

EXHIBIT C

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RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA CERTIFYING ENVIRONMENTAL IMPACT REPORT SUPPLEMENTS AND ADDENDUM, ADOPTING RELATED MONITORING PROGRAM, AND CONDITIONALLY GRANTING USE PERMIT FOR THE GOLF CLUB AT BOULDER RIDGE

File No. 2195-42-53-92EIR-92B

WHEREAS, following duly noticed public hearings before the Santa Clara County Planning Commission and Board of Supervisors on January 7, 1993 and February 23, 1993, respectively, the Board of Supervisors unanimously voted to certify pertinent environmental documents, to adopt a related monitoring program, and to conditionally approve a use permit for The Golf Club at Boulder Ridge; and

WHEREAS, a Resolution setting forth the findings, conclusions and conditions of the Board of Supervisors in taking such actions was duly agendized and formally adopted on April 6, 1993; and

WHEREAS, on March 29, 1993, CHARLES SMITH and the COALITION TO SAVE OPEN SPACE filed a Petition for Writ of Mandate (Superior Court No. 730166) to challenge the aforesaid environmental certification and conditional granting of said use permit; and

WHEREAS, trial of the Petition for Writ of Mandate was held on September 29, and on October 1, 4, and 5, 1993, before the Honorable Thomas P. Hansen; and

WHEREAS, on January 31, 1994, Judge Hansen issued his Statement of Decision and Writ of Mandate, vacating the aforesaid actions of the Board of Supervisors, and remanding the matter "... for the purpose of amending or supplementing the FEIRS to address, discuss, and analyze all proposed mitigation measures to the impact on loss of open space, to circulate the same for public comment, to make specific findings with respect to the feasibility or infeasibility of such mitigation measures, and, where alternative feasible mitigation measures exist, to set forth some meaningful articulation as to why one was adopted over the other;" and

WHEREAS, on March 15, 1994, a Draft Second Supplement to the Final Environmental Impact Report for the Golf Club at Boulder Ridge was published and duly circulated for public comment; and

WHEREAS, upon the preparation of responses to comments and text changes, an Addendum to the Second Supplement to the Environmental Impact Report for the Golf Club at Boulder Ridge was published on June 22, 1994; and

WHEREAS, on August 2, 1994, the Board of Supervisors conducted a duly noticed

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public hearing to consider certification of the Final Environmental Impact Report Supplements, adoption of a related Monitoring Program, and conditional approval of the use permit for the Golf Club at Boulder Ridge; and

WHEREAS, on that date public testimony was taken, and numerous variations of proposed mitigation measures were suggested for further study by Supervisors Honda and Gonzales, and by speakers at the hearing; and

WHEREAS, the proposed alternative mitigation measures did not identify new potentially significant environmental impacts, but offered refinements to mitigation measures studied in the Supplements; and

WHEREAS, following discussion between the Board of Supervisors and counsel for CHARLES SMITH and the COALITION TO SAVE OPEN SPACE, and counsel for applicant ROCKE GARCIA, it was agreed that an Addendum would be prepared to study such alternative mitigation measures by no later than September 2, 1994, in order to provide adequate opportunity for public review prior to further public hearing and consideration by the Board of Supervisors on September 20, 1994; and

WHEREAS, said Addendum was published and distributed on August 30, 1994; and

WHEREAS, on September 20, 1994, the Board of Supervisors conducted a duly noticed public hearing in order to consider the certification of the Addendum and Supplements to the Final Environmental Impact Report, the adoption of a related Monitoring Program, and the conditional granting of a use permit for the Golf Club at Boulder Ridge; and

WHEREAS, based upon the documentary evidence before it, and the testimony received at the public hearings of August 2, 1994, and September 20, 1994, the Board of Supervisors unanimously voted to certify the Addendum and Supplements to the Environmental Impact Report, to adopt the related Monitoring Program, and to grant the subject use permit, based upon designated findings and conditions.

NOW, THEREFORE, the Board of Supervisors of the County of Santa Clara finds as follows, as summarized in the remarks of Supervisor Honda, and in the motion he then presented:

1. The Final Environmental Addendum and Supplements have been completed in compliance with the California Environmental Quality Act, and they reflect the independent judgment of Santa Clara County. Further, the Board of Supervisors has reviewed and considered the information contained in the Final Environmental Impact Report, and each of its Supplements and Addendum, prior to making its decision regarding conditional approval of the use permit application for the Golf Club at Boulder Ridge.

2. The Golf Club at Boulder Ridge, as proposed, represents the maximum development allowable under the Hillside Zoning District, and any incremental expansion, or increase in use or intensity, would be inconsistent with the Hillside General Plan designation of the project, as well as the County Zoning Ordinance, and therefore could not be permitted, absent a General Plan Amendment and zoning amendment. Any such proposal would require the written approval of the City of San Jose, or waiver of its rights thereto.

3. Accordingly, the Board of Supervisors finds it necessary to take lawful measures to ensure that the project does not expand or increase in intensity by exerting development restrictions, in one form or another, over the entire site.

4. Restrictions placed on the project must not only adequately mitigate the loss of open space, but must also be comprehensive and, at a minimum, meet the following 5 objectives:

- a) Permanent preservation of as much open space as is constitutionally permissible;
- b) Development restrictions over portions of the site that shall prohibit physical expansion of the golf course;
- c) Development restrictions over portions of the site that shall prevent intensification of uses within the existing boundaries of the golf course;
- d) Disincentives to abandon the golf course use and develop the site for more intensive uses; and
- e) Prevention of any increase in allowable housing density as a result of the grading of the site.

5. Restrictions must also meet basic constitutional standards by clearly addressing the following:

- a) What are the impacts that are sought to be mitigated?
- b) Is there a nexus between the project impacts and a legitimate government purpose?
- c) Are the proposed mitigation measures roughly proportional in nature and extent to such project impacts?

6. Site specific project impacts to be addressed by mitigation measures include:

- a) The physical alteration of more than 100 acres of the site, including 750,000 cubic yards of grading.
 - b) The development of a property listed among the top priorities for preservation in the Preservation 2020 Plan, prepared by the County of Santa Clara.
 - c) Potential impacts on the steep sloping portions of the site, and rock outcrop areas, which are the most environmentally sensitive and most visible to the surrounding community.
 - d) Impacts associated with the siting and construction of a 22,000 square foot club house and other ancillary structures.
 - e) The close proximity of the neighboring community, and the need to create a physical buffer between commercial and residential uses.
 - f) Potential impacts associated with the loss of habitat for special status species.
 - g) Potential impacts to sensitive archaeological features.
 - h) Potential impacts of construction and operation on adjacent properties.
 - i) All other impacts evaluated in the Final Environmental Impact Report Supplements and Addendum, and in staff reports to the Board of Supervisors.
7. Of proposed mitigation measures to the loss of open space, the following 6 are infeasible for the following reasons:

- a) Open space easement of 120 or more acres in perpetuity: Although effective in preserving the undisturbed lands, and in preventing the expansion of the golf course, this mitigation is not likely to meet the constitutional test of *Dolan v. City of Tigard*.
- b) 90 - 100% open space easement in perpetuity: As in the previous case, although effective in restricting the expansion and intensification of the project, this mitigation is not likely to sustain a constitutional challenge.
- c) 90% open space easement extending 20 years beyond the life of the use permit: This mitigation is likely to be constitutionally infirm, and since it does not provide permanent protection of open space, is ultimately indistinguishable from use permit conditions. Further, it does not provide a disincentive for the conversion of the golf course to other, more intensive

uses.

d) 90% open space easement, effective until the General Plan and zoning are amended: Although arguably effective in the long-term preservation of open space, this mitigation measure is not permanent, and is also unlikely to pass the constitutional test of *Dolan v. City of Tigard*.

e) Purchase of an open space easement by the Santa Clara County Open Space Authority: This mitigation measure relies on the actions of a third party agency over which the County exercises no authority. Further, there is no identified funding source, no acquisition plan, and hence no guarantee that an easement can or would be purchased. An effective mitigation cannot be based upon a possible outcome, and this mitigation measure does not restrict the intensification of the project within the boundaries of the golf course.

f) Purchase of public or private open space easement through the creation of a special assessment district: This mitigation requires the creation of an assessment district, which can be overridden with a majority protest, and would rely on the levying of a substantial fee on neighboring properties.

8. Of proposed mitigation measures to the loss of open space, the following 4 are feasible, but inadequate, because they do not meet the additional objectives stated in paragraph 4, above:

a) Development restrictions over 97 acres (all undisturbed and rehabilitated areas of the site) as a condition of the use permit: This mitigation is inadequate because there is no long-term preservation of open space, and no disincentive to the conversion of the property to other uses.

b) A 50 acre open space easement in perpetuity (slopes in excess of 30%): This mitigation measure is insufficient in size to mitigate the significant conversion of open space lands represented by the golf course project.

c) Right of First Refusal Agreement: Given the lack of identified funding sources for the eventual purchase of this site, and the absence of any plan which would support the eventual acquisition of the site, this alternative, while feasible, is problematic, and fails to meet all of the objectives for the mitigation of the loss of open space, as set forth in Paragraph 4, above.

d) 97 acre open space easement in perpetuity: This mitigation measure appears to represent the uppermost limit of a constitutionally permissible requirement for the dedication of an open space easement, in that it is

roughly proportional in nature and extent to the projects impacts identified in paragraph 6, above.. Alone, however, it does not meet all of the objectives stated in paragraph 4, above. If coupled with other forms of development restriction, this mitigation measure appears to be the environmentally and legally superior alternative.

9. Based upon the foregoing findings, on the information in the Final Environmental Impact Report, its Supplements and Addendum, and upon analysis of staff reports and the testimony and documentary evidence received, the Board of Supervisors concludes that potentially adverse environmental impacts in the areas listed below have been identified. Appropriate mitigation measures, as summarized in the Summary of Impacts, attached hereto as Exhibit A, and fully incorporated herein by reference, together with such further mitigation measures as set forth in the following motion, have been proposed for each category of potential environmental impact noted below. These mitigation measures, and those specified in the following motion, when incorporated as conditions of the use permit, minimize such categories of potential impact to the extent feasible, and will reduce such potential environmental impacts to a less than significant level.

- Land Use Compatibility
- Wastewater Treatment
- Archaeology
- Geology
- Public Safety
- Utilities and Services
- Traffic
- Storm Drainage
- Vegetation and Wildlife
- Drainage and Flooding
- Water Quality
- Noise
- Air Quality
- Aesthetics
- Water Supply
- Parks, Recreation & Open Space

10. The loss of open space is mitigated to a less than significant level because the nature and design of the proposed golf course development, as conditioned, including the siting and environmental sensitivity of the golf course design, and the siting of the club house and ancillary facilities, effectively minimize the predominant aesthetic and visual components of the loss of open space. Further, the requirement of the dedication of an open space easement of approximately 97 acres in perpetuity, designed to permanently protect undisturbed and rehabilitated areas of the site, assures to the maximum extent feasible, the further mitigation of impacts summarized in paragraph 6, above.

11. Concerns regarding drainage from the golf course, and seepage into residential areas from golf course watering, have been adequately mitigated through the computerized watering system and other requirements of the Monitoring Program. These concerns are feasibly further mitigated by the incorporation of a Voluntary Drainage Monitoring Plan into the Monitoring Program. Such Voluntary Drainage Monitoring Plan is described in Exhibit B, attached hereto and incorporated herein by reference, and shall be incorporated as a further condition of the use permit.

12. Impacts from ancillary nighttime uses of the club house are feasibly mitigated by requiring that normal club house activities take place no later than 10:00 p.m. on Sunday through Thursday, inclusive, and no later than midnight on Fridays and Saturdays, provided, however, that such curfews shall not apply to occasional special events, such as receptions and tournaments. Impacts on the surrounding neighborhood are further reduced by conditions which eliminate the possibility of extending Mazzone Drive as a secondary access to the project site, time restrictions on hours of construction during the weekends which are at least as restrictive as those applicable during weekdays, and conditions to be implemented during the Architectural and Site Approval Committee process which shall implement identified mitigations, such as berms, to reduce the noise and visual impacts of the road and traffic to properties located at the end of Crossview Court.

13. The use, as designed, and as further conditioned through the Architectural and Site Approval Committee process, will not substantially alter the natural environment, in that the completed project will rehabilitate areas disturbed during grading, including the replacement of native trees at a 3:1 ration, and the recreation of lost habitat types at approved rations. Further, the steepest, most visible portions of the site shall remain undisturbed, as will the natural rock outcrops in the central portion of the site.

14. A suitable location exists on the site which can safely handle the size of expected sanitation waste generation. The project will be served by septic systems, in suitable locations for the drainfields that have been approved by the Department of Environmental Health, and are placed on natural slopes of 30% or less, unless they otherwise meet or exceed all requirements of the Department of Environmental Health.

15. Based upon the mitigations set forth in the Final Environmental Report, each of its Supplements and Addendum, as summarized in the Summary of Impacts (Exhibit A), and further provisions of the following motion, all of which are subject to the monitoring provisions of the Monitoring Program, and shall be incorporated as conditions of the use permit, the Board of Supervisors makes each of the general findings set forth in Section 47-5 of the Zoning Ordinance of the County of Santa Clara, and incorporates each of said findings as if fully set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara that the Final Environmental Impact Report, and each of its Supplements and Addendum, be, and hereby are, certified as adequate, and as having been completed in compliance with the California Environmental Quality Act.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Monitoring Program, attached hereto as Exhibit C, incorporated herein by reference, be, and hereby is, adopted.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a use permit for the

Golf Club at Boulder Ridge, subject to the Conditions of Approval set forth in Exhibit D, attached hereto and incorporated herein by reference, and as modified by the following additional conditions, be and hereby is, granted:

1. As and for a further mitigation of the loss of open space, and other impacts designated in Paragraph 6, above, a permanent open space easement, in substantially the form set forth in the Addendum to the Final Environmental Impact Report, over approximately 97 acres of the project site shall be granted to the County of Santa Clara in perpetuity. Said easement shall be drafted in order to permit the installation of utilities, drainage systems, and minor ancillary structures within the open space area, consistent with the present design of the project, and to permit minor adjustments of the greens, tees, fairways, as well as the repair and maintenance of utilities and improvements. Cart paths, small directional signs, golf course "rough" areas, the relocated PG&E access road (which will also serve as a golf course service road), horticultural areas, and fences are all depicted as part of the current design and shall be permitted. In addition, where necessary, portions of golf course bridges and support structures may encroach into the easement area.
2. As and for a further condition of the use permit, no further development of the remaining portion of the property shall be permitted, with the exception of minor adjustment of the greens, tees and fairways, and the repair and maintenance of utilities and improvements.
3. As and for a further condition of the permit, consistent with the finding of this Board of Supervisors that this project maximizes the development potential of the site under existing General Plan and zoning designation, the construction of homes, overnight accommodations, the expansion of the club house or other facilities, or the introduction of new uses on the property, such as pools, tennis courts, or any other uses permitted with the Hillside zoning district, shall be prohibited.
4. As and for a further condition of the use permit, to be specifically implemented during the Architectural and Site Approval Committee process, identified mitigations measures, such as berms, shall be incorporated into the project design in order to reduce to the extent feasible the noise and visual impacts of the road and traffic to properties located at the end of Crossview Court.
5. As and for a further condition of the use permit, Mazzone Drive shall not be used as secondary access to the project site.
6. As and for a further condition of the use permit, hours of construction on the weekends shall be limited as restrictively as construction during the weekdays.
7. As and for a further condition of the use permit, the applicant shall be required to post security sufficient to provide for the rehabilitation of the site in the event the project is abandoned before completion, such security to be tendered prior to the

