

EXHIBIT F

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), effective May 20, 1997, is entered into by and between the Board of Supervisors of the County of Santa Clara and the County of Santa Clara (collectively "County") as the first party, Garcia Development Company and Roche Garcia (collectively "Garcia") as the second party, and The Coalition to Save Open Space, and Charles Smith, individually and on behalf of all similarly situated property owners (collectively "Coalition") as the third party, with reference to the following facts:

RECITALS

A. Garcia Development Company owns that certain 202 acre parcel of real property located in the County of Santa Clara and sometimes known as Boulder Ridge (the "Property");

B. Garcia is desirous of constructing and operating a golf course on the Property;

C. Two lawsuits have been filed regarding the County's approval of Garcia's golf course use: Smith, et al. v. Board of Supervisors (Garcia) (Action No. 730166; the "Smith Case"), and Garcia v. County of Santa Clara (Coalition) (Action No. 747010; the "Inverse Case"), and an additional suit is pending regarding Garcia's interim farming activities on the Property: Coalition v. Garcia, et al. (Action No. 754489; the "Farming Case");

D. Without any admission of liability, the parties hereto desire to resolve all issues concerning the Smith case, the

Inverse Case, the Farming Case, and expected approval of those project-related implementing permits which the golf course use permit requires Garcia to obtain, and, while the absence of future controversy cannot be assured, to establish procedures aimed at allowing the construction and operation of the golf course on the Property to move forward without further litigation.

AGREEMENT AND RELEASE

FOR AND IN CONSIDERATION of the mutual releases and other valuable considerations set forth in this Agreement, County, Garcia and Coalition hereby agree as follows:

1. Covenant to Construct and Operate Golf Course. Garcia, and its assigns or successors in interest (if any), covenant(s) to the County that it will build and operate the Boulder Ridge Golf Club. Garcia, and its assigns and successors in interest (if any), covenant(s) to the County not to make any commercial agricultural use of the Property during the construction and operation of the Boulder Ridge Golf Club. Garcia, and its assigns and successors in interest (if any), covenant(s) to the County not to apply to the County, the City of San Jose, or any other governmental entity for any further development on the Property, including, but not limited to, residential development for a period of either (a) four (4) years commencing upon the issuance of the grading permit for the golf course on the Property, or (b) two (2) years commencing from the date that the golf course (including the completion of construction and commencement of operation of the cart barn, pro shop, and grill) is open for public

play, whichever is later. This covenant shall run with the land and shall be transferred to any entity to which Garcia transfers title. This covenant is not intended to and does not imply that the County is agreeable to any further development of the Property under any circumstances. This covenant shall be included as a condition to the use permit.

2. Preservation of Open Space. Pursuant to Judge Flaherty's Statement of Decision in the inverse case filed April 8, 1997, the County shall promptly eliminate the 97 acre open space easement as a condition to approval of Garcia's golf course project, and shall reaffirm Garcia's use permit for the golf course without any additional conditions, except for the covenant described in Paragraph 1 above and the open space preserve described below. Garcia does not concede that an open space easement of any size is legally required to address any open space impact of the golf course project. Nonetheless, Garcia hereby irrevocably offers to donate to the County a 50 acre open space preserve, pursuant and subject to the terms and conditions of that certain document entitled "Grant of Open Space Preserve" attached hereto as Exhibit 1 and incorporated herein by this reference. Exhibit 1 contains the final language of the Grant of Open Space Preserve, but the parties hereby acknowledge that the map attached thereto is not in final form because the exact location of the preserve area cannot be known until rough completion of the golf course. ~~Upon rough completion of the golf course, and prior to the opening of the golf course, Garcia shall cause the preserve area to~~

~~be surveyed and shall present the resulting legal description to the County for its acceptance and recording of the Grant of Open Space Preserve. The boundaries of the 50 acre open space preserve shall be in substantial compliance with the area designated on the map attached to Exhibit 1.~~

3. Monitoring of Golf Course Construction. Garcia hereby agrees to allow George Bettisworth, or a mutually agreed upon successor, as a representative of the Coalition to Save Open Space, to monitor the construction of the Boulder Ridge Golf Course under the terms and conditions stated herein. The monitoring period shall commence on the date that the County issues the grading permit to Garcia and shall end on the date that the golf course is opened for public play. During that period, Mr. Bettisworth may tour the Property with a representative of Garcia a maximum of once per calendar month, at times to be mutually agreed upon within 72 hours after notice by Mr. Bettisworth. The sole and exclusive purpose for Mr. Bettisworth's onsite visits is the visual observation of construction matters that could directly impact the adjacent Almaden Hills Estates residential area. Examples of matters which could result in direct impacts include, but are not limited to, noise, dust, drainage and erosion. Examples of matters which do not relate to direct impacts, and which are not to be the subject of Mr. Bettisworth's site visits, include but are not limited to, the number or location of trees removed and impacts to sensitive habitats. Garcia will designate a representative to accompany Mr. Bettisworth on the site visits at

the time Mr. Bettisworth provides notice of his request for a site visit.

4. Payment of Attorneys Fees. Within thirty (30) days of the effective date of this Agreement, County shall deposit with Richard Wylie, the mediator agreed upon by Garcia and Coalition, the amount of \$82,500. Within forty-five (45) days of the effective date of this Agreement, Garcia shall deposit with Mr. Wylie either (1) the amount of \$82,500 or (2) a note in that amount payable to McManis, Faulkner & Morgan, signed by Garcia Development Company, and providing for interest at the rate of ten percent (10%) per annum from the 46th day after the effective date of this Agreement until paid, with payment to occur no later than the 120th day after the effective date of the Agreement, along with a letter from Rocke Garcia stating: "If Garcia Development Company does not make payment pursuant to the note when due, I will make that payment immediately" (collectively the "Note"). The sums and/or Note delivered to Mr. Wylie pursuant to this Paragraph 4 shall be delivered by Mr. Wylie to McManis, Faulkner & Morgan in the manner provided in Section 6 below.

5. Dismissals of Pending Litigation. Within thirty (30) days after the effective date of this Agreement, the following shall occur:

a. The Coalition shall deliver to Mr. Wylie all fully executed documents in fileable form necessary to dismiss its two attorneys fees claims currently pending in the Smith Case, a dismissal with prejudice of its Complaint in the Farming Case, and

a letter from Jim McManis to Rocke Garcia as attached hereto as Exhibit 2.

b. Garcia shall deliver to Mr. Wylie all fully executed documents in fileable form to effect a final judgment for Garcia in the Inverse Case, which documents shall include an explicit waiver by Garcia of any claim for attorneys fees and any damages which Garcia may have incurred as a result of any temporary taking arising from the imposition of the 97 acre open space easement.

c. Garcia shall prepare, with language to be agreed upon by all parties, and all parties shall sign, a Stipulation in the Inverse Case wherein the parties agree (1) to the filing of an interlocutory judgment and issuance of a writ by Judge Flaherty, in the form submitted to the Court on March 18, 1997, commanding County to set aside the 97 acre open space easement condition and to take such other actions as are consistent with his Statement of Decision filed April 8, 1997, and (2) a return to that Writ wherein Judge Flaherty acknowledges that, by virtue of this Agreement and the County's approval of it by resolution, the writ has been fully satisfied. The parties agree that the Board's resolution implementing the Agreement is in compliance with the California Environmental Quality Act based on the existing certified Environmental Impact Reports for the project. The interlocutory judgment and writ shall be presented to the Court immediately upon execution of the Agreement by Garcia and Coalition in anticipation of Board approval on May 20, 1997; and the return

shall be prepared and delivered after said Board action to Mr. Wylie for filing with the Court together with the above-mentioned dismissals.

6. Disbursement and Filing. The parties hereby authorize Mr. Wylie to release the payments and/or Note to McManis, Faulkner & Morgan described in Section 4 only after he has received all documents described in Section 5, and to file all documents in Section 5 immediately after disbursing to McManis, Faulkner & Morgan the payments and/or Note described in Section 4.

7. No Appeal in Inverse Case. The Coalition and County each agree not to appeal Garcia's judgment in the Inverse Case.

8. Fees and Costs. Except as explicitly described in this Agreement, each party hereto shall bear all of its own fees and costs (including attorneys fees) regarding the Smith Case, the Inverse Case, the Farming Case, and all administrative proceedings to date related to the approval, construction and operation of the golf course and related facilities which have been approved by the County.

9. Enforcement of Use Permit. Nothing in this Agreement is intended, or shall be interpreted, as limiting County's ability to enforce the conditions to Garcia's use permit governing construction and operation of the golf course and related facilities.

10. General and Mutual Release.

a. Each party hereto hereby releases and forever discharges each other party of and from any and all legal or

equitable claims, demands, causes of action, liabilities or obligations of any kind, known or unknown, which any party has or may have against any other party, arising out of or in any way connected with Garcia's prior farming activities on the Property and/or the County's prior and current (i.e. pursuant to this Agreement) approvals of Conditional Use Permit No. 2195-42-53-92EIR-92B, including but not limited to the expected issuance of those project-related implementing permits (such as ASA, grading and building permits) which said conditional use permit, requires Garcia to obtain, for construction and operation of the golf course and related facilities which have been approved by the County for the Property. Coalition agrees not to challenge such permits on any ground existing before or at the effective date of this Agreement.

b. The acts described in Sections 1 through 8 above, and the execution of this Agreement, are entered into by way of compromise and to avoid the expenses and uncertainties of continued litigation, without any admission of any liability or responsibility on the part of any party hereto. It is understood and agreed that liability for any of the claims, demands or causes of action referred to herein specifically is denied.

c. Each party hereto agrees that if the facts with respect to this Agreement or the facts alleged in the Smith Case, the Inverse Case or the Farming Case, are found hereafter to be different from the facts now believed by them to be true, each party hereto expressly accepts and assumes the risk of such

possible difference in facts and hereby agrees that this Agreement is and will remain effective notwithstanding such difference in facts.

d. It is understood and agreed that this is a full and final release applying to all unknown and unanticipated injuries, debts or damages to the undersigned, or to any of them, as well as those now known or disclosed. Each party hereto understands and agrees that this is a general release of each other party, and each party expressly waives the provisions of California Civil Code §1542, which provides as follows:

"A general release does not extend to claims which each creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

e. In that connection, each party hereto realizes and acknowledges that one or any of them may have sustained losses that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future which are not now anticipated. Nevertheless, each party acknowledges that this Agreement has been negotiated and agreed upon in light of this realization and, being fully aware of this situation, they do, and each of them does, nevertheless intend to release, acquit and forever discharge each other as set forth above from any and all such unknown claims, including damages which are known and anticipated.

f. This general and mutual release shall extend to all conduct occurring through date of expected passage by the

County Board of Supervisors of a resolution accepting this Settlement Agreement and the new conditions of the use permit. This general and mutual release shall not constrain or limit the parties from pursuing legal claims for conduct occurring after such date, except for the County's expected issuance of the above-mentioned implementing permits, so long as the approved conditions of the use permit as of the date of this Agreement are not modified or revised in any manner affecting said implementing permits.

11. Final Expression. The terms of this Agreement are intended by the parties as a final expression of their agreement and understanding with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement, including its exhibits, constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced to vary its terms in any judicial proceedings involving this Agreement.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same document.

13. Authority. Each person executing this Agreement on behalf of an entity warrants and represents that it has fully authority to execute the Agreement on behalf of that entity and to fully bind that entity to the terms of this Agreement.

14. Execution. This Agreement shall be void and of no

force and effect whatsoever unless it is fully executed by all parties hereto no later than the Effective Date of this Agreement as stated in the Preamble.

15. Future Disputes Regarding the Golf Course Project.

Prior to taking any formal action, Coalition will try to resolve future disputes regarding perceived violations of the terms and conditions of the permits for the golf course project in the following manner: To the extent it is feasible to do so, Coalition intends to have Mr. Bettisworth (or his successor) contact Garcia to discuss the dispute and make a good faith effort to resolve it. If they cannot resolve the dispute, they will contact the office of Supervisor Gage (or his successor) to discuss the dispute and make a good faith effort to resolve it. Coalition will provide a written notification to its members advising them of this dispute resolution procedure.

16. Future Development of the Property. Nothing in this Agreement is intended to, nor shall it be interpreted to imply that Coalition is agreeable to any development of the Property other than the golf course project as currently described and approved through the use permit and this Agreement.

17. Approval of Homeowners Association. The effectiveness of this Agreement is expressly preconditioned upon the execution, by the effective date of this Agreement, of a separate document whereby the Almaden Hills Estates Homeowners Association agrees to be bound by the terms and conditions of this Agreement.

18. Pac Bell Mobile Services' Conditional Use Permit Application. Pac Bell Mobile Services has submitted to the County a permit application, No. 6232-41-52-96A, for a mobile/wireless communications facility on the Property (the "Pac Bell Permit"). Regarding the Pac Bell Permit, it is the intent of the parties that this Agreement be interpreted as follows: (1) Nothing in this Agreement, including Section 1 hereinabove, is intended to preclude the County from processing the Pac Bell Permit and rendering a decision in its discretion; (2) nothing in this Agreement (including Section 10 hereinabove), is intended to limit, in any manner, the Coalition's ability to take any position regarding the Pac Bell Permit or to pursue any legal remedy regarding the Pac Bell Permit; and (3) for the purposes of this Agreement, the Pac Bell Permit shall not be construed as a permit implementing the golf course project.

"COUNTY"

COUNTY OF SANTA CLARA and BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA

Dated: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

County Counsel

"GARCIA"

Dated: _____

ROCKE GARCIA

GARCIA DEVELOPMENT COMPANY, a
California Corporation

Dated: _____

By: _____
ROCKE GARCIA, President

APPROVED AS TO FORM:

MATTEONI, SAXE & NANDA

By: _____
NORMAN E. MATTEONI

"COALITION"

COALITION TO SAVE OPEN SPACE

Dated: _____

By: _____
GEORGE BETTISWORTH, individually
and as a Coalition member

Dated: _____

By: _____
DENNIS MULVIHILL, individually
and as a Coalition member

Dated: _____

By: _____
CARL RAND, individually and as
a Coalition member

Dated: _____

CHARLES SMITH, individually and on
behalf of all similarly situated
property owners

McManis, Faulkner & Morgan hereby approves the form of this
Agreement for Coalition and, as consideration for the payment of

) attorneys fees described in Section 4 above, agrees to forever forbear from seeking from Garcia, County, or any entity or person related to either of them, any costs or fees, including attorneys fees, arising from the efforts of any member of the law firm related in any way to the Property through and including the effective date of this Agreement.

MCMANIS, FAULKNER & MORGAN

Dated: _____

By: _____
JAMES MCMANIS, Partner

GRANT OF OPEN SPACE PRESERVE

This is an agreement to establish an open space preserve by Garcia Development Company ("Grantor") for the benefit of the property and in favor of the County of Santa Clara ("Grantee").

RECITALS

A. Grantor is the sole owner of property that is the subject of this Grant ("Subject Property") located in the County of Santa Clara, State of California, legally described as fully set forth in Exhibit "A" which is attached hereto and made a part of this Grant by reference.

B. The total property is approximately 202 acres, which is the subject of a County use permit (File No. 2195-42-53-92EIR-92B) granting approval for development of the land as a golf course with clubhouse, ancillary structures and other uses ("golf course").

C. The Subject Property possesses certain slopes exceeding 30% and rock outcrop areas which have visual prominence from certain areas of Almaden Valley and have scenic amenities.

D. It is the intention of the Grantor, pursuant to a condition of the use permit, to secure open space for the benefit of Subject Property and preserve the above-mentioned values over certain portions of the property consisting of approximately 50 acres in conjunction with the development of the overall site as a golf course.

GRANT OF OPEN SPACE PRESERVE

1. As a condition of the use permit, and in consideration of the mutual covenants, terms and conditions contained in this Grant, ~~Grantor conveys to Grantee an open space preserve in the subject property, in perpetuity, upon those certain lands, depicted in Exhibit "B" attached hereto, containing approximately 50 acres, subject to the terms of this Grant, to be recorded in the County at the time the subject property is finally approved for the development of the golf course as described in Application No. 2195-42-53-92EIR-92B.~~

2. During the construction of the golf course development, Grantor may, under the terms of the use permit, disturb portions of the 50 acre open space preserve, including grading and removal of natural vegetation for the purpose of constructing the golf course, subject to restoration conditions of the use permit.

3. Grantor reserves the right to utilize the open space preserve. ~~The open space preserve may be utilized as a portion of the natural rough and/or out-of-bounds of the golf course, including utilities, drainage systems, cart paths, small directional signs, ancillary structures, the relocated PG&E access road (which will also serve as a golf course service road), horticultural areas, fences and other allowed uses either related to operation and construction of the golf course or regarding future development as may be approved by responsible governmental agencies.~~

4. Grantor reserves the right to make reasonable adjustments in the golf course design after its initial develop-

ment, providing that the balance between golf course and other developed areas to the open space preserve is maintained in the same proportion as under this Grant. In other words, ~~Grantor may, subject to appropriate County approvals, make incidental changes in its golf course design which do not change the purpose of the open space preserve and which, if certain portions of the preserve are subsequently used for golf course or other related uses, those portions will be substituted on a like-for-like basis with other contiguous land on subject property.~~

5. Grantor reserves the right to all uses and occupancy of the open space preserve as part of its overall subject property in any manner consistent with the stated purposes and covenants of this Grant, including but not limited to agricultural uses and utilities and drainage for such present and future development of Subject Property as may be approved by responsible governmental agencies.

6. By this Grant, the open space preserve will be privately maintained in an open character which excludes residential, industrial or commercial structures.

7. Grantor shall retain all rights of ownership to the Subject Property, except as expressly restricted herein, and shall bear responsibility concerning ownership, operation and maintenance of this open space preserve.

8. The granting of this open space preserve by this instrument, and the acceptance of the Grant by the Grantee, do not authorize, and are not to be construed as authorizing, the public

or any member of the public to enter, trespass on, or use any or all of the open space preserve, or as granting to the public or any member of the public any easement or other tangible rights in or to the open space preserve. ~~It is understood that the purpose of this grant is solely to preserve certain undeveloped portions of the property in their general open space character.~~

9. If any action in eminent domain or condemnation of any interest in subject property is filed, or if the subject property is acquired for parkland, open space or any other public project by a public agency or person, these restrictions will be null and void as to the interest in the open space preserve actually condemned or acquired, in order that the property is valued without the restrictions stated herein.

10. This Grant binds Grantor and Grantor's successors and assigns, and constitutes the servitude on the Subject Property which runs with the land.

11. The purposes, terms, and covenants in this Grant may be specifically enforced or enjoined by the Grantee in proceedings in the Superior Court of the State of California. The rights granted herein to the Grantee may not be assigned by the Grantee.

12. This grant of open space preserve is to be interpreted, enforced and performed in accordance with the laws of the State of California.

13. This grant of open space preserve sets forth the entire agreement of the parties with respect to this Grant.

IN WITNESS WHEREOF, the parties have executed this Grant

on the dates indicated below, the latest of which shall be the effective date of this Grant.

GRANTOR:

GARCIA DEVELOPMENT COMPANY

Dated: _____

By: _____
W. ROCKE GARCIA, President

GRANTEE:

COUNTY OF SANTA CLARA

Dated: _____

By: _____
Chairperson

CERTIFICATE OF ACCEPTANCE
(Government Code §27281)

This is to certify that the foregoing Grant to the County of Santa Clara, State of California, is hereby accepted by the undersigned officer on behalf of the Board of Supervisors of the County of Santa Clara, pursuant to the authority conferred by resolution of the Board of Supervisors of the County of Santa Clara, adopted September 27, 1965, and the Grantee consents to the recordation thereof by its duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand on this _____ day of _____, 1997.

Chairperson, Board of Supervisors

garcia2.agr/md
5/15/97

LEGAL DESCRIPTION

The following described real property in the County of Santa Clara,
State of California:

PARCEL 3, as shown on Parcel Map filed February 28, 1978, in Book
413 of Maps, at Pages 51 and 52, Santa Clara County Records.

EXHIBIT A

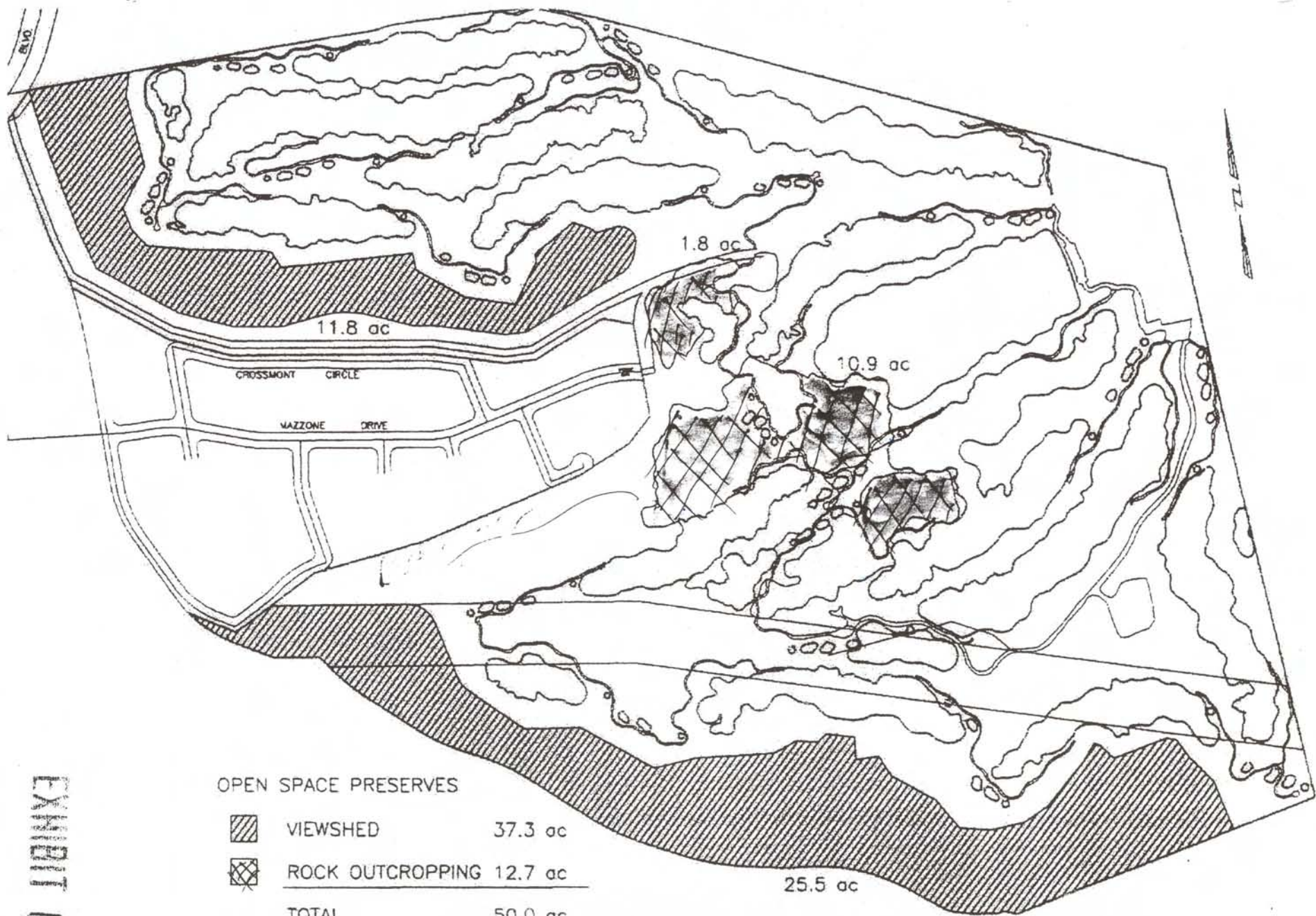


EXHIBIT B