property line of Lots 6 and 7 to intercept any storm water from the lots and direct the water into the bio-retention area;**
- b. A "V"-ditch along the west property line of Lots 5 and 6 to intercept storm water runoff from the open space flowing onto these lots; and,**
- c. Swales or "V"-ditches between these lots to prevent storm water from the upper lot flowing onto the lower lot.**

**All storm water from the lots and private street/court shall be directed to the bio-retention area. The storm drain system outside the public right-of-way shall be private and maintained by the development's homeowners association (HOA). The HOA shall provide annual maintenance report to the City prepared by a California licensed Civil Engineer for the bio-retention area and "V"-ditches.**

**15. All roof leaders shall be connected to the storm drain system. This statement shall be added to the development's design guidelines.**

**16. Lot 7 shall be accessed through the shared access driveway over Lot 6. After the subdivision improvements are completed, the project developer shall eliminate the driveway access from Lot 7 onto Old Foothill Road. This statement shall appear on the face of the Tentative Subdivision Map.**

17. The existing septic tank and leach field to the existing house on Lot 7 shall be abandoned per Alameda County Health Department regulations. Any existing well may be used for landscape purposes or shall be abandoned per Zone 7 standards. If an existing well is used for landscape purposes, the home that is served by the well is required to have a backflow device on the domestic water service. The backflow device shall be re-certified each year.
18. The perimeter of all building foundations shall be designed with subdrains. The subdrains shall have a cleanout installed at the beginning of the pipe. The bottom of the pipe shall terminate in a storm drain or other storm drain outfall subject to the approval of the City Engineer. The project developer's engineer shall submit a final subdrain location map to the City Engineer prior to acceptance of the public improvements for this development. It shall be the responsibility of the homeowner to relocate the subdrains if the subdrains are encountered during the excavation of a pool or other subsurface structure. All owners within the subdivision shall receive notice of the presence of these subdrains. The City Attorney shall approve said notice.
19. Unless otherwise approved by the City Engineer, all fill and cut slopes shall be graded at a 3:1 (horizontal:vertical) slope. There shall be a minimum, 2-foot wide "overbuild" area between the lot line(s) and the slope's hinge point. This change shall be shown on the tentative subdivision map and/or grading plan to the satisfaction of the City Engineer and shall be subject to review/ approval by the Planning Commission.
20. The project developer shall comply with the recommendations of the following geotechnical reports:
  - *"Landslide Investigation, Austin Property, Foothill Road, Pleasanton, California"*, prepared for Austin and Briggs Investments by Berlogar Geotechnical Consultants, dated July 18, 2002.
  - *"Supplemental Landslide Investigation, Austin Property, Foothill Road, Pleasanton, California"*, prepared for Austin and Briggs Investments by Berlogar Geotechnical Consultants, dated September 24, 2003.
  - *"Geologic/Geotechnic Investigation, Proposed Eight-Lot Meadowlark Development, Foothill Road, Pleasanton, California"*, prepared for Austin and Briggs Investments by Berlogar Geotechnical Consultants, dated May 25, 2006.
  - *"Laboratory Corrosivity Tests, Proposed Eight-Lot Meadowlark Property, Austin Property, Pleasanton, California"*, prepared for Charles Austin by Berlogar Geotechnical Consultants, dated June 15, 2006.
  - The peer-review comment letters from Dale Marcum of Cotton, Shires & Associates to Marion Pavan dated July 12, 2006.

The project developer shall implement Comment 1b of the Cotton/Shires letter – provide an analysis of storm drainage impacts to the proposed building pads – with the tentative subdivision map application.

21. The project developer's geotechnical consultant shall review and approve all foundation, retaining wall, and drainage geotechnical aspects of the final development plans to ensure that the recommendations have been properly incorporated into the development. The consultant shall certify by writing on the plans or as otherwise acceptable to the Director of Building Inspection that the final development plan is in conformance with the geotechnical report approved with the project.
22. The project developer shall annex this development and the open-space area to be deeded to the City to the Lemoine Ranch Geologic Hazard Abatement District (GHAD). The project developer shall be responsible for preparing all necessary documentation to annex to the Lemoine Ranch GHAD including any expenses of the City's geotechnical engineer for the GHAD. The project developer shall be responsible for paying a catch-up payment to the GHAD assessments and any expenses of the City's geotechnical engineer prior to the approval of the final map. Upon recordation of the final subdivision map, the project developer and/or lot owners shall be responsible for paying the future annual GHAD assessments for the development and the public open-space area.
23. At the tentative map stage, the applicant shall work with staff to reduce the height of the slope banks on the west side of Lot 6 and on the south side of Lot 7 facing the proposed Public Street and Old Foothill Road. Measures such as using additional, lower retaining walls and/or split pads shall be considered.
24. At the tentative map stage, staff shall discuss the means to permanently preserve the open space area, and shall make a recommendation to the Planning Commission.
25. With the first construction phase, the project developer shall construct the public infrastructure including the street and cul-de-sac, mass grading for the lots, bio-retention pond/swales, perimeter landscaping in the open space area, the shared access driveways, and all entry landscaping along Foothill Road, Old Foothill Road, and Austin Place. The applicant shall work with Parks and Community Services staff to design a coordinated entry landscape plan for the development and the Alviso Adobe Park, and shall install such landscaping.
26. With the application for the tentative subdivision map, the project developer shall submit the following:
  - a. An updated tree analysis for the eight-lot portion of this development; and,
  - b. A mitigation plan showing the location of protective fencing for the trees, swales, seeps, etc.

These items shall be subject to final review and approval with the Planning Commission's action on the tentative subdivision map.

27. Thirty days before grading begins, the project developer shall survey the eight-lot portion of this development for nesting raptors and burrowing owls. If present, the project developer shall submit a mitigation plan prepared by a licensed biologist for the review and approval by the Planning Director. The project developer shall implement the mitigation plan to the satisfaction of the Planning Director.
28. The project developer shall complete all of the on-site improvements at one time, including all improvements around future building pads.
29. After the subdivision improvements are completed to the satisfaction of the Planning Director and the City Engineer, the project developer shall install the reforestation trees and interim irrigation system in the areas surrounding the eight-lot portion of this development. The project developer shall maintain the tree planting and irrigation system for a time-period no less than three years where the maintenance shall then revert to the homeowners association created for this development.
30. If the applicant commences grading for the project prior to the City's Alviso Adobe Park Project, he shall work with the Director of Parks and Community Services to identify potential improvements that could be done to the Park. Any work performed by the applicant for strictly Park improvements will be subject to a reimbursement agreement.
31. The uses in the open space area to be dedicated to the City shall be addressed at a later time.

**General Conditions:**

32. The project developer shall obtain a building permit from the Building and Safety Division for the structures covered by this approval and any other applicable City permits for the project prior to the commencement of any construction.
33. Prior to issuance of a building permit, the project developer shall pay the applicable Zone 7 and City connection fees and water meter cost for any water meters, including irrigation meters. Additionally, the project developer shall pay any applicable Dublin San Ramon Services District (DSRSD) sewer permit fee.
34. This development plan shall be of no further validity and the project developer shall be required to submit the same or new development plan for City approval prior to development of the site in the event that the project developer fails to record a final map within two years of PUD approval.

35. The project developer acknowledges that the City of Pleasanton does not guarantee the availability of sufficient sewer capacity to serve this development by the approval of this case, and that the project developer agrees and acknowledges that building permit approval may be withheld if sewer capacity is found by the City not to be available.
36. This approval does not guarantee the availability of sufficient water to serve the project. The City shall withhold building permits for the project if at the time building permits are applied for, mandatory water rationing is in effect, unless the City has adopted a water offset program and unless the project developer is participating in the program. Notwithstanding the project developer's participation in such a program, the City may withhold building permits if the City determines that sufficient water is not available at the time of application of building permits.

**Planning Requirements:**

37. The project developer shall survey the building pad heights to verify their conformance to the approved building pad elevations on Exhibit "A". Said verification shall be performed by a licensed land surveyor or civil engineer, and shall be completed and provided to the Planning Department before the building foundations/slabs are formed.
38. The project developer shall survey the heights of the structures to verify their conformance to the approved building height as shown on Exhibit "A". Said verification shall be performed by a licensed land surveyor or civil engineer, and shall be completed and provided to the Planning Department before the first framing or structural inspection of each building on each lot by the Building and Safety Division.
39. The homes covered by this approval shall be constructed to encourage telecommuting by providing as an option telecommunications infrastructure consistent with state-of-the-art methods at the time that the homes are submitted for site-specific design review approval.
40. A list of all green building measures used in the design of the home(s) shall be provided for the review and approval of the Planning Director with the application for design review approval for the home(s). Each home shall be designed to include a minimum of 50 points using the ACWMA's Green Points rating system with a minimum of ten points in each category (Resources, Energy, and IAQ/Health).
41. The project developer shall submit a waste management plan to the Building and Safety Division prior to issuance of building or demolition permits. The plan shall include the estimated composition and quantities of waste to be generated and



how the project developer intends to recycle at least 50-percent of the total job site construction and demolition waste measured by weight or volume. Proof of compliance shall be provided to the Chief Building Official prior to the issuance of a final building permit. During demolition and construction, the project developer shall mark all trash disposal bins "trash materials only" and all recycling bins "recycling materials only". The project developer shall contact Pleasanton Garbage Service for the disposal of all waste from the site.

42. Trellis-covered arbors and/or porches up to a height of 15-feet supporting photovoltaic panels shall be exempt from the City's Administrative Design Review procedures. Design review at the Planning staff level and building/electrical permits would still be required.
43. The project developer shall implement the following measures with the construction of the structures covered by this approval so that the owners can install roof-mounted photo-voltaic systems in the future:
  - a. Electrical conduit and pull strings shall be installed from the roof/attic areas to the buildings' main electrical panels.
  - b. Roof trusses shall be "engineered" to handle an additional load of five-pounds per square foot beyond that of the anticipated for roofing.
  - c. An area shall be provided near the electrical panel for the "inverter" required to convert the direct current output from the photovoltaic panels to alternating current.
  - d. A bi-directional electrical meter shall be installed.

These measures shall be shown on the building permit plan set submitted to the Planning Director for review and approval before issuance of the first building permit. The project developer shall provide to the future homebuyers the necessary information delineating the means by which photovoltaic panels can be applied to the roofs of the structures covered by this approval. This information shall be submitted to the Director of Planning for review and approval prior to occupancy of the first unit.

#### **Tentative/Final Subdivision Map Requirements:**

44. With the tentative subdivision map, the project developer shall set forth the common open space/maintenance areas of the proposed development and maintenance responsibilities. The project developer shall record CC&R's at the time of recordation of the final subdivision map, which shall create a homeowners association for the development. The CC&R's shall be subject to the review and approval of the City Attorney prior to recordation of the final map. The property owners association shall be responsible for the maintenance of all private utilities, wildland fire and buffer areas, bio-retention ponds, landscape buffer areas along the south side of Lots 1 through 5 and the north side of Lots 6 through 8, and other common areas/facilities on the site. The City shall be

granted the rights and remedies of the association, but not the obligation, to enforce the maintenance responsibilities of the property owners association.

45. The project developer shall show with the tentative subdivision map application the building setback lines conditioned by this approval superimposed on the lots.
46. The CC&R's for the project shall prohibit the parking of boats, campers, and trailers on Lots 1 through 8.
47. Prior to recordation of the final subdivision map, all modifications required to the design guidelines through conditions of approval shall be combined into a single comprehensive document. This document shall be submitted to the Planning Director for review and approval prior to publication. The project developer or its successor in interest shall disclose the design guidelines to the lot buyers prior to close of escrow, and shall provide them with copies of the guidelines.
48. The project developer shall prepare maintenance agreements for the shared driveway including the culverts/bridges. The agreements shall be submitted to the City Attorney for review and approval before City Council approval of the first final subdivision map for this development and shall be recorded over the project site by separate instrument.
49. The recorded deed of sale for all lots covered by this PUD Development Plan approval shall include the following:
  - a. A disclosure stating that the City of Pleasanton intends to develop and operate the Alviso Adobe Park, a City park, and that the buyer recognizes that the activities that take place in the Alviso Adobe Park may result in noise, odors, dust, traffic or other conditions that may affect the lots covered by this PUD Development Plan.
  - b. A disclosure stating that the City of Pleasanton owns the open space area surrounding Lots 1 through 8, that the open space area can be used by the public, that the open space area may include a trail which would connect to the Pleasanton Ridge trail, and that the buyer recognizes that the activities that take place in the open space area may result in noise, odors, dust, or other conditions that may affect the lots covered by this PUD Development Plan.
  - c. A disclosure indicating the presence of the subdrains and cleanouts and that it is the responsibility of the homeowner to relocate the subdrains if encountered during the excavation of a pool or other subsurface structure.
  - d. The following statement, signed by the future homeowner stating, that:

**“You are hereby advised that this property is surrounded by land zoned and/or used for the day and night-time activity relating to livestock grazing and the keeping of livestock. Some of the impacts associated with this use include, but are not limited to, noise, odor, dust, chemicals, refuse, waste, unsightliness, use of agricultural equipment, and traffic. Permitted agricultural pursuits conducted in accordance with good practice and maintenance are not deemed by the City of Pleasanton to be a nuisance.”**

**Wording for these clauses and/or disclosures shall be submitted to the City Attorney for review and approval before City Council approval of the first final subdivision map for this development and shall be recorded over the project site by separate instrument.**

- 50. With recordation of the final map, the project developer shall abandon access rights to Old Foothill Road.**

**Building and Site Design Requirements:**

- 51. The project developer shall provide automatic opening sectional roll-up garage doors throughout the project, as approved by the Chief Building Official and the Planning Director.**
- 52. The project developer shall post address numerals on the buildings so as to be plainly visible from all adjoining streets or driveways during both daylight and night time hours.**
- 53. Approved building materials and colors shall be stated on the building permit plans submitted for issuance of building permits.**
- 54. Only natural gas burning fireplaces and/or USEPA-approved wood/pellet stoves shall be permitted in the proposed homes. This condition shall not apply to outdoor bar-be-ques.**

**Existing Trees:**

- 55. The project developer shall comply with the recommendations of the tree report prepared by HortScience, Inc., dated November, 2005. No tree trimming or pruning other than that specified in the tree report shall occur. The project developer shall arrange for the horticultural consultant to conduct a field inspection prior to issuance of grading permits to ensure that all recommendations have been properly implemented. The consultant shall certify in writing that such recommendations have been followed.**
- 56. No trees shall be removed other than those specifically designated for removal on the approved plans or tree report. The project developer shall post cash,**

letter of credit, or other security satisfactory to the Planning Director in the amount of \$5,000 for each tree required to be preserved, up to a maximum of \$25,000. This cash bond or security shall be retained for one year following acceptance of public improvements or completion of construction, whichever is later, and shall be forfeited if the trees are destroyed or substantially damaged.

**Landscaping and Irrigation System Design and Operation:**

57. The project developer shall enter into an agreement with the City, approved by the City Attorney, which guarantees that all landscaping, landscape buffer areas, and open space areas included in this project will be maintained at all times in a manner consistent with the approved landscape plan for this development. Said agreement shall run with the land for the duration of the existence of the structures located on the subject property.
58. A final landscape plan and irrigation plan for this development shall be submitted to and approved by the Planning Director as part of the improvement plans prior to issuance of a grading permit. Said landscape plan shall be consistent with the approved landscape plan plus any conditions of approval, and shall be detailed in terms of species, location, size, quantities, and spacing.
59. Six-inch vertical concrete curbs shall be installed between all paved and landscaped areas.
60. The project developer shall provide root control barriers and four inch perforated pipes for parking lot trees, street trees, and trees in planting areas less than ten-feet in width, as determined necessary by the Planning Director at the time of review of the final landscape plans.
61. All private yard landscaping for the custom homes covered by this approval shall be installed within nine months of occupancy.
62. Root control barriers and four inch perforated pipes shall be provided for all trees planted in an area less than 10 feet in width, as determined necessary by the Planning Director at the time of review of the final landscape plans.
63. The sizes and species of the trees shall be determined at the Tentative Tract Map stage.

**Building Permit Review:**

64. All conditions of approval for this case shall be reprinted and included as a plan sheet(s) with the improvement plan and building permit plan check sets submitted for review and approval. These conditions of approval shall be on, at all times, all grading and construction plans kept on the project site. It is the responsibility of the building developer to ensure that the project contractor is

aware of, and abides by, all conditions of approval. It is the responsibility of the building developer to ensure that the project landscape contractor is aware of, and adheres to, the approved landscape and irrigation plans. Prior approval from the Planning Department must be received before any changes are constituted in site design, grading, building design, building colors or materials, landscape material, etc.

65. All dwelling units in the development shall be constructed to meet Title 24 state energy requirements.
66. All building and/or structural plans must comply with all codes and ordinances in effect before the Building and Safety Division will issue permits.
67. All retaining walls higher than four-feet from the top of the wall to the bottom of the footway shall be constructed of reinforced concrete. Calculations signed by a registered civil engineer shall accompany the wall plans.
68. The soils engineer shall certify the pad compactions of all lots containing fill to the satisfaction of the Chief Building Official prior to the issuance of building permits.

**Construction Requirements:**

69. All site improvements and house construction activities shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. All construction equipment must meet Department of Motor Vehicles (DMV) noise standards and shall be equipped with muffling devices.
70. Final inspection by the Planning Department is required prior to the occupancy of the custom homes on Lots 1 through 8.
71. At no time shall campers, trailers, motor homes, or any other vehicle be used as living or sleeping quarters on the construction site. All such vehicles shall be removed from the site at the end of each workday. A construction trailer shall be allowed to be placed on the project site for daily administration/coordination purposes during the construction period.
72. If archeological materials are uncovered during grading, trenching, or other on-site excavation, all work on site shall be stopped and the City immediately notified. The county coroner and the Native American Heritage Commission shall also be notified and procedures followed as required in Appendix "K" of the California Environmental Quality Act (CEQA). A similar note shall appear on the improvement plans.

73. Portable toilets used during construction shall be kept as far as possible from existing residences and shall be emptied on a regular basis as necessary to prevent odor.

**Fire Department Requirements:**

74. The project developer shall meet all requirements of the Pleasanton Fire Code (Pleasanton Municipal Code, Chapter 20.24).
75. The building(s) covered by this approval shall be equipped with an automatic fire sprinkler system. Plans and specifications for the automatic fire sprinkler system shall be submitted to the Pleasanton Building and Safety Division for review and approval prior to installation. The fire alarm system, including waterflow and valve tamper, shall have plans and specifications submitted to Fire Prevention for review and approval prior to installation. All required inspections and witnessing of tests shall be completed prior to final inspection and occupancy of the building(s).
76. The project developer shall keep the site free of fire hazards from the start of lumber construction until the final inspection.
77. Prior to any construction framing, the project developer shall provide adequate fire protection facilities, including, but not limited to surface roads, fire hydrants, and a water supply and water flow in conformance to the City's Fire Department Standards able to suppress a major fire. When alternate methods of fire protection are approved by the Fire Chief, this requirement may be waived or modified. Proposed alternative methods of fire protection shall be submitted in writing to the Fire Chief prior to any framing construction. Work on the alternative fire protection methods shall not begin until approved by the Fire Chief.
78. Unless otherwise approved by the Fire Marshal, no housing construction shall begin until such time as an acceptable emergency vehicle access has been established, as defined by the Fire Marshal. This access shall be maintained at all times until the public improvements are accepted
79. The Fire Chief and the City Engineer shall approve the number, type, and location of all public fire hydrants.
80. Blue Street "hydrant markers" shall be installed for all fire hydrants per City of Pleasanton Standard Specifications.

81. All public streets designated as fire lanes by the Fire Chief shall be maintained in accordance with Articles 9 and 10 of the Uniform Fire Code, which permits towing vehicles illegally parked on the fire lanes. Fire lane curbs shall be painted red with "No Parking, Fire Lane, Tow Away Zone" or "No Parking, Fire Lane, Tow Away Zone" signs shall be installed as required by the Vehicle Code.
82. In order to provide a minimum fire flow of 60 g.p.m. for 10 minutes in addition to the domestic water demand of 5 g.p.m. to the houses on Lots 4, 5, and 6, the project developer shall provide the following:
- A minimum, 2-inch diameter domestic water line lateral from the City water main to the water meter. (The water lines for the other lots shall be sized to meet their fire flow and domestic demands as determined by the City Engineer and the Fire Marshal.
  - A pressure tank and electric booster pump, which can be located in the garage, on a protected pad outside the home, etc.
  - A minimum, sustained fire sprinkler system flow of 60 g.p.m. for 10 minutes in addition to the minimum, domestic water demand of 5 g.p.m.
  - The pressure tank and pump system shall be interconnected to the domestic service so that this combination system is used for both the domestic and fire protection systems.

These measures shall be shown on the building permit plan sets for the individual homes and shall be subject to the review and approval by the Chief Building Official and the Fire Marshall before issuance of a building permit.

#### **Engineering Requirements:**

83. All utilities required to serve any existing or proposed development on-site shall be installed underground.
84. The project developer shall arrange and pay for the geotechnical consultant to inspect and approve all foundation, retaining, and wall and drainage geotechnical aspects of project construction. The consultant shall be present on site during grading and excavation operations. The results of the inspections and the as-built conditions of the project shall be certified in writing by the geotechnical consultant for conformance to the approved plans and geotechnical report and submitted to the City Engineer and Chief Building Official for review and approval prior to occupancy.
85. The paving sections for the on-site parking and drive areas shall be designed on the basis of an R-Value test and a traffic index to carry the anticipated traffic loads. This design shall be subject to the approval of the Chief Building Official. The minimum paving section shall be two inches of asphalt concrete (A.C.) on a six-inch asphalt base (A.B.). The minimum A.C. pavement slope shall be one percent. For pavement slopes less than one-percent, the surface runoff shall be

carried in a concrete gutter to an acceptable point of discharge. The minimum slope for concrete gutter shall be 0.5-percent.

86. Property lines shall be located a minimum of two feet from the uphill side of the top of bank.
87. The project developer shall submit a final grading and drainage plan prepared by a licensed civil engineer depicting all final grades and on-site drainage control measures, including concrete-lined V-ditches, to protect all cut and fill slopes from surface water overflow. This plan shall be subject to the review and approval of the City Engineer and/or the Chief Building Official, as applicable, prior to the issuance of any building permits.
88. The project developer shall submit a refundable cash bond for hazard and erosion control prior to issuance of an Engineering or Building and Safety Division permit. The amount of this bond will be determined by the City Engineer.
89. The project developer shall dedicate to the City for street right-of-way purposes those parcels of land intended to be public streets.
90. The project developer shall grant an easement to the City over those parcels needed for public service easements (P.S.E.) and which are approved by the City Engineer or other easements, which may be designated by the City Engineer.
91. The design for the line, grade, and structural sections for the streets serving this development shall be subject to final review and approval by the City Engineer.
92. The project developer shall construct vertical P.C.C. curbs and gutters within this development unless otherwise approved by the City Engineer. When the sidewalk is adjacent to the curb and gutter, they shall be poured monolithically.
93. The haul route for all materials to and from this development shall be approved by the City Engineer prior to the issuance of an encroachment permit.
94. The project developer shall submit a dust control plan or procedure as part of the improvement plans.
95. The design of the water supply and sanitary sewer systems shall be subject to the review and approval of the City Engineer.



96. Storm drainage swales, gutters, inlets, outfalls, and channels not within the area of a dedicated public street or public service easement approved by the City Engineer shall be privately maintained by the property owners or through an association approved by the City.
97. Approval of the storm drainage system shall be subject to the review and approval of the City Engineer and Zone 7, where applicable. The storm drainage system shall connect to an approved point of discharge and shall meet any and all applicable requirements of the Alameda County Flood Control District - Zone 7, the Federal Emergency Management Flood Hazard Program, the California Department of Fish and Game, and the immediate and long-range requirements of this development and all upstream areas intended to be drained through this development.
98. Electric power distribution, gas distribution, communication service, cable television, and any required alarm systems shall be installed underground in a joint utility trench unless otherwise specifically approved by the City Engineer or Chief Building Official for on-site.
99. The project developer shall be responsible for the installation of the street lighting system serving the development. The street lighting for the development shall be designed and located so as to minimize its visibility from the valley floor to the greatest extent possible. Approval for the number, location, design, and type of electroliers shall be subject to the review and approval of the City Engineer.
100. Any damage to existing street improvements during construction on the subject property shall be repaired to the satisfaction of the City Engineer at full expense to the project developer. This shall include slurry seal, overlay, or street reconstruction if deemed warranted by the City Engineer.
101. The project developer's contractor(s) shall obtain an encroachment permit from the City Engineer prior to moving any construction equipment onto the site.

**Urban Stormwater Design Requirements:**

102. The project shall comply with the Alameda Countywide NPDES Permit #CA50029831, a copy of which is available at the City offices. In addition to the Standard Urban Stormwater Runoff Requirements for compliance with the Alameda County NPDES Permit, the project shall also comply with the Permit's Hydro Modification requirements as approved by the Regional Water Quality Control Board for Alameda County.

103. The following requirements shall be incorporated into the project:

- a. The project developer shall submit a final grading and drainage plan prepared by a licensed civil engineer depicting all final grades and on-site drainage control measures including bio-swales. Irrigated bio-retention swales and areas shall be designed as needed to the satisfaction of the City Engineer to optimize the amount of the storm water running off the paved surface that enters the bio-retention swale at its most upstream end. This plan shall be subject to the review and approval of the City Engineer prior to the issuance of the first grading permit for the development covered by this approval.
- b. The project developer shall submit sizing designs criteria to treat stormwater runoff at the time of the grading plan submittal.
- c. Public and private landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution.
  - Structures shall be designed to discourage the occurrence and entry of pests into buildings, thus minimizing the need for pesticides.
  - Where feasible, landscaping shall be designed and operated to treat stormwater runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified. Soil shall be amended as required.
  - Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.
  - Landscaping shall also comply with City of Pleasanton ordinances and policies regarding water conservation.

The CC&Rs covering Lots 1 through 8 shall include the above statements in their wording.

- d. Bulk construction materials stored outdoors that may contribute to the pollution of storm water runoff shall be covered as deemed appropriate by the City Engineer and/or the Chief Building Official as applicable. The CC&Rs covering Lots 1 through 8 shall include this statement in their wording.
- e. Prior to grading permit issuance the project developer shall submit a copy of the State Water Resources Control Board Notice of Intent (NOI) for coverage under the State Construction Storm Water General Permit for

projects with clearing, grading and excavation exceeding the current standards.

- f. All metal roofs shall be finished with rust-inhibitive paint. The CC&Rs covering Lots 1 through 8 shall include this statement in their wording.
- g. Roof drains for all existing and future primary and accessory structures on Lots 1 through 8 shall be connected to the development's storm drain system. The CC&Rs covering Lots 1 through 8 shall include this statement in their wording.

**Urban Stormwater Construction Requirements:**

- 104. The project developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for review and approval by the City Engineer prior to issuance of building or grading permits. Failure to comply with the approved construction SWPPP may result in the issuance of correction notices, citations or stop work order. The following construction Best Management Practices (BMPs), as well as any other applicable measure, shall be included in the SWPPP and implemented as approved by the City.
- 105. The project developer and the homeowner after building occupancy is responsible for implementing the following measures during all construction phases of the project and the lots covered by this approval:
  - a. The project developer shall include erosion control/storm water quality measures on the final grading plan which shall specifically address measures to prevent soil, dirt, and debris from entering the storm drain system. Such measures may include, but are not limited to, hydroseeding, hay bales, sandbags, and siltation fences and are subject to the review and approval of the City Engineer and/or the Chief Building Official as applicable. The project developer is responsible for ensuring that their contractors and sub-contractors are aware of and implement these measures.
  - b. All graded lots shall be revegetated and stabilized after completion of grading, but in no case later than October 15<sup>th</sup>. The hydroseed mixture shall consist of the following species and rate-of-cover: crimson clover (20.0 lbs/acre), California poppy (3.0 lbs/acre), valley lupine (5.0 lbs/acre), farewell-to-spring (2.0 lbs/acre), and African daisy (2.0 lbs/acre). The hydroseed mixture shall be specified on the subdivision's grading plans and the building permit plans for review and approval by the Planning Director.

The hydroseeding shall be accomplished before September 15<sup>th</sup> and irrigated with a temporary irrigation system to ensure that the grasses are

established before October 15<sup>th</sup>. No grading shall occur between October 15<sup>th</sup> and April 15<sup>th</sup> unless approved erosion control/storm water quality measures are in place, subject to the approval of City Engineer and/or the Chief Building Official as applicable. Such measures shall be maintained until such time as building construction begins.

- c. Gather all construction debris on a regular basis and place it in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water runoff pollution.
- d. Remove all dirt, gravel, rubbish, refuse, and green waste from the street pavement and storm drains adjoining the site. Limit construction access routes onto the site and place gravel on them. Do not drive vehicles and equipment off paved or graveled areas during wet weather. Broom sweep the street pavement adjoining the project site on a daily basis. Scrape caked-on mud and dirt from these areas before sweeping.
- e. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site in order to retain any debris or dirt flowing in the storm drain system. Maintain and/or replace filter materials to ensure effectiveness and to prevent street flooding.
- f. Create a contained and covered area on the site for the storage of bags, cement, paints, oils, fertilizers, pesticides, or other materials used on the site that have the potential of being discharged into the storm drain system through being windblown or in the event of a material spill.
- g. Never clean machinery, equipment, tools, brushes, or rinse containers into a street, gutter, or storm drain.
- h. Ensure that concrete/gunite supply trucks or concrete/plaster operations do not discharge wash water into street, gutters, or storm drains.

The CC&Rs covering Lots 1 through 8 shall include the above statements in their wording.

**Urban Stormwater Operation Requirements:**

- 106. All projects, unless otherwise determined by the City Engineer or Chief Building Official, shall enter into a recorded Stormwater Treatment Measures Inspection and Maintenance Agreement for ongoing maintenance and reporting of required stormwater measures. These measures may include, but are not limited to:

- a. The property owners' association for this development shall be responsible for maintaining the bio-swales adjoining the public street, the bio-retention to be located in the public area adjoining Old Foothill Road, and any other stormwater treatment measures determined to be required by the City Engineer. The association shall be composed of Lots 1 through 8. These maintenance responsibilities shall include implementing the maintenance plan, which is attached to the Stormwater Treatment Measures Inspection and Maintenance Agreement. This document shall be reviewed by the City Attorney's Office and recorded with the final map.
- b. All storm drain inlets shall be clearly marked and maintained with the words "No Dumping – Drains to Bay."
- c. Ensure wastewater from vehicle and equipment washing operations is not discharged to the storm drain system.
- d. The CC&Rs covering Lots 1 through 8 shall include the statement, "No person shall dispose of, nor permit the disposal, directly or indirectly, of vehicle fluids, hazardous materials or rinsewater from cleaning tools, equipment or parts into the private, on-site storm drains.
- e. The CC&Rs covering Lots 1 through 8 shall include the statement, "All private on-site storm drains shall be cleaned by the property owner at least twice a year with one cleaning immediately prior to the rainy season."
- f. The vegetated bio-retention swales shall be mowed and clippings removed on a regular basis by the Property Owners Association.

*{end}*

PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-2007-25

RESOLUTION APPROVING VESTING TENTATIVE TRACT MAP 7813,  
THE APPLICATION OF CHARLES AUSTIN AND SCOTT AUSTIN

- WHEREAS, Charles Austin and Scott Austin have applied for Vesting Tentative Tract Map approval to subdivide an approximately 30.15-acre property located at 3459 Old Foothill Road into eight single-family custom home lots, four parcels that will be transferred to adjoining property owners, and with the remaining land dedicated to the City of Pleasanton for open space purposes; and
- WHEREAS, The subdivision map is submitted in conformance to the previously approved applications, PGPA-11 and PUD-58; and
- WHEREAS, zoning for the property is PUD-LDR and AG (Planned Unit Development – Low Density Residential and Agriculture and Grazing) District; and
- WHEREAS, at its duly noticed public hearing of May 23, 2007, the Planning Commission considered all public testimony, relevant exhibits, and recommendations of the City staff concerning this application; and
- WHEREAS, the environmental review for this project is covered by the Initial Study/ Mitigated Negative Declaration for PUD-58 and PGPA-11, approved by the City Council on October 17, 2006; and
- WHEREAS, the Planning Commission made the following findings:

1. The proposed vesting tentative subdivision map is consistent with the Pleasanton General Plan.

The PUD Development Plan that the proposed vesting tentative subdivision map is based on was found by the City Council to be consistent with PGPA-11, the amendment to the Pleasanton General Plan that changed the land use designation to Low Density Residential (< 2 du/ac) on eight acres, with a maximum of eight units, and Agriculture and Grazing on the remaining 22 acres. The subdivision map and its improvements are consistent with these land use designations. Therefore, this finding can be made.

2. The subject property/project site is physically suitable for this type of development and density.

Project construction would involve site grading and the alteration of a relative small portion of the site's existing topography. An existing central drainage course would be altered with retaining walls flanking the drainage course. All other drainage courses would be maintained in their natural condition. Existing trees would be preserved where feasible. However, the removal of an existing tree with the subdivision's construction would be mitigated in accordance with the development plan approval.

3. The design of the subdivision and improvements covered by the proposed vesting tentative subdivision map will not cause substantial environmental damage and avoidably injure fish and/or wildlife or their habitat.

Grading has been designed to reflect existing topographic conditions and to be consistent with the requirements and geotechnical report recommendations that have been prepared for the proposed project. All lots will be designed to drain to the face-of-curb with the storm water runoff directed into public bio-retention swales for pretreatment before entering City storm drains. Adequate access is also provided to all structures for police, fire, and other emergency vehicles. Therefore, this finding can be made.

4. The design of the proposed subdivision is not likely to cause serious public health problems.

The proposed project, including the recommended conditions of approval, meets all applicable City standards pertaining to public health, safety, and welfare, e.g., vehicle access, geologic hazards, and flood hazards. All public safety measures are addressed through provisions of approval of the development plan and conditions of approval for the tentative subdivision map. Therefore, this finding can be made.

5. The design of the subdivision or its related improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

The existing utility and driveway easements from Old Foothill Road to the Segundo and Messa properties will be maintained. A new utility easement will be provided from Austin Place, across Lot 5 and the open space parcel, to the Segundo property. The proposed subdivision would not affect any other existing public utility and/or access easements.

Except for access to the open space parcel, all direct access from the Austin property to Old Foothill Road will be deleted with the recordation of the final subdivision map. Therefore, this finding can be made.

WHEREAS, the Planning Commission has determined that the proposed subdivision is in keeping with the requirements of the previously approved PUD development plan.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

Section 1. Approves Vesting Tentative Tract Map 7813, the application of Charles Austin and Scott Austin for Vesting Tentative Tract Map approval to subdivide an approximately 30.15-acre property located at 3459 Old Foothill Road into eight single-family custom home lots, four parcels that will be transferred to adjoining property owners, and with the remaining land dedicated to the City of Pleasanton for open space purposes, subject to the conditions shown in Exhibit B, attached hereto and made part of this case by reference.

Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 23<sup>RD</sup> DAY OF MAY 2007 BY THE FOLLOWING VOTE:

AYES: Commissioners Blank, Fox, Narum, Olson, and Pearce.  
NOES: None.  
ABSTAIN: None.  
RECUSED: None.  
ABSENT: None.



Resolution No. PC-2007-25  
Page Four

ATTEST:

  
\_\_\_\_\_  
Donna Decker  
Secretary to the Planning Commission

  
\_\_\_\_\_  
Anne Fox  
Chairperson

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Julie Harryman  
Assistant City Attorney

**EXHIBIT B  
CONDITIONS OF APPROVAL**

**Vesting Tentative Subdivision Map 7813  
Charles Austin and Scott Austin  
3459 Old Foothill Road  
May 23, 2007**

1. The final subdivision map shall substantially conform to the vesting tentative subdivision map and grading/utility plan, Exhibit A, dated "Received April 13, 2007" on file with the Planning Department, except as modified by the following conditions. Minor changes to the plans may be allowed subject to the approval of the Planning Director if found to be in substantial conformance to the approved exhibits.
2. This vesting tentative map shall incorporate by reference all conditions and requirements of PUD-58, the approved PUD Development Plan covering this subdivision, as approved by the City Council, except for the items listed in the attached Exhibit C, which shall be reviewed and approved with the final subdivision map.
3. An easement shall be shown on the final subdivision map to the satisfaction of the Planning Director and the City Engineer for the wildland fire buffer area and the reforestation areas that will be maintained by the homeowners association (HOA).
4. Condition Nos. 5 through 18 shall be submitted to the City Engineer for review and approval with the final subdivision map.
5. The following typical Driveway section shall be revised as follows:
  - a. The Typical Private Driveway Section with bridges:  
The driveway section with bridges: the bridge shall be 24-foot wide curb-to-curb or rail-to-rail whichever is wider. The approach to the bridge from the public street shall be the same width as the bridge. The other bridge approach and the remainder of the driveway section shall be a minimum of 16 feet wide with two feet of class II aggregate Base Rock on both sides of the driveway, unless otherwise approved by the Fire Marshall. The structural section of the driveway/bridge shall support the Fire apparatus and maintenance vehicle as determined by the City Engineer. The minimum inside radius of the driveway shall be 55 feet. The maximum grade of the driveway shall be 15 percent except at bridge or road intersection where the grade shall not exceed seven percent. Additionally, the landscaping shall be trimmed back to

maintain 14 feet clear area above the roadway (20 feet). The water and sewer laterals and storm drain system within the driveways shall be private and maintained by the individual property owners or HOA.

- b. The Typical Private Driveway Section (without bridges):  
The driveway section shall be a minimum of 16 feet wide paved surface with 2 feet of class II aggregate base rock on both sides of the driveway unless otherwise approved by the Fire Marshall. The structural section of the driveway shall support the Fire apparatus and maintenance vehicle as determined by the City Engineer. The minimum outside radius of the driveway shall be 55 feet. The maximum grade of the driveway shall be 15 percent except at driveway intersections where the grade shall not exceed 7 percent. The landscaping shall be trimmed back to maintain 14 feet clear area above the roadway (20 feet). The water and sewer laterals and storm drain system within the driveways shall be private and maintained by the individual property owners or HOA.
6. The typical lot side slope shall be 3:1 maximum, unless otherwise approved by the City Engineer.
7. The concrete V-ditch located between the lots shall extend down the slope and tie into the V-ditch along the north and south sides of the development unless otherwise approved by the City Engineer.
8. The homeowners association shall maintain the Filterra stormwater filtering system unless otherwise approved by the City Engineer.
9. The subdivider's engineer shall demonstrate to the satisfaction of the City Engineer that the Filterra stormwater filtering system will capture a minimum of 0.2 inches per hour storm with a 15 percent street grade.
10. The northeasterly curb return at the intersection of Austin Place and the City parking lot the radius shall be adjusted to accommodate the fire truck otherwise approved by the City Engineer
11. If the existing home is to remain the overhead utilities serving the home shall be underground as part of the subdivision improvements. The subdivider shall convert these homes from overhead services to underground.
12. The curb and gutter of all streets within the development, shall have subdrains installed at either the back of curb or lip of gutter at the discretion of the City Engineer. This detail shall be shown on the

- improvement plans. Said drains shall be connected to the storm drain system or drained by other means acceptable to the City Engineer.
13. The subdivider shall post with the City prior to approval of final map, an additional performance bond for all subdivision improvements that are not to be accepted by the City of Pleasanton.
  14. The subdivider shall give notice to any prospective owners of the maintenance of the concrete V-ditch storm drain system, the private storm drain system in the private driveways and Filterra stormwater filtering system. The City Attorney shall approve the exact language of the notice.
  15. All existing drainage swales that are filled shall have subdrains installed unless otherwise recommended by the Developer's Soils Engineer and approved by the City Engineer. All subdrains shall have a cleanout installed at the beginning of the pipe. The bottom of the pipe shall terminate in a storm drain or other storm drain outfall; subject the approval of the City Engineer. The subdivider's engineer shall submit a final subdrain location map to the City Engineer prior to acceptance of the Public Improvements. It shall be the responsibility of the homeowner to relocate the subdrain, if during the excavation of a pool or other subsurface structure a subdrain is encountered. All owners within the subdivision shall receive notice of the presence of these subdrains. The City Attorney shall approve said notice.
  16. The subdivider shall acquire written permission from the property owner(s), for any work on the adjoining properties. Proof of such permission shall be required prior to the issuance of a grading permit.
  17. All agency environmental permits shall be obtained prior to the approval of the Final Map.
  18. The overhead utilities serving the existing home on Lot 7 that is to remain within the development shall be placed underground as part of the subdivision improvements. The subdivider shall convert this home from overhead to underground services.

{end}

**EXHIBIT C**  
**PUD DEVELOPMENT PLANS CONDITIONS OF APPROVAL**  
**Applicable to**  
**Vesting Tentative Subdivision Map 7813**  
**Charles Austin and Scott Austin**  
**3459 Old Foothill Road**  
**May 23, 2007**

2. The design, construction, and landscaping of the development covered by this approval including the individual homes shall be subject to the following design guidelines to the satisfaction of the Planning Director:
  - a. "Meadowlark Estates Subdivision Site Development and Architectural Review Guidelines", dated August 11, 2006 or as subsequently revised by City approval, prepared by Gorny & Associates and PGAdesign.
  - b. "Landscape Design Guidelines for Meadowlark, Austin Property", dated May 2006 or as subsequently revised by City approval, prepared by PGAdesign.

The project developer shall work with staff to further refine the guidelines for clear guidance to future owners regarding all aspects of the designs of these homes. The guidelines shall state the design review procedures for these lots for approval by the Zoning Administrator and shall state the procedures to inform the Planning Commission of the Zoning Administrator's actions. The revised guidelines shall be subject to review and approval by the Planning Commission with its action on the tentative subdivision map.

4. Cattle grazing shall be allowed on the 22-acre open space area surrounding the eight-lot portion of this development. The grazing density shall be based on a combination of factors including, but not limited to, the type of grazing (free-range and/or supplemented with feed), the age of the animals, etc., and shall be determined with review of the tentative subdivision map and shall be subject to the approval by the Planning Commission. The existing cattle shed located near the southern side of the property is allowed to remain. Any future use for the open space area is subject to City review including the Trails Ad Hoc Committee and the Parks and Recreation Commission.
10. The project developer shall submit with the tentative subdivision map application, a Wildland Fire Management Plan (WFMP) prepared by a licensed consultant covering the private lots and open space area for review by the Fire Marshall and review/approval by the Planning Commission. Measures identified in the WFMP will be incorporated into the City's management/maintenance plan of the open space area.

11. The following changes shall be shown on the tentative subdivision map and/or grading plan to the satisfaction of the City Engineer and shall be subject to review/approval by the Planning Commission:
- a. The typical street section for the public street/cul-de-sac accessing Lots 1 through 8 shall include an 8-foot wide Public Service Easement (PSE) measured from the back of curb. Unless otherwise approved by the City Engineer, the first five feet of the easement shall be graded at two percent towards the street.
  - b. The water, stormdrain system, and gravity sanitary sewer mains shall be public and maintained by the City. There shall be individual sanitary sewer and water laterals to each dwelling unit. The gravity sanitary sewer lateral shall have a two-way cleanout located at the back of curb. All water services shall be two inches unless otherwise approved by the City Engineer.
  - c. The width of the court/street between Foothill Road and the Old Foothill Road shall be increased to allow sufficient width for two, 12-foot wide exit lanes and a 16-foot wide entrance lane.
  - d. Old Foothill Road.

The project developer shall:

- Construct an earth swale along the westerly edge of pavement to capture surface drainage along the roadway.
- Unless otherwise required by the City Engineer based upon further information from P.G. & E., the project developer shall underground the overhead utility lines along Old Foothill Road as determined to the satisfaction of the City Engineer.
- Improvements to Old Foothill Road shall include a slurry seal or overlay as determined by the City Engineer, if any. If an overlay, a pro-rata cost sharing shall be established between the project developer and the City.

- e. Foothill Road

The project developer shall:

- Construct the new street tie-in to Foothill Road as shown on the plans (except as modified above).
- Re-stripe the median striping to create a left turn pocket into the development.
- Shorten the existing raised median north of the proposed entrance street/court as determined by the City Engineer to allow for a smooth transition while exiting the proposed street/court.

- Construct a deceleration lane for vehicles traveling southbound and turning into the site. The deceleration lane can be combined with the existing bike lane on the street. The City Engineer shall determine the exact length and width of the deceleration lane.
12. The project developer shall provide individual booster pumps on the domestic water service to Lots 4, 5 and 6, located above the 400-foot elevation. The proposed location of these pumps shall be shown on the tentative subdivision map to the satisfaction of the City Engineer and shall be subject to review/approval by the Planning Commission.
  15. Lot 7 shall be accessed through the shared access driveway over Lot 6. After the subdivision improvements are completed, the project developer shall eliminate the driveway access from Lot 7 onto Old Foothill Road. This statement shall appear on the face of the Tentative Subdivision Map.
  18. Unless otherwise approved by the City Engineer, all fill and cut slopes shall be graded at a 3:1 (horizontal:vertical) slope. There shall be a minimum, 2-foot wide "overbuild" area between the lot line(s) and the slope's hinge point. This change shall be shown on the tentative subdivision map and/or grading plan to the satisfaction of the City Engineer and shall be subject to review/ approval by the Planning Commission.
  19. The project developer shall comply with the recommendations of the following geotechnical reports:
    - *"Landslide Investigation, Austin Property, Foothill Road, Pleasanton, California"*, prepared for Austin and Briggs Investments by Berlogar Geotechnical Consultants, dated July 18, 2002.
    - *"Supplemental Landslide Investigation, Austin Property, Foothill Road, Pleasanton, California"*, prepared for Austin and Briggs Investments by Berlogar Geotechnical Consultants, dated September 24, 2003.
    - *"Geologic/Geotechnic Investigation, Proposed Eight-Lot Meadowlark Development, Foothill Road, Pleasanton, California"*, prepared for Austin and Briggs Investments by Berlogar Geotechnical Consultants, dated May 25, 2006.
    - *"Laboratory Corrosivity Tests, Proposed Eight-Lot Meadowlark Property, Austin Property, Pleasanton, California"*, prepared for Charles Austin by Berlogar Geotechnical Consultants, dated June 15, 2006.
    - The peer-review comment letters from Dale Marcum of Cotton, Shires & Associates to Marion Pavan dated July 12, 2006.

The project developer shall implement Comment 1b of the Cotton/Shires letter – provide an analysis of storm drainage impacts to the proposed building pads – with the tentative subdivision map application.

25. With the application for the tentative subdivision map, the project developer shall submit the following:
- a. An updated tree analysis for the eight-lot portion of this development; and,
  - b. A mitigation plan showing the location of protective fencing for the trees, swales, seeps, etc.

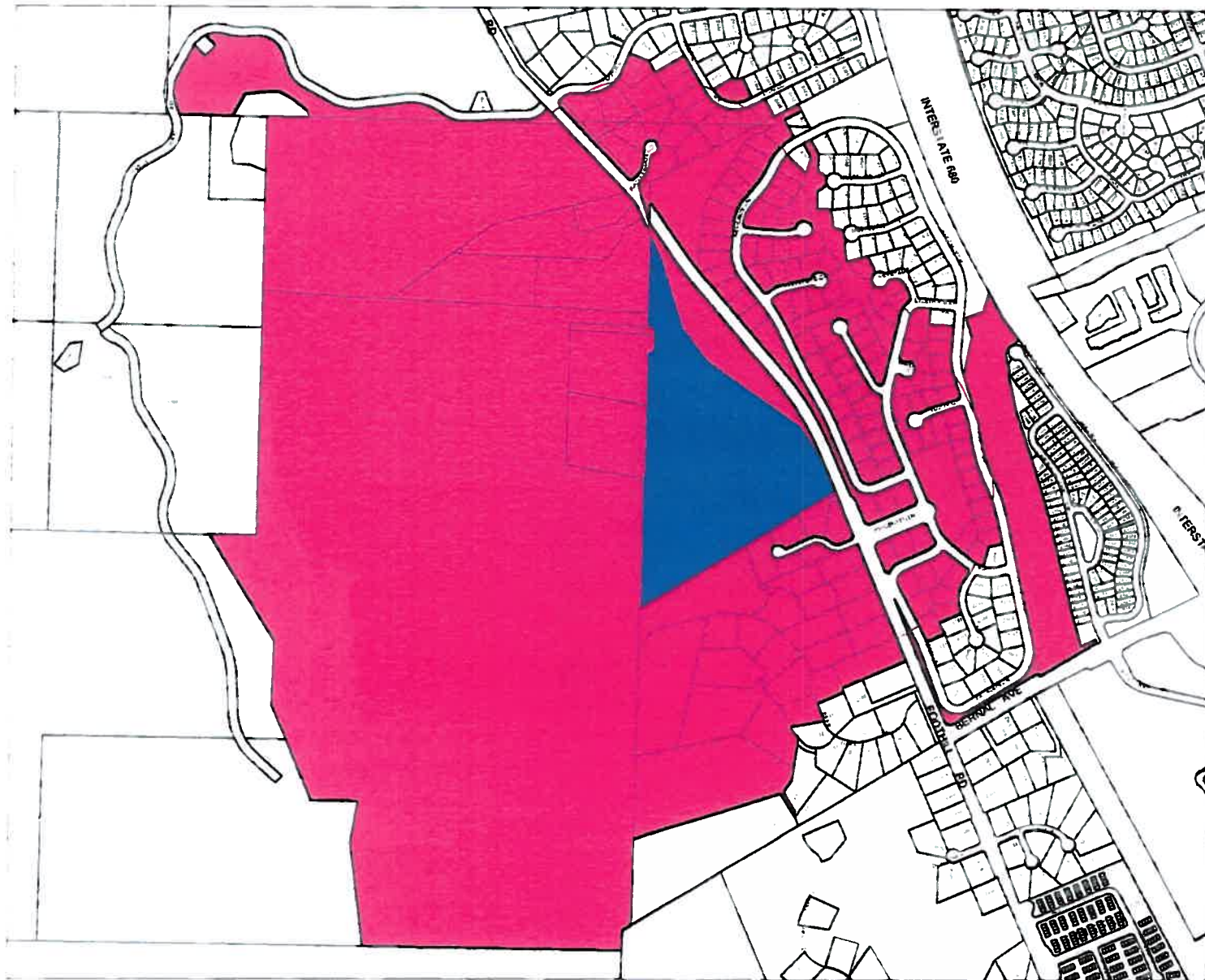
These items shall be subject to final review and approval with the Planning Commission's action on the tentative subdivision map.

41. With the tentative subdivision map, the project developer shall set forth the common open space/maintenance areas of the proposed development and maintenance responsibilities. The project developer shall record CC&R's at the time of recordation of the final subdivision map, which shall create a homeowners association for the development. The CC&R's shall be subject to the review and approval of the City Attorney prior to recordation of the final map. The property owners association shall be responsible for the maintenance of all private utilities, wildland fire and buffer areas, bio-retention ponds, landscape buffer areas along the south side of Lots 1 through 5 and the north side of Lots 6 through 8, and other common areas/facilities on the site. The City shall be granted the rights and remedies of the association, but not the obligation, to enforce the maintenance responsibilities of the property owners association.
42. The project developer shall show with the tentative subdivision map application the building setback lines conditioned by this approval superimposed on the lots.

*{end}*



**EXHIBIT D**



**P14-0704, Hirst**  
**City of Pleasanton**  
**GIS**  
**Department**  
**3459 Old Foothill Rd**

